



Report
of the
Tribunal of Inquiry
into
Payments to Politicians
and Related Matters

Part I

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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Tribunal of Inquiry
(Payments to Messrs Charles Haughey and Michael Lowry)

Appointed by instrument of

An Taoiseach

dated the 26th day of September 1997

Sole Member:

The Honourable Mr. Justice Michael Moriarty



Tribunal Office

State Apartments

The Upper Yard

Dublin Castle

Dublin 2

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December 2006

Mr Kieran Coughlan
Clerk of the Dáil
Dáil Éireann
Leinster House
Kildare Street
Dublin 2

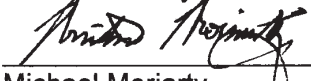
RE: TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921 AND
1979 (NO. 2) ORDER 1997

Dear Mr Coughlan

I enclose the First Part of my Report as Sole Member of the Tribunal appointed by Order made on the 26th day of September, 1997 by the Taoiseach, pursuant to resolutions of Dáil Éireann and Seanad Éireann passed on the 11th and 18th days of September, 1997 respectively, to inquire into any payments made to certain politicians and associated matters in accordance with the Terms of Reference contained in the said Order. The Second and Final Part of the Report will be furnished at the earliest practicable date in 2007.

As you will be aware, I am required on foot of the provisions of the said Order to report to yourself on this basis in your said capacity. In accordance with the practice observed in prior Tribunals, I have also furnished the First Part of the Report and written in similar terms to the Taoiseach.

Yours sincerely


Michael Moriarty
Sole Member of Tribunal

Tribunal of Inquiry
(Payments to Messrs Charles Haughey and Michael Lowry)

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December 2006

Mr Bertie Ahern TD
Taoiseach
Government Buildings
Upper Merrion Street
Dublin 2


RE: TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921 AND
1979 (NO. 2) ORDER 1997

Dear Taoiseach

I enclose the First Part of my Report as Sole Member of the Tribunal appointed by Order made on the 26th day of September, 1997 by yourself as Taoiseach, pursuant to resolutions of Dáil Éireann and Seanad Éireann passed on the 11th and 18th days of September, 1997 respectively, to inquire into any payments made to certain politicians and associated matters in accordance with the Terms of Reference contained in the said Order. The Second and Final Part of the Report will be furnished at the earliest practicable date in 2007.

As required by the said Order, I am writing in similar terms to the Clerk of the Dáil, Mr Kieran Coughlan.

Yours sincerely



Michael Moriarty
Sole Member of Tribunal

PREFACE

In a long running Tribunal, it is inevitable that an amount of turnover in the personnel attached to it will occur, hence the list of persons who gave assistance at different times is less short than the total number involved at any one time, which ranged between twelve and fifteen. Apart from those mentioned here, there was a small number of lawyers whose duties primarily related to the matters that will be addressed in the Second Part of the Report in 2007, and it is preferable that their contributions should be acknowledged at that stage.

First and foremost, I am indebted to the three most senior barristers, John Coughlan SC, Jerry Healy SC and Jacqueline O'Brien SC, whose involvement dates back to the very commencement of the Tribunal, and whose advice, assistance and commitment in all respects has been invaluable throughout. Maire Moriarty BL has been retained for almost all of that duration, providing an assured grasp of much complex documentation, in addition to which Brian McGuckian BL and Darach MacNamara BL have at different times provided important contributions in research and other spheres.

For most of the period relating to this Part of the Report, John Davis was the Solicitor to the Tribunal, and he was succeeded for the latter portion of relevant investigations and sittings by Stuart Brady. Both brought a high degree of skills and organisation to the role.

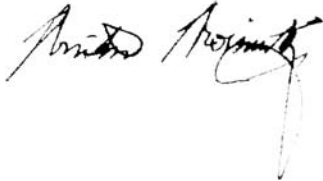
As Registrar to the Tribunal, Annette O'Connell dealt with a wide range of organisational duties with exceptional expertise and adroitness, drawing on her previous Tribunal and Court experience. On her appointment to a senior position in the Courts Service, Christopher Lehane and Siobhan Hayes were her capable successors in respect of the remaining periods concerned with this Part of the Report.

In administering the Tribunal office, Karl Martin was able to draw upon extensive prior experience of earlier Tribunals, and in enabling smooth and unobtrusive functioning he was capably assisted throughout by Colm Grace, particularly in ensuring that the exceptional and thankless demands entailed in photocopying vast amounts of documentation were undertaken unerringly. Similarly high secretarial demands, primarily in typing and telephone duties, were fully met in the early days of the Tribunal by Jacinta Larkin, Marie Heffernan, Jeanette O'Hare and Mary McCabe; in recent years, when the volume of this work had risen yet further, these roles were undertaken by Anne Greenalgh and Sarah Marshall, aided in recent months by Martina Regan, with particular commitment and skill in what were often long and unsocial hours.

Last but not least, I am appreciative of the help and support provided by Brendan Daniels and Des Clifford.

Some outside agencies have given important assistance to the Tribunal from time to time, and it is unnecessary that these be listed, but it would be wrong not to acknowledge the accurate and punctual transcription service provided for all Tribunal hearings by Doyle Court Reporters Limited.

Without the professionalism, dedication and good humour of all these persons, it would in no sense have been possible to bring a lengthy and sometimes arduous task to completion.



Michael Moriarty
Sole Member of Tribunal

Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 2) Order, 1997

WHEREAS a Resolution in the following terms was passed by Dáil Éireann on the 11th day of September, 1997 and by Seanad Éireann on the 18th day of September, 1997.

“Bearing in mind serious public concern arising from the Report of the Tribunal of Inquiry (Dunnes Payments) published on 25 August, 1997, which established that irregular payments were made to and benefits conferred on certain persons who were members of the Houses of the Oireachtas between 1 January, 1986, and 31 December, 1996.

And noting that the said Tribunal established that money was held on deposit in certain Irish banks by offshore banks in memorandum accounts (“the Ansbacher accounts”) for the benefit of Irish residents including Mr Charles Haughey, (the history of which deposits is set out in Chapter 6 of the Report of the said Tribunal),

And noting further that the Dunnes Payments Tribunal was unable by reason of its terms of reference to investigate the source of the Ansbacher accounts, other than in respect of sums paid by certain persons referred to in the said terms of reference.

Resolves that it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:

- (a) Whether any substantial payments were made, directly or indirectly, to Mr Charles Haughey (whether or not used to discharge monies or debts due by Mr Charles Haughey or due by any company with which he was associated or due by any connected person to Mr Charles Haughey within the meaning of the Ethics in Public Office Act, 1995 or discharged at his direction) during any period when he held public office commencing on 1st January, 1979 and thereafter up to the 31st December, 1996 in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office held by him or had the potential to influence the discharge of such office.
- (b) The source of any money held in the Ansbacher accounts for the benefit or in the name of Mr Charles Haughey or any other person who holds or has held Ministerial office, or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr Haughey or for the benefit or in the name

of a connected person within the meaning of the Ethics in Public Office Act, 1995, or for the benefit or in the name of any company owned or controlled by Mr Haughey.

- (c) Whether any payment was made from money held in any of the accounts referred to at (b) to any person who holds or has held public office.
- (d) Whether Mr Charles Haughey did any act or made any decision in the course of his Ministerial offices, to confer any benefit on any person making a payment referred to in paragraph (a) or any person who was the source of money referred to in paragraph (b), or any other person in return for such payments being made or procured or directed any other person to do such an act or make such a decision.
- (e) Whether any substantial payments were made directly or indirectly to Mr Michael Lowry (whether or not used to discharge monies or debts due by Mr Michael Lowry or due by any company with which he was associated or due by any connected person to Mr Michael Lowry within the meaning of the Ethics in Public Office Act, 1995 or discharged at his direction), during any period when he held public office in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office held by him or had the potential to influence the discharge of such office.
- (f) The source of any money held in the Bank of Ireland, Thurles branch, Thurles, Co. Tipperary, the Allied Irish Bank in the Channel Islands, the Allied Irish Banks, Dame Street, Dublin, the Bank of Ireland (I.O.M.) Limited in the Isle of Man, the Irish Permanent Building Society, Patrick Street branch, Cork or Rea Brothers (Isle of Man) Limited, in accounts for the benefit or in the name of Mr Lowry or any other person who holds or has held Ministerial office or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr Lowry or for the benefit or in the name of a connected person within the meaning of the Ethics in Public Office Act, 1995, or for the benefit or in the name of any company owned or controlled by Mr Lowry.
- (g) Whether Mr Lowry did any act or made any decision in the course of any Ministerial office held by him to confer any benefit on any person making a payment referred to in paragraph (e) or any person who was the source of any money referred to in paragraph (f) or on any other person in return for such payments being made or procured or directed any other person to do such act or make such decision.

- (h) Whether any payment was made from money held in any of the bank accounts referred to at (f) to any person who holds or has held public office.
- (i) Whether any holder of public office for whose benefit money was held in any of the accounts referred to at (b) or (f) did any act, in the course of his or her public office, to confer any benefit on any person who was the source of that money, or directed any person to do such an act.
- (j) Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr Michael Lowry and Mr Charles Haughey of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) above and the gifts received by Mr Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) above.

And further in particular, in the light of its findings and conclusions, to make whatever broad recommendations it considers necessary or expedient:—

- (k) to ensure that the integrity of public administration is not compromised by the dependence of party politics on financial contributions from undisclosed source
- (l) for the reform of the disclosure, compliance, investigation and enforcement provisions of company law (including in particular those which relate to directors' duties).
- (m) for maintaining the independence of the Revenue Commissioners in the performance of their functions while at the same time ensuring the greatest degree of openness and accountability in that regard that is consistent with the right to privacy of compliant taxpayers
- (n) for enhancing the role and performance of the Central Bank as regulator of the banks and of the financial services sector generally
- (o) for the effective regulation of the conduct of their members by such professional accountancy and other bodies as are relevant to these terms of reference, for the purpose of achieving the highest degree of public confidence, and
- (p) for the protection of the State's tax base from fraud or evasion in the establishment and maintenance of offshore accounts, and to

recommend whether any changes in the tax law should be made to achieve this end.

“Payment” includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

“Person” includes any natural or legal person or any body of persons whether incorporated or not.

And that the Tribunal be requested to conduct its enquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:—

- (i) To carry out such investigations as it thinks fit using all the powers conferred on it under the Acts (including, where appropriate, the power to conduct its proceedings in private), in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,
- (ii) To enquire fully into all matters referred to above in relation to which such evidence may be found to exist, and to report to the Clerk of the Dáil thereupon,
- (iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate, on the steps taken by the Tribunal to determine what evidence, if any, existed,
- (iv) To report on an interim basis, not later than three months from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:

the numbers of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference);

And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that —

- (a) the Inquiry be completed in as economical a manner as possible

and at the earliest date consistent with a fair examination of the matters referred to it, and

- (b) all costs incurred by reason of the failure of individuals to cooperate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.”

NOW I, Bertie Ahern, Taoiseach, in pursuance of those Resolutions, and in exercise of the powers conferred on me by section 1 (as adapted by or under subsequent enactments) of the Tribunals of Inquiry (Evidence) Act, 1921, hereby order as follows:

1. This Order may be cited as the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979 (No. 2) Order, 1997.
2. A Tribunal is hereby appointed to enquire urgently into and report and make such findings and recommendations as it sees fit to the Clerk of the Dáil on the definite matters of urgent public importance set out at paragraphs (a) to (b) of the Resolutions passed by Dáil Éireann on the 11th day of September, 1997, and by Seanad Éireann on the 18th day of September, 1997.
3. The Honourable Mr Justice Michael Moriarty, a Judge of the High Court, is hereby nominated to be the Sole Member of the Tribunal.
4. The Tribunals of Inquiry (Evidence) Act, 1921 (as adapted by or under subsequent enactments) and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, shall apply to the Tribunal.

GIVEN under my Official Seal, this 26th day of September, 1997.

Bertie Ahern

TAOISEACH

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PURPOSE AND COMPOSITION OF THE REPORT

INTRODUCTORY

1-01 When the second and final Part of this Report is presented in the early part of 2007, the Tribunal process will have occupied in excess of eight years since the commencement of substantial public sittings. Such a period greatly exceeds what was contemplated at its inception, either by those who created it or by those who have managed it. It is preferable that a reasoned analysis as to why such extensive time and expense were entailed await that Second Part, when all the matters that required consideration can be drawn together, and when in addition, recommendations can be made as to how any future processes of the genre of Tribunals of Inquiry may avoid such protraction. For immediate purposes, it is nonetheless material to note a number of factors.

1-02 Unlike the Tribunal chaired by Mr. Justice Brian McCracken in 1997, the focus of which was relatively narrow, this Tribunal was required to examine a much wider range of activities over a much lengthier period in relation to both Mr. Charles Haughey and Mr. Michael Lowry, in addition to related persons in each instance, along with substantial recommendatory matters.

1-03 Being an inquisitorial rather than adversarial procedure, and accordingly having no plaintiff or defendant to bring information to it, the Tribunal had to obtain all its information for itself. It started with no more than the Report of the McCracken Tribunal, and the transcripts of that Tribunal's evidence. The process of conducting inquiries, particularly financial inquiries in relation to what has been termed the "*money trail*", proved extremely time-consuming; variable degrees of cooperation, at least in the first instance, were afforded by financial institutions, and only very limited information relevant to inquiries was volunteered by individuals.

- (i) With a view to preparation of this part of the Report, which primarily relates to the Terms of Reference pertaining to Mr. Haughey, the inquiries conducted by the Tribunal involved, firstly, the examination of his bank accounts and other sources of income; secondly, inquiries into aspects of the operation of Ansbacher Bank within this jurisdiction, and the role of the Central Bank in relation to those inquiries; thirdly, a detailed examination of the conduct of the Leader's Allowance Account in connection with payments to Mr. Haughey; fourthly, an investigation of potential acts or decisions on the part of Mr. Haughey falling within the Terms of Reference; fifthly, an examination of Mr. Haughey's relations with the Revenue Commissioners, in particular with regard to the manner in which Mr. Haughey was taxed in relation to gifts or payments found by either the McCracken Tribunal or this Tribunal to have been received by him. Prior to the commencement of public sittings in relation to any of these matters, a substantive legal challenge was

brought by Mr. Haughey against both the Tribunal and the State. As in the case of further legal challenges subsequently brought by other persons, these proceedings were heard and determined with the maximum possible expedition by the High Court and the Supreme Court, but nonetheless occupied the greater part of 1998, so that the commencement of public sittings was precluded until early 1999. It is not suggested that Mr. Haughey was not entitled to avail of his legal right of access to the Courts in this regard, but it is nonetheless the fact of matters that the litigation consumed a significant amount of the Tribunal's time and resources. Once these public sittings had commenced, relating to Mr. Haughey's relevant banking arrangements, payments made to Mr. Haughey, the operation of the Ansbacher accounts, the Leader's Allowance Account, and Mr. Haughey's dealings with the Revenue Commissioners, they were largely concluded by the end of May, 2001, although later sittings were considerably retarded by unavoidable issues concerning Mr. Haughey's state of health; having taken medical advice on a continuing basis with a view to hearing Mr. Haughey's own evidence in a manner which made due allowance for his medical condition, whilst as far as possible enabling him to give the best possible account of himself, it proved necessary to hear his testimony in truncated sessions, initially in public, then latterly on an even more abbreviated basis at commission hearings held in private, then subsequently read into the public record. Following the taking of Mr. Haughey's evidence, lengthy public sittings ensued in regard to the major part of the evidence relating to the Terms of Reference referable to Mr. Michael Lowry, although this had already been commenced in 1999; on virtual completion of those sittings in 2005, evidence was then adduced as expeditiously as was possible in relation to the remaining matters referable to Mr. Haughey, being the balance of dealings had by him with the Revenue Commissioners, in addition to the limited number of potential acts or decisions on his part deemed to fall within the Terms of Reference.

- (ii) In addition to the hearings held in relation to the matters to which reference has already been made, and other business which will be referred to later in this Chapter, very considerable time and endeavour was expended by the Tribunal in the private investigation of matters which ultimately did not, either by reason of insufficient evidence, by not being considered to fall within the Terms of Reference, or for other reasons of substance, proceed to public hearing. The confidentiality procedures observed by the Tribunal in general terms prohibit mention of these matters, but it may in general terms be said that numerous such matters came, or were brought to the attention of the Tribunal and, after careful investigation in private, were found not to require being heard in public hearings. In general, such investigations required interviews

with potential witnesses, in addition to examination of documentary files or financial records, which had to be obtained from Departments of State or financial institutions that may have been involved. Accordingly, what is addressed in this part of the Report by no means represents the totality of transactions and evidential material that required careful examination. Among the matters that were investigated in this fashion were some that had been the subject matter of earlier publicity and media reporting. In deciding whether or not to proceed to public hearing in individual instances, particular attention was paid by the Tribunal to its Terms of Reference, and specifically to what was apparent in regard to following what has been widely referred to as the money trail. Whilst many matters relating to Mr. Haughey were examined, it was of course not possible for the Tribunal to examine every act or decision involving any element of potential relevance that was undertaken by Mr. Haughey in the course of the lengthy period covered by the Terms of Reference. Such an exercise would have required enormous resources, and would have occupied a vastly lengthier period than the already considerable duration of the Tribunal.

BACKGROUND TO BOTH TRIBUNALS AND MAIN FINDINGS OF MCCRACKEN TRIBUNAL

Background facts

1-04 For persons reading this Report who may have forgotten or not have been fully aware of the rather startling background facts which led to the establishment of the McCracken Tribunal, it may be useful to set out a brief summary.

1-05 By the year 1992, the Dunnes Stores chain of large retail premises had become an enormous success commercially, primarily within the Island of Ireland. While it is unnecessary at this stage to dwell on its ownership and management structure, it can be noted that the two most significant entities were an unlimited company named Dunnes Holding Company, to which the entire business had been transferred, and a Trust, known as the Dunnes Settlement Trust, which in addition to holding all the ordinary shares in the Dunnes Holding Company, held the preference shares, to which voting rights attached, together with members of the Dunne Family. The purpose of the Trust, which, was discretionary in nature, was to provide for the children and grandchildren of the original founder of the business, Mr. Bernard Dunne Snr. On his death in 1983, the management of the Company passed to five of his children. Whilst different areas of responsibility were shared by the siblings, the reality of matters was that complete control of the finances of the business had been acquired by Mr. Ben Dunne during the decade of rapid expansion which dated from 1983.

1-06 Notwithstanding the success of the business, serious differences and disagreements arose within the board of the Dunnes Holding Company in regard to a number of significant decisions and business methods on the part of Mr. Ben Dunne. In addition, Mr. Dunne was in February, 1992 charged with possession of cocaine in Florida, USA, in circumstances attracting lurid publicity, and was ordered by the Court of Trial there to spend a month in a rehabilitation clinic in England. The combination of circumstances brought matters to a head, and in February, 1993 Mr. Dunne was removed as Chairman of Dunnes Holding Company, and five months later was removed as an Executive Director of the Company. In response, Mr. Dunne issued two sets of proceedings. The first of these was a petition claiming relief under Section 205 of the Companies Act, 1963, on the basis that he was an oppressed shareholder. The second proceedings were brought against the Trustees of the Dunnes Settlement Trust, claiming a number of reliefs against them, but in effect alleging that the Trust was no more than a sham.

1-07 In the proceedings brought against the Trustees, particulars were sought in relation to Mr. Ben Dunne's claim. In the course of the responses delivered on behalf of Mr. Dunne, it was contended that he made payments to Mr. Charles Haughey in excess of £1 million between the years 1988 and 1991, when Mr. Haughey was Taoiseach. References to other payments, the details of which subsequently transpired to be substantially correct, were also made in the course of this correspondence between the respective firms of solicitors, which did not form part of the file of the proceedings in the Central Office of the High Court. In preparation for the case on the Dunnes Stores side, the accountants, Price Waterhouse, were instructed to investigate and report on certain accounts containing money which was the property of the Dunnes Stores Group, but which appeared to have been operated solely by Mr. Ben Dunne, by whom substantial payments had been made that were unconnected with the affairs of the Dunnes Stores Group and not authorised by it.

1-08 On 16th November, 1994, both actions were listed for hearing in the High Court. Both were settled after extensive negotiations. The essential basis of the settlement was that Mr. Dunne withdrew all the allegations that he had made in the course of the proceedings, and the remaining members of his family acquired his entire interest in the Dunnes Stores Group on agreed terms. Following the settlement, neither the correspondence relating to particulars, nor the Price Waterhouse Report were made public. Nonetheless, later in November, 1996 media reports appeared to the effect that the Dunnes Stores Group had paid more than £200,000 in relation to renovation of the home of Mr. Michael Lowry TD. Whilst matters relating to Mr. Lowry are not the concern of this part of the Report, these reports, and Mr. Lowry's subsequent resignation as Minister for Transport, Energy and Communications on 2nd December, 1996, were some days afterwards followed by further media reports, referring in particular to more than £1

million having allegedly been paid by Mr. Dunne to a retired politician. This led to speculation that the politician might have been Mr. Haughey.

1-09 Also in early December, 1996, the Committee on Procedure and Privileges of the Oireachtas appointed retired Circuit Judge Gerard Buchanan to report to the Committee in relation to the Price Waterhouse Report in a context of any payments or transactions there found which were referable to categories of persons essentially comprising politicians and public servants. The very limited materials and powers that were available to Judge Buchanan led to the Reports which he was able to furnish to the Committee on Procedure and Privileges being unable to provide anything like the complete picture of all payments to politicians made by Dunnes interests. Following receipt of his Interim Report, the Dáil and Seanad decided to set up the McCracken Tribunal.

1-10 The Terms of Reference of the McCracken Tribunal in essence were:

“To inquire urgently into, and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:—

(a) *All payments in cash or in kind directly or indirectly whether authorised or unauthorised within or without the State which were made to or received by*

(i) *Persons who were between 1st January 1986 and 31st December 1996 members of the Houses of the Oireachtas,*

(ii) *Their relatives or connected persons as defined in the Ethics and Public Office Act, 1995,*

(iii) *Political parties*

from Dunnes Holding Company and/or any associated Enterprises. . . .and/or Mr. Ben Dunne or any person on his behalf or any companies Trusts or other entities controlled directly or indirectly by Mr. Ben Dunne between 1st January 1986 and 31st December 1996, and the considerations, motives and circumstances therefor.”

1-11 Before setting out the main relevant findings of the McCracken Tribunal, which led to the establishment of this Tribunal, it is well to state some brief details in relation to the principal persons and entities concerned in the McCracken Tribunal, as they emerged in the course of its hearings.

Principal Persons and Entities

Mr. Charles Haughey

1-12 Having qualified as a Chartered Accountant in the 1940s, and subsequently also as a barrister, Mr. Haughey set up an accountancy partnership under the name and style of Haughey Boland with Mr. Harry Boland. He remained in the practice until 1956. In 1957 he commenced a highly successful career in public life by being elected to Dáil Éireann, where he remained a member continuously until 1992. Following initial appointments as a Parliamentary Secretary, the earlier designation of what are now known as Ministers of State or Junior Ministers, he held the

portfolios of Justice, Agriculture, Finance, then Health and Social Welfare, before first becoming Taoiseach in 1979, a position he resumed in 1982, in 1987 (not continuously), and then in 1989 until his retirement in 1992. Mr. Haughey had in the course of the 1970s purchased Abbeville, a Gandon designed house with substantial lands at Kinsealy, in North County Dublin. Until shortly after his first appointment as Taoiseach, he at various times carried out farming activities on the land.

Mr. Desmond Traynor

1-13 Mr. Traynor was initially a Chartered Accountant who started his career in Haughey Boland; and was articled to Mr. Haughey. He later became a successful businessman and banker. On 11th December, 1969, he was appointed a Director of Guinness & Mahon (Ireland) Limited, a licensed bank, and on 13th May, 1976, he was appointed Deputy Chairman, a full time executive position in relation to which he was also *de facto* Chief Executive of the Bank. He remained there until his resignation on 2nd May, 1986. Soon thereafter, he was appointed Chairman of Cement Roadstone Holdings Plc, and enjoyed the use of an office, at the Headquarters of that Company initially in Lower Pembroke Street and subsequently in 42 Fitzwilliam Square, Dublin. In 1969, Guinness & Mahon (Ireland) Limited formed a small investment company in the Cayman Islands. Mr. Traynor was responsible for setting up this company, which became a Class A licenced bank in late 1972. He became Chairman of the Cayman Bank in 1974.

Mr. Noel Fox

1-14 Mr. Fox is a Chartered Accountant and a Senior Partner in the firm of Oliver Freaney & Company, with which he has been associated since 1963. The firm was at all material times Auditors of some of the companies in the Dunnes Stores Group. Mr. Fox was in addition a financial adviser to the Dunnes Stores Group, and in particular was then a close friend and adviser to Mr. Ben Dunne. In this context, he for some years attended daily early morning meetings of the Dunnes Stores Group. He became one of the Trustees of the Dunnes Settlement Trust in 1972, and was one of the Defendants in the action taken by Mr. Dunne against the Trustees.

Guinness & Mahon (Ireland) Limited

1-15 Having been founded in 1836 by John Ross Mahon and Robert Rundell Guinness as a land agency, the firm of Guinness & Mahon later became a bank. By 1923, the bank headquarters were located in London, and the bank was known as Guinness Mahon & Company. In 1966, Guinness & Mahon Limited was formed as a subsidiary of the London company, and in August, 1994, it was acquired by Irish Permanent Plc, with its name being changed to Guinness & Mahon (Ireland) Limited.

Mr. Padraig Collery

1-16 After previous experience as a bank official with Lloyds Bank in London, Mr. Collery joined Guinness & Mahon (Ireland) Limited as a senior

bank official in 1974. His main duties were the management of the Operations Department, which was responsible for maintaining all the customer accounts of the bank, and he was also responsible for computer operations. Although he left the bank in 1989, he maintained close contacts with Mr. Desmond Traynor until Mr. Traynor's death in 1994.

Mr. John Furze

1-17 Following some years of banking experience in the Cayman Islands with the Bank of Nova Scotia, Mr. Furze together with Mr. John Collins became responsible for the management of Guinness Mahon Cayman Trust Limited, the Cayman subsidiary set up by Guinness & Mahon (Ireland) Limited, and managed initially by the Bank of Nova Scotia. Both left the Bank of Nova Scotia in 1973, and became joint Managing Directors of Guinness Mahon Cayman Trust Limited. Mr. Furze had a close relationship with Mr. Traynor, who introduced several Irish customers to the Cayman Bank, and it seems that the affairs of those customers were attended to by Mr. Furze in conjunction with Mr. Traynor. Mr. Furze died in 1997.

Mr. Paul Carty

1-18 Mr. Carty practiced for many years as a chartered accountant, having joined the firm of Haughey Boland in February, 1968. He was made a partner in 1971, and remained so at all material stages through the course of various mergers. The last of these saw the firm become part of Deloitte & Touche, of which Mr. Carty was appointed Managing Partner.

Mr. Jack Stakelum

1-19 Mr. Stakelum is also a chartered accountant, having initially been articled to Mr. Charles Haughey in the firm of Haughey Boland. After practising elsewhere, he returned to the firm in 1962, and was made a partner in 1967. On leaving in 1975, he set up a financial consultancy practice under the name of Business Enterprises Limited, and was at all stages a close personal friend of Mr. Traynor.

Ansbacher Cayman Limited

1-20 The genesis of Guinness Mahon Cayman Trust Limited, and how it became a bank in its own right, has already been referred to. In 1984 it was sold by Guinness & Mahon (Ireland) Limited to Guinness Mahon & Co. Limited in London, its parent company. The following year it was sold on to a consortium, which included Mr. Traynor, Mr. Furze and Mr. Collins. In turn they sold a 75% interest to a London bank called Henry Ansbacher & Company, a member of the Ansbacher Group, and the name of the bank was changed to Ansbacher Limited. Its title was since changed again to Ansbacher Cayman Limited, and the remaining 25% interest was also sold to the Ansbacher Group, which itself was later sold to the First National Bank of South Africa.

1-21 From the mid 1970s, Ansbacher Cayman Limited placed substantial deposits with Guinness & Mahon (Ireland) Limited, which by 1989 had grown to approximately £38 million. Although deposited in the name of Ansbacher Cayman Limited, these deposits consisted of money that had been deposited by persons resident in Ireland with Ansbacher Cayman Limited. Until Mr. Traynor departed from Guinness & Mahon (Ireland) Limited, he organised these deposits for the Irish residents, and maintained records of them both for his own purposes and for Ansbacher Cayman Limited. He was at all times assisted by Mr. Collery, who was responsible for the actual record-keeping, at later stages on computer. After departing from Guinness & Mahon (Ireland) Limited, Mr. Traynor continued to instruct Mr. Collery to keep the records of the depositors in Ansbacher Cayman Limited, which are what have come to be referred to as the Ansbacher accounts.

Operation of Ansbacher accounts (including positions of Hamilton Ross Company Limited and Poinciana Fund Limited)

1-22 Although this Tribunal heard further and lengthier evidence in relation to the successive procedures and mechanics of these operations, which will be referred to in subsequent chapters, the essential system deployed was cogently and succinctly set forth at pages 37 to 41 inclusive of the McCracken Report. These portions are set forth at Appendix A and this Tribunal adopts their content, including the conclusion that “*this was a very ingenious system whereby Irish depositors could have their money off-shore, with no record of their deposits in Ireland and yet obtain an interest rate which was only one eighth of 1% less than they would have obtained had they deposited it themselves in an Irish bank.*”

Conclusions of McCracken Tribunal

1-23 As noted by the Supreme Court in the aforesaid judgment of Haughey -v- Moriarty, the following conclusions relevant to the First Part of the Report were set forth in the Report of the McCracken Tribunal.

- “21. Mr. Ben Dunne made four payments for the benefit of Mr. Charles Haughey amounting in all to some £1.1 million at the request of Mr. Desmond Traynor, which request was transmitted through Mr. Noel Fox.
22. In addition, Mr. Ben Dunne personally handed three bank drafts for £70,000 sterling each to Mr. Charles Haughey in November 1991 as a spontaneous gesture, and without any request for funds having been made to him.
23. All of the initial £1.1 million was ultimately paid through Mr. Desmond Traynor into an account in the Cayman Islands bank known as Ansbacher Cayman Limited with Guinness & Mahon (Ireland) Limited in Dublin, having been routed through various accounts in England. The three bank drafts constituting the final payment of £210,000 sterling were lodged by Mr. Desmond Traynor directly to an account of Ansbacher Cayman Limited with Irish Intercontinental Bank in Dublin.
24. The first payment of £182,630 sterling was transferred from the account of Ansbacher Cayman Limited to an account of Amiens Investment Limited with Guinness & Mahon (Ireland) Limited. Amiens Investments Limited was a

company owned and controlled by Mr. Desmond Traynor, and this money was then dispersed for the benefit of Mr. Charles Haughey by Amiens Investments Limited, including a payment of £105,000 to Agricultural Credit Corporation to discharge a debt owing by Mr. Charles Haughey to that organisation.

25. *Mr. Desmond Traynor was Chairman of Ansbacher Cayman Limited, which had originally been a subsidiary of Guinness & Mahon (Ireland) Limited at a time when Mr. Desmond Traynor was Deputy Chairman and in effect Chief Executive of Guinness & Mahon (Ireland) Limited. He acted on behalf of a number of Irish persons who wished to deposit their money off-shore, and deposited the money on their behalf in Ansbacher Cayman Limited. At the same time Ansbacher Cayman Limited deposited the monies which it had received from Irish clients in its own name with Guinness & Mahon (Ireland) Limited. It is not known whether each Irish client had a separate deposit account with Ansbacher Cayman Limited, as it has not been possible to obtain access to the records of that bank, but some form of internal accounting or memorandum accounts exists accounting for the funds of each Irish client.*
26. *During his lifetime Mr. Desmond Traynor controlled monies deposited in this manner on behalf of Mr. Charles Haughey with Ansbacher Cayman Limited. Each of the last four payments made by Mr. Ben Dunne, namely the payments of £471,000 sterling, £150,000 sterling, £200,000 sterling and £210,000 sterling, were paid into accounts in the name of Ansbacher Cayman Limited and formed part of the monies deposited by Ansbacher Cayman Limited with Guinness & Mahon (Ireland) Limited and Irish Intercontinental Bank. At least two of the memorandum accounts or sub-accounts in Ansbacher Cayman Limited were held for the benefit of Mr. Charles Haughey, being those designated S8 and S9.*
27. *After the death of Mr. Desmond Traynor, the monies held on behalf of Mr. Charles Haughey came under of the control of Mr. John Furze, who was a joint Managing Director of Ansbacher Cayman Limited. In about the year 1992 some of these monies were transferred into an account of Hamilton Ross Co. Limited, a company owned and controlled by Mr. John Furze, with Irish Intercontinental Bank.*
28. *For many years prior to 1991 Mr. Charles Haughey's day to day financial affairs were dealt with by his former accountancy firm of Haughey Boland, which paid all his personal and household expenses. It received the necessary funds to pay his expenses from Mr. Desmond Traynor during his lifetime, and after his death from Mr. Padraig Collery. Such funds were withdrawn by Mr. Desmond Traynor or Mr. Padraig Collery initially from the account of Ansbacher Cayman Limited with Guinness & Mahon (Ireland) Limited and Irish Intercontinental Bank and subsequently from the account of Hamilton Ross Co. Limited with Irish Intercontinental Bank.*
29. *It has been shown without doubt that the last four payments by Mr. Ben Dunne for the benefit of Mr. Charles Haughey were paid into accounts in the name of Ansbacher Cayman Limited with Guinness & Mahon (Ireland) Limited and Irish Intercontinental Bank, and it has been shown that substantial payments for the benefit of Mr. Charles Haughey were paid out of such accounts. Beyond this, it is not possible to establish whether the payments by Mr. Ben Dunne were used solely to discharge Mr. Charles Haughey's living and household expenses, or whether such payments may have been used to discharge other substantial debts of Mr. Charles Haughey. Such information could only come from the detailed memorandum accounts or the internal documents of Ansbacher Cayman Limited."*

A limited number of further conclusions relating primarily to Mr. Haughey were also recited in the Report, but need not be set forth at this juncture.

1-24 It was in the context of the public concern following publication of the McCracken Report, and the limitations in its Terms of Reference which rendered it unable to investigate the sources of relevant funds held in the Ansbacher accounts, other than in respect of sums paid by persons referred to in its Terms of Reference, that this Tribunal came to be established later in 1997.

WHY PART ONE OF THE REPORT IS NOW PUBLISHED AND WHAT IT CONTAINS

1-25 Apart from matters relating to recommendations, and some aspects referable to other holders of public office, the Terms of Reference of the Tribunal may essentially be sub-divided into those referable to Mr. Haughey, and those referable to Mr. Lowry. A broadly analogous framework is set forth in relation to both these individuals, requiring the Tribunal to examine and report on any substantial payments to each that may be referable to any position of public office held, then the sources of money held in bank accounts for the benefit of each, then whether any acts or decisions were made by either individual in recompense for any such payments made, and finally addressing the manner in which the Revenue Commissioners taxed both Mr. Haughey and Mr. Lowry in relation to payments or gifts identified by both the McCracken Tribunal and this Tribunal.

1-26 There were some limited elements of interdependence in the evidence relating to each of the named individuals, and the Tribunal in private investigations and public sittings sought to advance the task of dealing with both in a systematic fashion, rather than concentrating exclusively on one individual in the first instance. Accordingly, it was long the intention of the Tribunal to present its entire Report in relation to all its Terms of Reference in one publication; it was only in the course of the early months of 2006, when it was apparent that the health of Mr. Haughey was in very serious decline, and that litigation by way of legal challenges brought in relation to the Terms of Reference relating to Mr. Lowry had occupied lengthy periods notwithstanding prompt disposal by the Superior Courts, that it was resolved that what in essence relates to the Terms of Reference concerning Mr. Haughey should be published as a First Part of the Report, with the balance, primarily those matters relating to Mr. Lowry, being published at the earliest possible date in 2007. This demarcation is not absolute: while some aspects of recommendations are addressed in the ensuing Chapters, the preponderance of recommendatory aspects is being held over until the Second Part of the Report; in addition, a limited number of matters, not referable to Mr. Haughey but potentially within the Terms of Reference primarily relating to him, remain in the final stages of investigations, having become part of the Tribunal's investigations at a relatively advanced stage. Finally, it is a possibility that limited aspects of the matters in the Chapter dealing with Passports, may require to be addressed further.

1-27 What follows in the succeeding Chapters is therefore primarily an account of Mr. Haughey's financial affairs, many, but by no means all, arranged and organised by his long-term friend and adviser, Mr. Desmond Traynor, in accordance with the requirements of the Terms of Reference. In detailing those arrangements, particular attention is given to the exceptionally opaque and clandestine nature of many of them. As was stated in this regard at a late stage of public sittings (Day 323) by Mr. Frank Daly, Chairman of the Revenue Commissioners "*I don't think there is any case, certainly in my experience, that has had the same set of circumstances in terms of complexity, hidden secretiveness, structures designed to keep all this from our gaze*".

1-28 Chapter 2 is a brief overview of the main elements involved in Mr. Haughey's finances over the years in question, which are examined in greater detail in succeeding Chapters.

1-29 Chapter 3 deals with Mr. Haughey's bank accounts with Allied Irish Banks, at its Branch at Dame Street, Dublin 2, where he for many years maintained a number of accounts, in relation to which substantial and increasing overdrawn balances accumulated. Some emphasis is given to the manner in which that aggregate indebtedness was discharged on foot of a compromise agreement made between Mr. Haughey and the Bank early in 1980, which was very shortly subsequent to his having attained the office of Taoiseach for the first time.

1-30 Chapters 4 to 12 inclusive address Mr. Haughey's finances in detail, with these Chapters arranged to reflect the different relevant periods and the principal features examined. The longest of these Chapters is Chapter 7, which deals with the Party Leader's Allowance Account. This was a form of periodic payment made from public funds to the Leaders of the Political Parties to assist in financing the political activities of those parties, and the Chapter reviews in some detail what transpired in relation to that account over the lengthy period whilst Mr. Haughey was Leader of the Fianna Fáil Party, including payments from other sources which appeared to become associated with that account.

1-31 Chapters 13 and 14 each deal with matters relating to potential indirect payments or benefits referable to Mr. Charles Haughey, as envisaged by Term of Reference (a). The principal content of the two Chapters relates to two companies which had close associations with immediate members of Mr. Haughey's family. These were Celtic Helicopters Limited, and Feltrim plc, whose name has subsequently been changed to Minmet Plc. Of the two Companies, in which during the relevant periods, Mr. Ciaran Haughey and Mr. Conor Haughey respectively, sons of Mr. Charles Haughey had a substantial involvement: the payments and arrangements made in relation to Celtic Helicopters Limited were appreciably the more complex. Chapter 13 deals with Feltrim plc, and by reason of certain connected features also addresses a series of payments made in relation

to refurbishment works carried out in respect of a yacht named “*Celtic Mist*”, which was owned by Larchfield Securities Limited, the Haughey family holding company. Chapter 14 deals with payments and other financial arrangements of relevance made in relation to Celtic Helicopters Limited.

1-32 Chapter 15 deals with a limited number of other individuals whose affairs in some manner fell within the terms of reference as interpreted.

Of the following three chapters dealing with possible acts or decisions on the part of Mr. Haughey within the Terms of Reference, Chapter 16 is the first, relating to a series of dealings had in relation to certain tax affairs of the Dunnes Settlement Trust.

1-33 Chapter 17 then deals in a like context with grants of certificates of naturalisation and Irish passports to certain non-nationals during the period that Mr. Haughey was Taoiseach.

1-34 Chapter 18 deals similarly with the circumstances in which certain State lands near Blessington in County Wicklow that have come to be known as Glen Ding Wood came to be sold to Roadstone (Dublin) Limited, a member of the Cement Roadstone Holdings plc group of companies.

1-35 Chapter 19 deals with the relationship between Mr. Haughey as a taxpayer and the Revenue Commissioners, reviewing initial dealings, and proceeding to examine the manner in which the latter taxed the former in relation to payments or gifts referable both to the McCracken Tribunal and to this Tribunal.

1-36 Chapter 20, like the Chapter following it, refers only indirectly to Mr. Charles Haughey. It relates to the main matters examined by this Tribunal in relation to the operation of what may somewhat loosely be referred to as the Ansbacher accounts, follow-up on evidence and findings in that regard on the part of the McCracken Tribunal as already referred to. Insofar as this and the subsequent Chapter both relate in part to dealings had by Mr. Desmond Traynor and some associates, whose crucial role in the finances of Mr. Charles Haughey has been noted, it may be that some readers will prefer to read these two Chapters in advance of those which describe Mr. Haughey’s finances in detail.

1-37 Chapter 21 relates to the important position of what was then the Central Bank of Ireland, since re-named the Central Bank and Financial Services Authority of Ireland, alluding to its role in regulating exchange control during the period that that regime was applicable, that with a focus upon its role in regulating the affairs of licensed banks, and in particular the Dublin Bank, Guinness & Mahon (Ireland) Limited, whose involvement in the business of both the McCracken Tribunal and this Tribunal has been conspicuous and pivotal. A number of succeeding inspections and reports

in relation to Guinness & Mahon (Ireland) Limited undertaken by the Bank are considered, along with some limited and subsidiary matters arising from differences in recollection expressed by some Central Bank witnesses at a latter stage of that inspection process. Whilst the Chapter sets out certain principal matters in relation to the Central Bank's role and function, some additional assistance may be derived from a Memorandum in that regard prepared for the Tribunal by the Central Bank.

1-38 Chapter 22 sets out some brief concluding observations and conclusions pertinent to this part of the Report.

1-39 An Executive Summary of the principal matters contained in this part of the Report is then set forth, following which are a number of Appendices, Orders and a List of Witnesses who testified at Public Hearings.

PROCEDURES ADOPTED BY TRIBUNAL

1-40 Since the work of the Tribunal is inquisitorial and not adversarial, the essence of its operation is of necessity a fact-finding exercise. It does not concern itself with, or proceed from, allegations, and it is not involved in the administration of justice. As was emphasised by the Supreme Court in *Lawlor v. Flood* [1999] 3IR 107 at 137, a Tribunal hearing is neither a criminal trial nor a civil court trial, and findings of a Tribunal can impose no criminal sanctions or civil liabilities on any person. In essence, the findings of this or any other Tribunal are no more than an expression of opinion in relation to matters considered by it. Nonetheless, such findings may impact significantly upon the reputation or standing of persons involved in matters that have been considered, and safeguards are accordingly necessary to ensure adherence to fair procedures.

1-41 In this regard, the Tribunal is obviously bound by the judgment of the Supreme Court in the case of *In Re. Haughey* [1971] IR 217. By virtue of that decision it is incumbent on a Tribunal to furnish any person whose reputation is likely to be affected by intended evidence with a copy of such evidence as reflects on that person's good name, to enable cross-examination of such evidence by Counsel, to permit that person to give rebutting evidence, and to permit the person to address the Tribunal through Counsel in defence of such matters. The Tribunal is equally bound by the more recent Supreme Court decision in *Haughey v Moriarty* [1999] 3IR, in particular with regard to the procedural stages that are required to be observed in the course of the Tribunal, and, whilst not strictly so bound, is generally in agreement with the preponderance of the matters set forth in the Report of the British Royal Commission on Tribunals of Inquiry, conducted in 1965/1966, and chaired by Lord Justice Salmon ("*the Salmon Report*"). However, rather than setting out at length matters of precedent or case law in what is the Report of a Public Inquiry, intended to notify the public at large of what has transpired in relation to matters of important concern, it may be preferable at this juncture to set forth a short account of

how the Tribunal went about its business in relation to the necessary procedural stages undertaken by it. For this purpose, the position will be referred to in relation to each of the five stages of a Tribunal of Inquiry identified by the Supreme Court in the case of *Haughey v. Moriarty*.

Preliminary Investigations of the Evidence Available

1-42 This work conducted in private had a two-fold purpose, firstly, to assemble material relevant to the Terms of Reference which was appropriate to be led in evidence at the public sittings, and, secondly, to exclude material not relevant to those Terms of Reference, and which, if led in public, might be damaging to persons unconnected with those Terms of Reference. Letters were sent to all members of the Oireachtas, requesting assistance from each member as to any available information that might be relevant to the Terms of Reference. Inquiries were made of all banks operating within Ireland to ascertain the existence of accounts material to the Terms of Reference, that is, accounts of persons mentioned in the Terms of Reference and of persons or companies associated with them or connected to them within the meaning of the Ethics in Public Office Act 1995, and of persons who may have held accounts for their benefit. Some twenty nine Orders for Discovery and/or Production were made prior to Christmas of 1997. Inquiries were made of banks in which the McCracken Tribunal had found that amalgamated accounts were held by off-shore institutions and recorded in memorandum accounts within the jurisdiction. Inquiries were also made of persons who were associated with the operation of those accounts. Orders were made for Discovery and Production of documents relating to those accounts, to enable the Tribunal to examine the manner in which those accounts were operated, and to identify the memorandum account holders with a view to ascertaining whether funds were held for the benefit of persons holding ministerial office, and whether other memorandum account holders were sources of monies to persons holding ministerial or public office. In addition, inquiries were made directly of Government Departments and State Agencies, and in some instances, Orders were made for Discovery and Production of documents. Inquiries were further made on foot of the limited quantity of information which was brought to the attention of the Tribunal, on a basis of being potentially material to its Terms of Reference.

1-43 The proceedings on behalf of Mr. Haughey against the Tribunal that have already been referred to were instituted on 18th December, 1997. Discovery and substantive hearings took place over the course of 1998, and on 28th July, 1998, judgment was delivered by the Supreme Court, refusing primary grounds of relief that had been sought on behalf of Mr. Haughey, but directing that certain Orders made by the Tribunal should be quashed. By that date, as an approximate indication of the volume of work undertaken by the Tribunal, and carried out in tandem with the proceedings, forty one Orders had been made, three hundred and seventy five lever arch files of bank-related documents had been produced, and all

of these had been scrutinised and analysed with a view to identifying material accounts, and ascertaining the sources of the funds in those accounts. In addition, more than two hundred and fifty people had been identified as persons who might be of assistance to the Tribunal. Inquiries had been made of those persons, and private meetings held with a large proportion of them.

1-44 In accordance with the Supreme Court judgment, all the documents that had been the subject matter of the Orders that were quashed were returned within a period of two days from delivery of the judgment. Other extensive measures were taken to ensure that there was absolute compliance with that judgment, and all information obtained by the Tribunal on foot of procedures which could in any sense have been viewed as subject to infirmity were thereafter ignored. Having considered fully all the matters contained in the Supreme Court judgment, the Tribunal held a public sitting on 24th September, 1998. The two purposes for which this sitting was held were, firstly, for the Tribunal to furnish its views as to its interpretation of its Terms of Reference and, secondly, to indicate the procedures which were intended to be adopted in the preliminary investigative stage, in particular in connection with the production of documents sought for examination. In accordance with that procedure, the Tribunal set about securing the documents which appeared to be material. This was done by seeking in the first instance the consent of the persons to whom the documents related. In the absence of consent, notice was given of the intention of the Tribunal to make an Order to persons to whom the documents related, being the persons who held the documents and persons who might be affected by such an Order. Time was allowed to all such persons to enable them to make submissions or representations, either in writing or orally in private. In the case of certain Orders, notice had to be served on very many persons. In order to identify those persons, two further sittings were held from which the public was excluded, on 5th November, 1998, and 9th December, 1998. Between 3rd November, 1998, and the commencement of full public sessions to hear evidence on 28th January, 1999, some fifty four such Orders were made. In addition, the Tribunal received a considerable number of consents from persons whose accounts were sought, authorising banks to produce documents voluntarily. On having assembled the documents, the Tribunal commenced the work of analysing and inquiring into the accounts afresh. A further one hundred and forty four lever arch files of documents were thereby assembled and, apart from work undertaken in relation to the documentation, the Tribunal continued to make inquiries and hold meetings with regard to information provided to it or discovered on foot of Orders made. Additional inquiries were also made with Government Departments and Agencies regarding material which might prove relevant to the Terms of Reference. This resulted in the making of one further Order, which occasioned the production of one hundred and thirty two files, the scrutiny of each of those files, and the holding of further meetings. The foregoing represents a summary of the scale and type of preparatory work that

required to be undertaken, even prior to the commencement of initial public hearings of evidence, and experience in subsequent years of private investigations and public sittings has broadly conformed to that pattern.

1-45 Whilst the details set forth above may seem to indicate procedures involving exact legal compliance, in practice much of the day-to-day experience of preliminary investigations on the part of the Tribunal involved consensual dealings between Tribunal Lawyers and prospective witnesses and their legal advisers. Whilst the Tribunal is vested under the Tribunals of Inquiry (Evidence) Act, 1921 (as amended) with all the powers of the High Court with regard to compelling the attendance of witnesses or the production of documents, it has no power to compel any person of whom enquiries are being made to attend a meeting, or to make a statement. However, in seeking to equate the two objectives of advancing the investigative work of the Tribunal, whilst at the same time according to any person dealing with it the opportunity to give the best account possible of himself or herself in any eventual public evidence, a practice of almost universal application developed of holding preliminary meetings between Tribunal lawyers and such persons, accompanied by their legal advisers if desired. Such meetings were conducted on foot of a Memorandum as to Confidentiality, similar to a like document used by the McCracken Tribunal, which, *inter alia*, provided that the content of what was said at such meetings was confidential on both sides, subject to the overriding discretion of the Tribunal to decide that any matter arising must proceed to be heard at public sittings.

1-46 In the event of the Tribunal proceeding to public hearing in relation to a particular matter, the position as to confidentiality was considered and ruled upon by the High Court in the case of *O'Callaghan v. Mahon & Ors*, a decision of O'Neill J. delivered on 7th July, 2004. This judgment in essence determined that when (a) a Tribunal had decided to proceed to public hearing on a particular matter, (b) an intended witness had imparted matters to the Tribunal that were potentially damaging to the good name of some other person, and (c) material inconsistency was apparent in the account or accounts of such matters imparted to the Tribunal, then any provision as to confidentiality must yield to the affected persons' constitutional entitlement to fair procedures in having all relevant documents in that regard disclosed to him or her, in particular to enable full cross-examination of the witness. Although this decision was appealed to the Supreme Court, by whom it was in due course affirmed, this Tribunal immediately upon delivery of the High Court judgment implemented it in full.

Determination by Tribunal of Evidence Relevant to Inquiry for Hearing at Public Sittings

1-47 Once the available evidential material relating to a particular matter had been assembled on foot of both the formal and informal procedures indicated above, a decision had to be made by the Tribunal as to whether

or not in the particular circumstances it was warranted to proceed to public hearing. Regard was primarily had to the relevant provisions of the Terms of Reference, and to the nature, content and potential quality of the assembled evidence, both collectively and as regards individual witnesses, and, although the process was inquisitorial, it was proper that the Tribunal should exercise a balanced and just discretion in coming to an appropriate determination. If the determination made was to proceed to public hearing, notice of that outcome would be conveyed to prospective witnesses and other persons likely to be affected, and matters then proceeded to the next stage of preparing relevant documents for service on such persons.

Service of Evidence on Persons Likely to be Affected

1-48 Once statements of intended evidence had been obtained from witnesses, these, in some instances involving two or more statements from individuals, would be served on persons likely to be affected or their solicitors. Also included with the statements would be copies of documents that would be referred to in the evidence. It was sought to give the persons who received the documents, and in particular, the actual witnesses themselves, as much notice of the date of relevant hearings as was practicable, and to include all statements and documents that would be relied upon, although on some occasions statements of individual witnesses would only become available at the last moment. Efforts were also made as far as practicable to accommodate the business or other commitments of witnesses, and it was indicative of the very substantially consensual nature of the procedures employed that it was only in a tiny minority of instances that it was necessary to invoke the power of serving a Summons on a witness to attend, or that an intended witness would not provide a statement by agreement.

Public Hearing of Evidence

1-49 On each initial day of public sittings, the evidence of the first witness was almost invariably preceded by a detailed Opening Statement by Counsel for the Tribunal. The purposes of such an Opening Statement were to outline the nature of inquiries that had been pursued, to summarise the principal content of intended evidence to be heard from the witnesses who were listed, and to indicate the relevance of such evidence to the particular Term or Terms of Reference in question. In the Salmon Report, it was considered that whether or not an Opening Statement should be provided should be left to each individual Tribunal of Inquiry. In the present instance, it was felt that, given the diffuse nature of both the Terms of Reference themselves and much of the evidence that was led pursuant to them, it was both necessary and desirable that the course and basis of intended evidence be explained clearly in advance, both to persons directly concerned in the Tribunal hearings, and to the public generally. The provision of such an Opening Statement was further of considerable assistance to media personnel covering the proceedings, thereby seeking to convey to the public at large an accurate account of enquiries being

undertaken. It was of course indicated that the content of the Opening Statement was not evidence, and that it was only the actual evidence that was heard on each occasion that could form the basis for any conclusions. There were occasions when such actual evidence to some extent diverged from, or transpired to be more complex than what had been indicated in an Opening Statement, but in general its provision proved invaluable and, particularly in instances of lengthy or complex evidence, provided a clear structure for that evidence.

1-50 A number of other preliminary matters arose in the course of public hearings. Firstly, there were Rulings made by the Tribunal in resolution of a wide variety of situations arising in the course of public hearings. Probably the most important of these was the setting forth on behalf of the Tribunal from time to time of its evolving interpretation of its Terms of Reference. Due to the inquisitorial nature of its procedures, many matters arose in the course of ongoing inquiries of which the Tribunal had no remote intimation at its commencement, and it became from time to time necessary to interpret the Terms of Reference on an ongoing basis in the light of such matters. Where matters of particular substance were involved, the Tribunal would invite for its assistance, generally at public hearings, the views of Counsel for the Public Interest retained by the Attorney General. In addition to setting forth these interpretations, rulings would require to be made on a reasonably regular basis in relation to matters raised by interested persons or their legal advisers, or in relation to evidential or other matters arising in the course of hearings. Since the commencement of full public hearings in early 1999, a Tribunal website had been created and maintained, and matters of interpretation of Terms of Reference, and other Rulings of significance were there set forth as they were made, for the assistance of interested persons and of the public.

1-51 The other principal preliminary matter that arose involved applications by legal practitioners for Orders of Representation, generally limited representation on behalf of clients who became involved in the Tribunal inquiries. In ruling on these in a wide variety of situations, the Tribunal had regard to the nature and degree of each such person's involvement, but on each such occasion made it clear that the granting for an Order for Representation in no sense bound any eventual Orders for Costs of Tribunal representation that might be made. It must also be said that a significant number of witnesses, some of considerable substance, appeared without legal representation, and seemed not to suffer any resultant detriment.

1-52 Once the evidence of any particular witness under Oath or Affirmation commenced, the usual practice was that one of the Tribunal Counsel would take him or her through whatever statement or statements had been made by that person, dealing also with any documents alluded to in such statements. On conclusion of that portion of the evidence, Tribunal Counsel would then ask further questions of the witness with a view to

advancing inquiries into the particular matters then under investigation. Whilst not amounting to cross-examination as such, this could on occasion extend to suggesting that portions of testimony were implausible, or likely to cause difficulty to a member of the public following matters. In combining these functions in a single examination, the intention was to advance the overall process of fact-finding and inquiry as far as possible, whilst at the same time seeking to enable each witness to give as good an account of himself or herself as was possible. It was further thereby intended to limit the scope of cross-examination by other legal practitioners, so that the sole or primary focus of any remaining questioning then undertaken by persons to whom legal representation had been granted would relate to the good name or repute of the client in question. Questioning on that basis would then follow, with the lawyer representing the witness at hearing being accorded the last entitlement to ask questions, save only for an entitlement on the part of Tribunal Counsel to raise any final matters with the witness that may have arisen from previous questions. In this manner, the evidence of the witnesses who had been listed for public hearings in relation to a particular matter was heard, and in a majority of instances the duration and scope of cross-examination undertaken was quite limited. Whilst a limited minority of witnesses heard expressed objection or resentment at perceived unfairness or inconvenience, a majority appeared to feel that, insofar as was consistent with the Tribunal's duty to investigate, they had been treated with fairness, courtesy and consideration.

1-53 On reasonably rare occasions at public sittings, references were made to persons who were not present or represented, in a manner that might have reflected upon the good name of those persons; in such situations, the practice adopted was to furnish very prompt notice in that regard to such persons, so as to give them an opportunity to make any written response felt necessary, which was then communicated at the earliest possible opportunity in the course of public hearings.

1-54 A final matter arising in relation to public hearings involved the limited number of instances in which, by virtue of the provisions of Section 2 of the Tribunals of Inquiry (Evidence) Act, 1921 (as amended), it became necessary to in effect reconstitute such hearings as hearings in private. Section 2 of the Act provides as follows:—

“A Tribunal to which this Act is so applied as aforesaid—

(a) shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the Tribunal unless in the opinion of the Tribunal it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given.”

1-55 In the case of *Haughey v. Moriarty*, it was held by the Supreme Court that “*the proceedings of the Tribunal*” referred to in the Section relate merely to public hearings consisting of sworn evidence and related matters, not to other stages of Tribunal procedures, such as preliminary investigations or report preparations.

1-56 The Tribunal was at all stages conscious that, as stated by the Supreme Court, the Section clearly recognises the entitlement of the public to be present at public hearings and prohibits their exclusion, save in the exceptional circumstances set forth of it being expedient to do so for reasons connected with the subject matter of the inquiry, or the nature of the evidence to be given. Accordingly, the power to exclude the public was exercised as sparingly as possible. The characteristic situation in which the power was invoked was where, in the course of private investigations, it had not proved possible to obtain material banking or other confidential particulars on foot of waivers of confidentiality, whereupon it became necessary to require the attendance of officials of financial institutions to provide relevant information and documentation. If such evidence was as a matter of course received in circumstances in which the public was entitled to attend, and the media representatives to report all details, it was likely that much private and personal information relating to the financial affairs of persons who might ultimately be found to have no involvement relating to the Tribunal would be needlessly ventilated in public. In order to provide against such potential breaches of confidentiality, it became the practice of the Tribunal that, when such sittings were listed, usually though not invariably in the course of or approaching a period of substantive public sittings, Tribunal Counsel would indicate this probability, and propose that an Order be made excluding the public on foot of the Section. If such an Order was made, the hearing would proceed in private with a view to obtaining all the potentially relevant information, whereupon it would then be determined what portion was relevant to the matters being inquired into, with superfluous information relating to unconnected persons and matters being discarded. Similarly, when the Tribunal sat to hear submissions from affected persons notified of the Tribunal's intention to make an Order for the production of documents, Orders excluding the public were then invariably made for the selfsame reasons.

Preparation of Report

1-57 When the Tribunal had concluded all the relevant evidence, it promptly set about the task of preparing this part of the Report. As part of that process, it engaged in a procedure of inviting submissions from principal interested persons, and in particular notifying persons in respect of whom adverse conclusions appeared warranted on a provisional view of the evidence, so that those persons might have an opportunity to advance reasoned arguments against such conclusions, to propose different conclusions, or otherwise as was seen fit. The extent of this process was lengthy and time-consuming, and may arguably have exceeded actual legal requirements, but was undertaken in the interests of fairness and of seeking to achieve a balance of conflicting views before expressing final conclusions. Particularly where such interested persons or their legal advisers engaged constructively, the process did prove valuable and of significant assistance.

1-58 In its preparation for this part of the Report, the Tribunal has re-read and considered with care all the transcripts of relevant evidence, amounting to marginally under 140 days (some unavoidable imprecision arises from the repetition involved in reading the evidence of Mr. Haughey initially taken on commission into the public record, and from a small number of days which spanned matters relating both to Mr. Haughey and Mr. Lowry). The Tribunal has similarly read and considered all submissions made to it in relation to all the matters in question, and where any such submissions have induced a revision, modification or other alteration of any provisional view expressed on behalf of the Tribunal, the Report has incorporated fully any resultant changes. The Report neither purports nor seeks to set forth all the evidence or all the submissions to which the Tribunal has had regard, since to do so would be impracticable and involve inordinate length, but nothing that is material has been neglected, overlooked or ignored.

1-59 The conclusions, recommendations and other findings arrived at by the Tribunal have been based exclusively upon evidence heard under oath or affirmation at Tribunal sittings, with due regard being had to the content of submissions made by or on behalf of interested persons. Outside of evidence and submissions, the Tribunal has considered that it may have regard only to (a) matters of public record, such as the content of other official reports, and such information as the amount of salary or State entitlements paid from time to time to Mr. Charles Haughey as a holder of public office, when any such matters have been referred to in the text of the Report, and (b) documentation furnished with submissions or otherwise by or on behalf of interested persons which may impact favourably upon such persons, or allay in whole or in part a possible adverse finding or findings in relation to any such persons and did not impact adversely on any other person. Examples of (b) would be documents such as medical reports, or banking documentation or other financial records, furnished to the Tribunal.

1-60 One of the matters which required careful consideration in the course of Report preparation was the standard of proof appropriate to justify conclusions or findings that could be adverse to the reputation of persons involved, whether individuals or corporations. In its appraisal of this matter, it seemed to the Tribunal that the adoption of a criminal standard of proof was neither warranted nor realistic; as indicated earlier in this chapter, the conclusions in a report such as this are in no sense findings of either criminal or civil liability in law, and represent no more than what should be a reasoned and informed expression of opinion. Moreover, the Tribunal has on a number of occasions indicated that having regard to its inquisitorial, as opposed to its adversarial character, it would not be bound by rules of evidence or procedures designed for Court cases. In discharging its functions, rules, either for the admission of evidence or the burden of proof, evolved for the purpose of the administration of justice in criminal or civil proceedings, would inhibit and confine the functioning of the Tribunal, in particular if it could express findings or conclusions only if so convinced of

them that no alternative view could be correct. At the other extreme, however, it seemed equally clear that findings, which could impact seriously on persons affected, could not be based upon evidence that was frail, untested or otherwise subject to real infirmity. It is noteworthy that a not dissimilar approach was adopted by Dame Janet Smith in the Inquiry she conducted relating to the multiple deaths caused by the conduct, as a medical practitioner, of Dr. Harold Shipman, and canvassed by Lord Saville in the Saville Inquiry established to enquire into and report upon the events of Bloody Sunday in 1972.

MATTERS IN CONCLUSION

1-61 Before proceeding to the Chapters which address Mr. Haughey's finances in detail, two important matters should not be neglected. Firstly on 13th June, 2006, the Tribunal learned with regret of the death of Mr. Charles Haughey earlier that day, following the illness that had affected him throughout all or most of the Tribunal's duration.

1-62 Secondly, it has already been stated, in the course of recalling matters material to the McCracken Tribunal, that the Bank, Guinness & Mahon (Ireland) Limited had been acquired by Irish Permanent Plc. The latter entity is now named Irish Life & Permanent Plc, which continues to own Guinness & Mahon (Ireland) Limited as an effectively dormant vehicle.

1-63 The Tribunal acknowledges having received significant assistance and cooperation from senior banking and legal personnel within Irish Life & Permanent Plc, in the context of both private investigations and public sittings, in its enquiries into the activities of Guinness & Mahon (Ireland) Limited. Further, insofar as certain such activities will later be noted as incurring adverse findings, such activities ceased some years prior to the Bank's acquisition by Irish Life & Permanent Plc. Accordingly, Irish Life & Permanent Plc bears no responsibility for any of the said activities of Guinness & Mahon (Ireland) Limited. The name Guinness & Mahon will be used for convenience sake, to identify the Bank throughout this Part of the Report.

ORGANISATION OF MR. HAUGHEY'S FINANCES

2-1 Mr. Haughey was elected to Dáil Éireann in 1957 and served as a TD until 1992. He held a number of ministerial offices during the 1960s. He was a back bench TD from 1970 to 1977 when, on the Fianna Fáil Party being returned to Government, he was appointed Minister for Health by the then Taoiseach, the late Mr. Jack Lynch. Mr. Haughey was elected Taoiseach on 12th December, 1979.

2-2 Mr. Haughey was a qualified Chartered Accountant and practised in that capacity until the early 1960s. He was a founding member of the firm of Haughey Boland & Company. He severed all professional connections with the firm in the mid-1960s following his appointment as Minister for Finance. Mr. Haughey continued in his occupation as a farmer until 1979 but on being elected Taoiseach, he ceased farming activities on his own account and applied himself exclusively to the duties of his office. In February, 1992, on resigning as Taoiseach, Mr. Haughey resumed farming activities on a relatively modest scale.

2-3 Mr. Haughey's sole source of income from 1979 to 1992 was the remuneration from the public offices which he held, that is from his office as Taoiseach during the years that Fianna Fáil was in Government, and from his salary as a TD and his ministerial pension during the years that Fianna Fáil was in opposition. Following his retirement from political life in 1992, Mr. Haughey was in receipt of a state pension. Mr. Haughey's income from his state salary and pensions during those years is a matter of public record. Details of the emoluments which Mr. Haughey received are set out in Appendix B to the Report. Mr. Haughey's gross annual salary ranged from £14,717.00 in 1979 to £75,248.00 in 1991 and following his retirement, his gross pension ranged from £20,442.00 in 1992 to £55,327.50 in 1996, with a lump sum payment in 1993 of £46,219.00.

2-4 During the entire of those years, Mr. Haughey, while generating relatively modest earnings, lived a conspicuously lavish lifestyle. The Tribunal's task in pursuing its inquiries for the purposes of paragraphs (a) and (b) of its Terms of Reference, involved the Tribunal, in the first instance, in endeavouring to ascertain how and from what source Mr. Haughey funded his lifestyle. Before proceeding to address these matters in detail, it may be of assistance to explain in outline how Mr. Haughey's financial affairs were managed and structured on both the expenditure side and the funding side.

EXPENDITURES

2-5 Mr. Haughey's household and personal expenses were paid through a bill-paying arrangement which was administered jointly by Mr. Haughey's personal secretary who was based in Abbeville, Kinsealy and by the Business Service Division of Haughey Boland, Chartered Accountants.

These arrangements appear to have operated from the early 1960s shortly after Mr. Haughey devoted himself full-time to his political career.

2-6 The Tribunal had the benefit of the evidence of Mr. Paul Carty, regarding the operation of the bill-paying service. Mr. Carty was a partner in Haughey Boland from 1971 and continued to be a partner in that firm and in subsequent manifestations of the firm following successive mergers until he was appointed Managing Partner of Deloitte & Touche in 1991. From Mr. Carty's evidence, it appears that once a month, Mr. Haughey's personal secretary sent a file of invoices which had been approved for payment to the Business Service Division of Haughey Boland. Cheques were prepared by personnel in the Division for each of these invoices. These cheques were drawn on the Haughey Boland client current account. During the period for which copies of account statements were available to the Tribunal, that is, from January, 1985, the account which was used for this purpose was the Haughey Boland No. 3 account No. 30065271 with Allied Irish Banks, Dame Street Branch. While this account was not dedicated exclusively to Mr. Haughey's bill paying service, Haughey Boland operated a separate cheque book on the account for payments on behalf of Mr. Haughey. Mr. Carty confirmed in evidence that a very sizeable proportion of the transactions on this account were referable to the bill-paying service provided to Mr. Haughey.

2-7 Once the Business Service Division had prepared the cheques for payment, personnel within the Division contacted Mr. Haughey's personal secretary and informed her of the amount of money required to meet the payments. The experience of the firm was that the necessary funds were received within a short number of days from Mr. Traynor usually in the form of bank drafts, sometimes in the form of cheques and occasionally in the form of direct transfers to the No. 3 account. On receipt, the funds were lodged to the No. 3 account and the cheques which had already been prepared were signed and dispatched to the payees in settlement of Mr. Haughey's outstanding bills. The invoices which had been received from Mr. Haughey's secretary were then returned to her. Mr. Carty confirmed in evidence that credit facilities were not extended to Mr. Haughey, in other words, cheques which had been prepared were not drawn until funds were received from Mr. Traynor and this was borne out by the balances on the Haughey Boland No. 3 account statements.

2-8 Haughey Boland kept a client ledger detailing each of the cheque payments made on behalf of Mr. Haughey and this ledger was kept in Mr. Haughey's name. Haughey Boland also retained the cheque stubs for the dedicated cheque books maintained by them for payments on behalf of Mr. Haughey. It is clear from Mr. Carty's evidence that Mr. Haughey was the only client of Haughey Boland for whom the firm provided a bill-paying service through its client account.

2-9 In 1991, in advance of a further merger which resulted in the creation of the much larger accountancy practice of Deloitte & Touche, Mr. Carty spoke to Mr. Traynor in connection with the development of the firm. In the course of their discussions, Mr. Traynor informed Mr. Carty that in the light of the merger, he intended to make new arrangements for the bill-paying service as the firm would become significantly larger and less personal. Subsequently, Mr. Traynor informed Mr. Carty that the service would be provided by Mr. Jack Stakelum and all three met to discuss the transfer of the service. All of the records which had been kept and retained by Haughey Boland in connection with the bill-paying service were subsequently sent to Mr. Traynor. As a result, Deloitte & Touche had no original or copy records whatsoever in connection with the bill-paying service which had been provided to Mr. Haughey over those years.

2-10 From February, 1991, Mr. Stakelum, through his company, BEL Secretarial Services, provided an equivalent bill-paying service to Mr. Haughey. Mr. Stakelum opened a dedicated account for the purpose of administering the service with Allied Irish Banks, 52 Upper Baggot Street, Dublin 4. The manner in which the service provided by Mr. Stakelum was operated was similar to the manner in which the service had previously been provided by Haughey Boland. As far as Mr. Stakelum was concerned, his instructions to pay invoices came from Mr. Haughey although transmitted from Mr. Haughey's secretary in Kinsealy to Mr. Stakelum's secretary at his place of business in Clyde Road. Invoices were furnished and were paid by cheques drawn on the dedicated bank account which had been opened by Mr. Stakelum. Whenever the account was low on funds, Mr. Stakelum contacted Mr. Traynor from whom he received funds, usually in the form of bank drafts, the proceeds of which he lodged to the dedicated account. Mr. Stakelum kept detailed records of the expenditures which were made over the years and those records were available to the Tribunal. In addition to the payment of bills furnished by Mr. Haughey's secretary, payments were also made from this account to Deloitte & Touche who continued to administer the payroll system for the Stud Farm and household employees at Abbeville.

2-11 After Mr. Traynor's death in May, 1994, the system continued to operate as before save that funds were received from Mr. Pdraig Collery, an associate of Mr. Traynor.

FUNDING

2-12 No part of Mr. Haughey's state entitlements were applied in the funding of his bill-paying service. From 1979 to 1992, it was Mr. Haughey's practice to cash his salary cheques. After his retirement, Mr. Haughey opened a series of accounts in his own name in National Irish Bank in Malahide and his pension cheques were lodged to one of those accounts. No funds from that account were applied in the financing of his bill-paying service.

2-13 The immediate source of funds to the bill-paying service from 1979 to January, 1991 was primarily accounts held with Guinness & Mahon (Ireland) Limited. From February, 1991 to December, 1996, the bill-paying service was funded from accounts held in Irish Intercontinental Bank Limited. This change in the immediate source of funds to the bill-paying service in February, 1991 coincided with the movement of the Ansbacher accounts from Guinness & Mahon to Irish Intercontinental Bank Limited.

2-14 From 1979 to 1987, there were bank accounts in Mr. Haughey's own name in Guinness & Mahon. In the early years, that is from 1979 to 1983, funds from those accounts were applied to the bill-paying service although in 1979 some funds may have been sourced from accounts which Mr. Haughey held with Allied Irish Banks, Dame Street, and which were closed in January, 1980, following a settlement of his outstanding liabilities on those accounts. The Guinness & Mahon accounts became inactive in 1983 and were virtually dormant until the last of the accounts was closed in May, 1987. From mid-1983 to January, 1991, the immediate source of funds to the bill-paying service was a series of accounts in Guinness & Mahon. These accounts were held in the names of companies controlled by Mr. Traynor, Amiens Investment Limited and Amiens Securities Limited, and in the latter years, that is from 1989 to January, 1991, in the name of Kentford Securities Limited. Some, but not all, of the statements of these accounts were retrieved by Guinness & Mahon from their microfiche records and were available to the Tribunal.

2-15 Typically, these Amiens/Kentford accounts were active for limited periods ranging from as short as three months to as long as two years. An account was opened by Mr. Traynor, was operated for a period of time and was then closed or left dormant and was replaced with another account. Frequently, two or more of these accounts were active at the same time and were designated as No. 1 and No. 2 accounts. As there were no books or records relating to the operation of these accounts available, the Tribunal was unable to ascertain all of the uses to which these accounts were put, why Mr. Traynor chose to operate a series of different accounts for short periods or what distinguished the No. 1 from the No. 2 accounts. Notwithstanding the absence of records and the unavailability of direct evidence from Mr. Traynor, from all of the evidence heard by the Tribunal, the following observations can be made about the purpose and uses of the accounts in the context of the substantive inquiries made by the Tribunal.

2-16 The accounts were, to a significant degree, used as an adjunct to the off-shore accounts held in Guinness & Mahon, initially in the name of Guinness Mahon Cayman Trust and subsequently in the name of Ansbacher Cayman. These off-shore accounts, which are addressed in detail in Chapter 20 of the Report, were held in sterling and other foreign currencies. It will be recalled that the sterling funds, which constituted a substantial part of the total funds deposited in Guinness & Mahon, were held in a single pooled account for which Memorandum Accounts were

kept in what was known as the Bureau System recording the account balance of individual customers in the overall pooled account. The Amiens/Kentford accounts appear to have been used by Ansbacher to facilitate their customers in making Irish currency lodgements to and withdrawals from their off-shore holdings. The device used for this purpose, and of which the Tribunal heard evidence from Mr. Collery, amongst others, was termed “*switching*”. How it operated was that the Irish currency funds of customers of Ansbacher who wished to lodge those funds to their off-shore holdings, were credited to the Amiens/Kentford accounts. These Irish funds were held in the accounts: they were neither converted to sterling nor were they transferred to the Ansbacher Sterling Account. Instead, they were used to meet the drawings of other customers of Ansbacher, such as Mr. Haughey, who wished to withdraw funds from their off-shore holdings.

2-17 This ingenious yet simple system involved no conversion of Irish currency to sterling which would have required exchange control approval and would have attracted the attention of the Central Bank. Nor did it involve the transfer of funds between the Amiens/Kentford accounts and the Ansbacher accounts. All that was involved was a paper transaction involving credit and debit entries to the Memorandum Accounts recording the holdings of individual customers. In other words, when an Irish Pound lodgement was made to the Amiens account an equivalent sterling credit was made to the Memorandum Account of the relevant customer. As and when that money was paid out to another customer, an equivalent sterling debit was made to the Memorandum Account of that customer. Accordingly, the double entry system operated by all bankers, which requires every credit to an account to have an equal and corresponding debit, was complied with in the entries made across the Memorandum Accounts. In the course of the Report, reference will be made to the use of the Amiens/Kentford accounts, in this manner, both as vehicles for the routing of funds for the benefit of Mr. Haughey and as the immediate source of funds to his bill-paying service.

2-18 The Amiens/Kentford accounts were further used as “*control*” accounts by Mr. Traynor which enabled him to track the constituent parts of much larger transactions. In the course of the Report, reference will also be made to the use of the accounts for this purpose as in the case of the funds which were raised by Mr. Haughey for the initial capitalisation of Celtic Helicopters in 1985.

2-19 The Tribunal is also left with the clear impression that the accounts were used as a means of concealing the true source of funds lodged to other accounts in Guinness & Mahon and, in particular accounts of or connected with Mr. Haughey. Reference will be made in the body of the Report to instances where funds intended for Mr. Haughey’s own accounts in Guinness & Mahon were first lodged to or transmitted through these accounts and ultimately transferred to Mr. Haughey’s accounts or accounts with which he was associated.

2-20 From February, 1991 until December, 1996, the immediate source of funds to Mr. Haughey's bill-paying service was accounts of Ansbacher Cayman and of Hamilton Ross in Irish Intercontinental Bank Limited. At that time, Irish Intercontinental Bank did not operate as a retail bank and did not offer its customers current account facilities. During those years, an account was operated in the name of Kentford Securities Limited in Bank of Ireland, St. Stephen's Green and appears to have functioned in much the same way as the Amiens/Kentford accounts which had been held in Guinness & Mahon. It was not however used, to any significant degree, in facilitating the provision of funds to the bill-paying service. Instead, funds were withdrawn directly from the Ansbacher and Hamilton Ross accounts, were converted to Irish pounds and were provided by means of bank drafts payable to Mr. Stakelum's business, BEL Secretarial Services.

MR. HAUGHEY'S ACCOUNTS AT DAME STREET

INTRODUCTION

3-01 By the end of 1979 Mr. Charles Haughey owed Allied Irish Banks £1.143 million. In January, 1980 he settled his indebtedness by a payment of £750,000.00. This involved a total discount in the order of £393,000.00.

3-02 Up to 1980, Mr. Charles Haughey had for many years been a personal customer of Allied Irish Banks at its large City Centre branch at Dame Street, Dublin. Both his personal expenses, and the bills and outgoings referable to his substantial house and lands at Abbeville, Kinsealy, including Abbeville Stud, were discharged out of his Dame Street accounts on foot of the bill-paying service instituted by Mr. Haughey's long-term friend and associate Mr. Desmond Traynor, a system described and referred to both in the McCracken Report and elsewhere in this Report. The income derived by Mr. Haughey as a public representative was palpably insufficient to meet these costs, and a large cumulative indebtedness built up. In the course of much of the 1970s the bank indicated its concerns through extensive correspondence, memoranda and meetings. These intensified over the course of 1979 in particular, at the conclusion of which Mr. Haughey became for the first time Taoiseach (having in 1977 ended what he described as a period in the political wilderness within his own Party, Fianna Fáil by being appointed Minister for Health and Social Welfare). By the end of 1979 a total indebtedness in excess of £1.143 million had accrued, but at the same time a disposition to address the problems thereby created, that hitherto had been lacking on Mr. Haughey's part, became apparent. Following negotiations conducted by Mr. Traynor on Mr. Haughey's behalf with Mr. P. O'Keeffe of Allied Irish Banks, a settlement was arrived at, in terms incorporated in writing, for a significantly discounted portion of the aggregate sum then owing in respect of principal and interest. On foot of this settlement, payments amounting to a total sum of £750,000.00 were paid to the bank on Mr. Haughey's behalf by Mr. Traynor. Of this sum, it appears that £300,000.00 represented a payment made by Mr. Patrick Gallagher, a payment made on foot of a somewhat unusual agreement, entered into between Mr. and Mrs. Haughey and the Gallagher Group, shortly after Mr. Haughey became Taoiseach. Regarding the balance of £450,000.00, reference will be made to the considerable amount of evidence heard and inquiries undertaken by the Tribunal with a view to discovering the source or sources of that money. While it was suggested in evidence that this balance of £450,000.00 may have been provided, or at least provided in substantial part, from borrowings, on balance this seems extremely unlikely and, it is more likely that this was provided by other supporters of Mr. Haughey. What accordingly arises for consideration is whether, in compromising Mr. Haughey's indebtedness on terms of settlement, at least part of which appeared somewhat unorthodox, and which involved a substantial discount, Allied Irish Banks conferred a substantial benefit on Mr. Haughey in circumstances referable to his political office, and whether all or any of the contributions to that settlement

were made in like circumstances, as envisaged by Term of Reference (a) of the Tribunal's Terms of Reference. No question of any acts or decisions referable to any such payment or benefit arises in this instance. The examination of these matters in the Report has been divided as follows: firstly the examination of Mr. Haughey's accounts in the 1970s up to in or about June of that year; secondly, the period from June of 1979 up to the conclusion of the settlement with Allied Irish Banks in early 1980 but going on to deal with a number of related events in the early 1980s; thereafter, the examination of payments by Mr. Patrick Gallagher, together with bank evidence regarding other sources of funding of Mr. Haughey's settlement with Allied Irish Banks.

PERIOD PRIOR TO IN OR ABOUT JUNE, 1979

3-03 The Tribunal's inquiries concerning Mr. Haughey's accounts during this period involved examining a significant volume of documentary material accumulated in Allied Irish Banks' files over a very lengthy period of time. Evidence concerning these accounts was given by a number of officials and former directors of Allied Irish Banks, as well as related evidence from an official of Guinness & Mahon, together with the evidence of Mr. Charles Haughey.

3-04 Mr. Haughey gave evidence in public in relation to his Allied Irish Banks accounts over the course of eight days in the year 2000. By reason of fears concerning Mr. Haughey's health conveyed to the Tribunal, his testimony was restricted to two hours per day. Having regard to this limitation on his availability, his age and state of health, the Tribunal endeavoured to curtail, so far as possible, the considerable volume of documentation required to be drawn to Mr. Haughey's attention, in order to endeavour to cover as much ground as possible over the limited amount of time available.

3-05 The Allied Irish Banks material examined by the Tribunal comprised account statements, correspondence, memoranda and other related documentation. From this material, which set forth what transpired in the relationship between the Bank and Mr. Haughey during much of the 1970s, a picture emerges of his dealings with the Bank between 1970 and in or about the month of June, 1979. The Table below sets out his levels of indebtedness in schematic form for some of the relevant years, from 1975 to 1979.

DATE	AMOUNT (£)
September, 1975	188,844.36
September, 1976	293,068.05
September, 1977	468,954.53
September, 1978	683,136.29
September, 1979	1,031,964.81
December, 1979	1,143,839.18

3-06 A trend that was to be exacerbated in later years was evident in September, 1971, when it was noted that Mr. Haughey's personal account was overdrawn in the amount of £244,000.00, with that of his farming/stud activities at Rath Stud overdrawn at £11,000.00, and that aspirations had been expressed by the borrower to sell cattle, shares and other assets to reduce the debt. However, the debt continued to mount, with "*extreme dissatisfaction*" being expressed by the Board of the Bank. Mr. Haughey's response was confined to some limited realisation of assets and a loan from Northern Bank Finance Corporation was applied in reduction of the amounts due. It is unnecessary to detail all that transpired, but notwithstanding such limited reductions, drawings continued unabated, and by June, 1974, internal bank memoranda were expressing a view on the part of the Bank that it was "*appalled*" at further excessive drawings. By July of that year, Mr. Haughey wrote to his Manager at Dame Street indicating that "*temporary excesses have arisen from a combination of circumstances outside my control*".

3-07 On the 30th of July, Mr. Haughey attended a meeting in the Dame Street Branch with the then Regional General Manager, Mr. McAuliffe, in addition to the Branch Manager; in language which characterised many of the Bank's views at that time, it was conveyed that Mr Haughey "*should not be surprised if the bank were to indicate that it could not continue to do business with him. . . Mr Haughey acknowledged he had overstepped the bounds, and while 'he had never left down the bank' and in effect found any restraint on his accounts unnecessary and galling, he would clear the excess overdrafts from insurance claim money and sale in September of young bloodstock. . . and cattle herd. . .*". Matters did not seem to improve during the remainder of 1974, and an internal memorandum in October, indicated displeasure that Mr. Haughey had "*abused our confidence and trust*", and that, although the Bank's Directors were very concerned and there was a fear that the Bank's security might not be adequate, it was nonetheless decided that cheques would not be dishonoured.

3-08 Into 1975, similar exchanges continued: the ongoing concerns extended to consideration having to be given to withdrawing cheque books. Mr. Haughey admitted that he had been "*casual in his dealings with the Bank*", but stated that he would in future keep to agreed limits. The early months of 1975 were also characterised by the appearance of Mr. Desmond Traynor in the Bank's internal documents as a representative of Mr. Haughey. He appears to have met senior bank representatives in the Bank's Oldbrook House, Dublin Headquarters, in March, 1975 and indicated that he appreciated the gravity of Mr. Haughey's position, and would have a down-to-earth talk to him before reverting with proposals to reduce the indebtedness. Attending again at the same venue soon afterwards with Mr. Haughey, it was accepted by Mr. Traynor that property would have to be sold in order to reduce borrowings. Mr. Traynor contended however that the time was not then right for the sale of land and a deferral of six months was sought. The assets of Mr. Haughey were

referred to by him as including the house and lands at Kinsealy, Rath Stud, the island Inisvickallaune, and premises at Sligo, Artane and Wexford, in addition to some shares and insurance related assets. On behalf of the Bank, Mr. Sweeney queried how Mr. Haughey would manage on Parliamentary income that was very modest in proportion to his outgoings, but Mr. Traynor's request was reluctantly accepted by the Bank.

3-09 Nothing fruitful from the Bank's standpoint appeared to emerge from the deferral, and by 17th September, 1975, an internal memorandum recorded an absence of any sales, or any improvement or progress. By this time Mr. Michael Phelan had become Manager of the Dame Street Branch and, subject to the tensions inevitably arising from the state of Mr. Haughey's accounts, he and Mr. Haughey appear by common consent to have enjoyed a cordial relationship. Mr. Haughey attended a further meeting at Oldbrook House on 24th September, 1975, in the course of which he was urged to seek finance from Agricultural Credit Corporation or Northern Bank Finance Corporation, to make his Dame Street accounts more manageable, but he indicated reluctance, referring to Fine Gael connections in relation to an individual connected with the Agricultural Credit Corporation. A further meeting the following month was attended by Mr. Traynor, but little beyond vague references to the sale of Rath Stud seemed to emerge.

3-10 Matters did not improve over the ensuing year: bank memoranda noted a reference by Mr. Haughey in September, 1976 to reducing his arrears by selling part of the lands at Abbeville to the Gallagher Group at £15,000.00 per acre, and a further mention by Mr. Haughey that he felt Allied Irish Banks did not make use of his influential position in commercial circles, on foot of which he indicated willingness to divert new business the Bank's way. The Bank did not appear to respond to Mr. Haughey's suggestions, made no doubt in ease of his own position, that the Bank might make use of his influence to their advantage. From a memorandum of 30th September, 1976, it appears that Mr. Haughey's indebtedness stood at £304,000.00, and it was noted that there had been an increase of £118,000.00 in the preceding twelve months. It seemed to be about this time that the Bank began to place certain of the ever growing interest indebtedness into what was called a Suspense Account. In other words, interest which was the Bank's profit, instead of being applied to the account in the ordinary way, was now treated by being placed in a separate account with the intention that it would not be taken into account in the Bank's profits, thereby reflecting the problematic nature of the relationship with the customer. A meeting with Mr. Haughey had been set for the 1st of October, 1976 and in anticipation of the meeting, a memorandum of the 30th of September noted a history of broken promises, a disregard for limits, and a likelihood of involving the main Board with a view to more decisive action and that a tough stance should be taken at that interview.

3-11 Not all dealings between the Bank and its customer had been so strained at this juncture, however, and a mere two weeks prior to this interview, Mr. Haughey had been the guest of the Chairman, Dr. O’Driscoll, at a luncheon that was also attended by the Secretary, Mr. Moyter and the Regional Manager, Mr. Kennedy; this was recalled by Mr. Haughey as a pleasant function, in which such discussion of his accounts as occurred had been limited and relatively uncontroversial. The meeting on the 1st October, 1976, at Oldbrook House, was less convivial. Mr. Denvir, who attended on behalf of the Bank with Mr. Phelan and Mr. Coyne was recorded as having taken a hard line, demanding the return of cheque books; at this point the note of the meeting indicated that Mr. Haughey “*became quite vicious, and told Mr. Denvir that ‘he would not give up his cheque book’ as he had to live, that they were dealing with an adult, and no banker would talk to him in that manner*”. It seems that he added that, if any drastic action was then taken, he could be “*a very troublesome adversary*”. Matters apparently then quietened down, and following various proposals an accommodation was reached whereby the debt would be frozen at £310,000.00, Mr. Haughey would discharge accruing interest in half-yearly instalments commencing in March, 1977, and would sell Rath Stud and 150 acres of the lands at Abbeville within two years. An advance of £10,000.00 per annum was sanctioned for Mr. Haughey’s living expenses, and Mr. Haughey referred to his Dáil salary then being of a similar amount, together with other limited income. He also referred to his position, and prestige, and dismissed the concept of any outright sale of Kinsealy.

3-12 Some progress resulted before the end of 1976, and a memorandum of a further meeting at Oldbrook House on 8th December, 1976, noted that Rath Stud had been sold for £350,000.00, although most of that sum was to be applied to discharge indebtedness to Northern Bank Finance Corporation; assurances were given by Mr. Haughey in respect of the sale of some Abbeville lands the following year. The reimbursement of Northern Bank Finance Corporation enabled Allied Irish Banks to have a first charge over Abbeville

3-13 Whilst further transitional arrangements were set in train to manage the indebtedness during the early months of 1977, it seemed that Mr. Haughey was unable to adhere to these; by 5th April, 1977 it had been recorded that he had exceeded the limit of £350,000.00, up to almost £400,000.00, and had not complied with the agreed half yearly interest payments. Although what had by then become almost ritual expressions of disappointment and intended remedial action were reiterated, it was concluded that “*all in all, we have little option but to let matters run*”.

3-14 Little or nothing transpired in direct dealings between the Bank and Mr. Haughey over the following year, save that the indebtedness continued to climb even more steeply, to the extent that, by 14th June, 1978, the indebtedness amounted to £580,960.00 with suspense interest of £135,678.00. In the interim there had been significant developments in

national politics, in that Fianna Fáil had been returned to Government with a large majority following a June, 1977 General Election, and Mr. Haughey, following years out of favour, had been appointed Minister for Health and Social Welfare.

3-15 In noting the new level of debt, arrears of £580,960.00 with suspense interest of £135,678.00 on 14th June, 1978 in an internal memorandum to Mr. Phelan, Mr. O'Donnell, another senior bank official trod familiar ground in stating that this was “*totally unacceptable*” and that a full report to the Board was now necessary, but he also indicated, in a clear reference to Mr. Haughey’s changed status, an acceptance that “*due to the change in the political climate in the past year, it has not been possible for you to tackle the situation as you or the Bank would wish*”, concluding that Mr. Haughey should be interviewed with a view to obtaining realistic proposals. Mr. Phelan met Mr. Haughey in the Department of Social Welfare on 1st December, 1978, and highlighted the ongoing heavy drawings, and the pressure being placed on him by Head Office in regard to the accounts. Mr. Haughey then appears to have admitted that he was using the Abbeville Stud Account for living expenses, in contradiction to earlier assurances to Mr. Phelan. He also made inquiry of Mr. Phelan as to what degree of reduction in regard to both principal and interest the Bank might allow with a view to overall settlement, to which Mr. Phelan responded that, failing realistic proposals from Mr. Haughey in the first instance, it would be a waste of time to ask the Bank how far they might compromise.

3-16 On 19th February, 1979, Mr. Phelan again met with Mr. Haughey at the Department of Social Welfare. Mr. Haughey had complained of interest rates, which were undoubtedly extremely high during this period, following which some tentative discussions by way of negotiations took place. Mr. Haughey proposed to pay a sum of £200,000.00, which seemingly was expected by him from some development in Baldoyle and referred rather vaguely to some other possible sources of funds. Mr. Phelan then pointed out and Mr. Haughey admitted that even such a £200,000.00 reduction would still leave interest charges beyond the customer’s capacity to meet.

3-17 It seems that Mr. Phelan found it difficult to make contact with Mr. Haughey for some months after the February meeting, but he did meet him at Leinster House on 19th June, 1979. On this occasion, there was again mention that a Gallagher land deal was to be considered with advisers, and Mr. Phelan appears to have suggested, on what must have been his own volition, that a cash deal of £767,000.00 might be an acceptable compromise, an observation of some interest, as it exceeded only quite marginally the essence of the agreement that was to be reached early the following year.

However, the response to Mr. Phelan’s proposal the following day was unpromising: Mr. Haughey offered £400,000.00 in full and final settlement before the end of that year. Mr. Phelan stated that he would not even put

this offer to Head Office in writing because of the likely reaction, and gave no hope of acceptance. At this stage the total debt had climbed to £867,000.00 inclusive of interest. There was mention of two sources of funds, one being Baldoyle, and of the Gallaghers no longer being necessary. Additionally, the possibility of Mr. Haughey introducing a £10 million deposit from the Iraqi State Bank was mentioned by him, in relation to which there had seemingly been an initial unfavourable response from the Central Bank, but no enthusiasm was shown for this by the Bank. Mr. Phelan's note of the meeting concluded with a reference "*End of year crucial in politics. Try to discount (1) value of deposit, (2) potential of leadership*".

3-18 In the course of his evidence Mr. Haughey stated on a number of occasions that, during the years under consideration and for some time previously, Mr. Traynor, both as a former associate in the firm of Haughey Boland and as a close personal friend, was the person who was really managing his finances; this relationship dated back to 1960, when Mr. Haughey left Haughey Boland to take up a fulltime political career, whereupon Mr. Traynor undertook the management of Mr. Haughey's "*difficult financial affairs*" as part of his duties in Haughey Boland, and continued in that role even after he had become a senior figure in the Bank, Guinness & Mahon. An integral part of that task was setting up and operating the bill-paying service for Mr. Haughey as already noted, and this continued within Haughey Boland even after Mr. Traynor's departure to Guinness & Mahon in 1969. Mr. Haughey stated that the two of them maintained contact, but not on a daily or even weekly basis. Mr. Traynor would advise Mr. Haughey, and take such actions as might be necessary, such as borrowing arrangements. Living close to each other, it was easy for the two of them to call upon or telephone each other. Mr. Traynor was assisted in his role by Mr. Michael McMahon, a tax expert in Haughey Boland, and by Mr. Pat O'Connor, Mr. Haughey's Solicitor. Mr. Haughey stated that Mr. Traynor was realistic in his approach, and tended to advise Mr. Haughey to reduce his expenditure and to get his affairs in order.

3-19 It was suggested to Mr. Haughey that extensive examination of all Allied Irish Banks' documentation relating to Mr. Haughey's accounts indicated only a limited involvement by Mr. Traynor during part of 1975, an absence of any involvement throughout the three succeeding years, then a renewed involvement as matters moved towards settlement in the latter part of 1979. Mr. Haughey responded that he did not agree with this and, even if the Bank documents were silent, felt Mr. Traynor would have been in touch with the Bank on his behalf on a considerably more regular basis, particularly after he had become a banker himself. However, it was acknowledged by Mr. Haughey that, whatever the extent of Mr. Traynor's dealings, Mr. Haughey did conduct the majority of his dealings with the Bank himself during these years: he was the client of the Bank, in difficulties through running up an overdraft, and from time to time the Bank when unhappy would call him in and lecture him.

3-20 Mr. Haughey took only limited issue with a couple of the matters set forth in the Bank documentation, and was disposed to place particular reliance on memoranda prepared by Mr. Michael Phelan, who he stated had become a personal friend in the course of their dealings, and was an old style gentleman who avoided aggression.

3-21 Regarding the very large indebtedness that built up, Mr. Haughey said that this was much more referable to the costs of managing the estate than to his personal or household expenses, and he stressed on a number of occasions the very high interest rates that were applied to his accounts, which were of a “*crucifying*” nature, particularly when surcharges were applied, which he did not believe he had ever agreed to. With regard to the references to a Baldoyle development in which he had an interest, he said that this puzzled him, and must have reflected some confusion, as the Abbeville lands were his only possibility of raising a substantial sum of money, and he absolutely ruled out any involvement in any Baldoyle development. He did recall something in relation to his having mentioned a large deposit from an Iraqi bank: Ireland was then in dire financial straits, and this was one of many instances in which persons came from places like the Middle East, and offered money at lower rates than were current in Ireland. He had offered to pass this possibility on to Allied Irish Banks, and they had shown no interest in it. This had not been done to alleviate his position with the Bank, and it merely seemed to Mr. Haughey that Allied Irish Banks was the most convenient receptacle for this investment. As to the references attributed to him in conversation with Mr. Phelan, about the end of the year being crucial in politics, and the potential of leadership, he was unable to decipher these, but it may well have been that the two of them had a general political conversation after dealing with the difficult business of Mr. Haughey’s account.

3-22 Although matters did not gain any particular momentum for several further months following the June, 1979 meeting, those dealings between Mr. Haughey and Mr. Phelan at that meeting may be said to represent the start of the process which led to settlement early the following year, a process which will be dealt with in the next section.

PERIOD FROM MID 1979 TO THE CONCLUSION OF THE SETTLEMENT AND RELATED EVENTS

3-23 In the following sections of this Chapter it is proposed to set forth the circumstances of the settlement of Mr. Haughey’s indebtedness with Allied Irish Banks in the period of time bridging the end of 1979 and the early part of 1980. Attention will then be devoted to a number of related matters in the early 1980s and thereafter identifying the sources of the monies used to fund the settlement.

3-24 By 23rd August, 1979, an internal bank report set out a debt of £913,000.00 inclusive of interest. It was also noted that, although there had

been no lodgements, drawings between June 1977 and June 1979 amounted to £279,000.00. What still remained an impressive list of securities, of which the land certificates of Abbeville were foremost, was then recited, along with the history of unabated drawings and dishonoured undertakings. It was then again noted that, Mr. Haughey's political career had changed dramatically, rendering even interviews difficult, and that, whilst outright sale of the Abbeville lands seemed to be rejected by Mr. Haughey due to paranoia over publicity, some form of arrangement in relation to land with the Gallagher family should be encouraged, to generate a reduction in borrowings. Confirming rejection of the £400,000.00 offer, it was then stated that Mr. Haughey "*fails to see the precarious position he is in, and obviously feels his political influence would outweigh any other consideration by the Bank*".

3-25 A report of a meeting on 6th September, 1979, with Mr. Haughey at his departmental office, noted that he seemed more anxious than previously to address the problems, had recently met with Mr. Patrick Gallagher, who was anxious to proceed with an arrangement over lands, and also gave the Bank consent to discuss the position with Mr. Traynor, with a view towards resolving issues without publicity. It seems that Mr. Haughey had expressed amazement at the amount of recent drawings, indicating that proper restraint had not been exercised on stud expenditure, but at the same time, had acknowledged that he had "*snaffled*" almost all of the stud income himself. In conclusion, he denied that he had any other bank accounts, and stated that he dealt entirely in cash.

3-26 The following day, Mr. Haughey telephoned Mr. Phelan, and confirmed his wish to resolve this "*dangerous*" situation with the aid of Mr. Traynor; he proposed selling 150 acres at Abbeville to a company with Gallagher involvement. No immediate development transpired, but he again telephoned on 13th October, 1979, to state that he could arrange a substantial reduction, and could go to £500,000.00, but sought to know what the Bank would accept in full settlement. Mr. Phelan responded that there would be no figure until cash was on the table. In subsequent discussions with senior colleagues however, Mr. Phelan expressed the view that, rather than naming a figure, it was preferable to allow a reduction of £150,000.00 in the amount outstanding on the day of any agreement. On 18th October, 1979, Mr. Traynor called to see Mr. Phelan: he fully agreed that the only course was one that would clear the debt totally. He indicated that, whilst aware of what had been proposed in relation to the Gallaghers, he had at least two other contributors in mind as well; however, he had to be sure that Mr. Haughey was serious about settlement, and had to look at the tax implications for the persons intending to contribute, to which end he would discuss matters with Mr. Haughey the following Saturday.

3-27 Prior to the end of October, 1979, Mr. Haughey made a number of telephone calls to the Bank, and from the documentary material it would appear that he had indicated at one point that he was borrowing abroad,

he also referred to an expected visit or call from Mr. Neil Crowley, then the Chairman of Allied Irish Banks, and finally indicated that he had in recent days again seen Mr. Patrick Gallagher, who had indicated a positive response to him. Whilst the content of these messages may not have been entirely consistent or clear, their overall tenor suggested an increasing disposition towards a final settlement on Mr. Haughey's part.

3-28 Mr. Haughey had little to say in regard to these matters in his evidence; he felt that the reference in the memorandum to his "*political influence*" only reflected the Bank's subjective view, and in regard to the large increase in drawings, stated that these were attributable to Abbeville rather than personal expenses. He acknowledged that it seemed that he had spoken to Mr. Gallagher, and permitted the involvement of Mr. Traynor in any further dealings. He agreed that "*by and large*" Mr. Phelan had had no dealings with Mr. Traynor, and accordingly needed Mr. Haughey's consent to deal with him, but he stated that he believed that the Bank was aware that he had been discussing the position with advisers. When it was suggested by Tribunal Counsel that this appeared to be the first recorded contact with Mr. Traynor since 1975, Mr. Haughey responded that he would have to check this. He also said that he had not known that Mr. Traynor had two persons in mind other than Mr. Gallagher; whilst he must have had some discussion with Mr. Traynor about the principles of his plan, there was no discussion in relation to any other two people. He stated that Mr. Traynor was quite reticent, and worked in his own way; it was possible that he may have mentioned two other potential investors, but Mr. Haughey had no recall of any specific names. It was Mr. Traynor's practice to work on a "*need to know*" basis. Also he may not then have felt at liberty to disclose any such names. In any event, Gallaghers were now an essential component, at least in Mr. Haughey's thinking.

3-29 On 11th December, 1979, following a leadership contest within the governing Fianna Fáil Party, Mr. Haughey became Taoiseach, and on the same day received a warmly worded personal letter of congratulations from Mr. Phelan. Thereafter the tempo of negotiations quickened appreciably, and six days after Mr. Haughey became Taoiseach, Mr. Traynor attended a meeting in the Dame Street Branch with Mr. Phelan and the Regional Manager, Mr. Michael Kennedy. The Bank memorandum of that meeting recorded that at the outset, Mr. Traynor made it clear that for political reasons, the recent proposals discussed were now out of the question, as the parties concerned would have no hand or part in them lest their names be dragged though the Dáil. He stated that Guinness & Mahon would advance a maximum sum of £600,000.00 against a first charge on Abbeville, but only on the basis that this was accepted in full and final settlement of the entire debt. This with interest then stood at £1.143 million, as recorded in a memorandum by Mr Kennedy of this meeting. The Bank's response was that this was out of the question, that the Bank had reached the end of its patience, and on grounds of potential embarrassment alone, it was essential that realistic proposals be ready for submission to the main

Board at their February meeting. Mr. Traynor was unmoved, stating that there were “*no rabbits to be pulled out of hats, or blood to be got out of turnips*“. It was a question of either taking the £600,000.00 or leaving the debt outstanding indefinitely. It was then stated on behalf of the Bank that if the debt was brought down to £200,000.00, the Bank would write off the balance, but would go no further, lest there be questions by their auditors. Mr. Traynor stated that he would convey these views to Mr. Haughey, but he was far from optimistic as to the outcome. However it appears negotiations remained ongoing at the end of the year, because Mr. Traynor rang Mr. Phelan on 28th December, 1979 to arrange a further conversation with him on January 2nd, 1980.

3-30 Mr. Haughey stated that he did not remember Mr. Traynor attending this meeting, and did not know if he had met with him previous to it, but he accepted that it took place as described. He stated that Mr. Traynor knew of Mr. Haughey’s anxiety for a solution, particularly having regard to his new situation, and he had a free hand in the matter. His new office made clearing the debt important, and the far from unanimous nature of the leadership contest added to the scrutiny that he would be under. He accepted that from in or about the previous September there was a chance that he would become Taoiseach. He was under hourly and intense political pressure, of such a nature as to imperil his very continuance as Taoiseach, and compared to this, the debt appeared of minor importance. Having taken over the problem, it would have been Mr. Traynor’s way to come to him when something was done, rather than look for step-by-step approval.

3-31 On 8th January, 1980, it appears that Mr. Traynor made contact by telephone with the office of Mr. Crowley, the Chairman of Allied Irish Banks, and on foot of this Mr. Crowley requested Mr. P O’Keeffe, Deputy Chief Executive and the most Senior Executive of Allied Irish Banks below Board level, to take up the ongoing negotiations on behalf of the Bank. Mr. Haughey stated that he was unable to comment on this, but it was natural, given the positions of himself and Mr. Traynor, and the implications of what was at stake, that matters would have been taken up with the Bank at the highest level.

3-32 Progress in finalising the terms of settlement appears to have been rapid: Mr. Traynor held a meeting with Mr. O’Keeffe, and a further meeting between the two was held on 24th January, 1980, at which details of settlement were finalised and reduced to writing. Whilst this process was in train, Mr. Phelan received telephone calls both from Mr. Haughey, who informed him of the progress of negotiations, and from Mr. Traynor, who told him that he had advised Mr. Haughey that no further cheques were to be drawn on Allied Irish Banks, and that he should promptly make other banking arrangements for his personal and farm accounts. He added that Mr. Haughey fully understood and accepted the position, and that there was no animosity on his part. Mr. Haughey did not take issue with any of

these details, although he did not remember them, save that he was sure he would have said that there was no animosity on his part.

3-33 Prior to the written settlement, Mr. Traynor wrote to Mr. O’Keeffe on 18th January, 1980, confirming their appointment for the following week, but stating that when previously speaking to Mr. O’Keeffe he had undertaken to furnish him with £600,000.00 within a week, so that he accordingly enclosed a bank draft in that amount. This was duly acknowledged by Mr. O’Keeffe.

3-34 The form of the settlement was set forth in a letter of 24th January, 1980, which was addressed to Mr. Haughey in the following terms:—

“Dear Mr. Haughey,

I refer to the discussions recently had here with Mr. Traynor from which certain proposals have emerged for the discharge of the indebtedness on all your accounts on the Bank. The proposals, briefly stated, are:—

- 1. The debit balance on the account was agreed at IR£860,001.17 to be permanently reduced to IR£110,000.00 by mid-February, 1980.*
- 2. The remaining balance of the indebtedness, namely IR£110,000.00, is to be liquidated within a reasonable period of time by the introduction of funds arising from the disposal of any part of the property and lands known as Abbeville (it being understood that not less than 10% of the proceeds of such disposals will be so introduced).*
- 3. As soon as the indebtedness has been permanently reduced to IR£110,000.00, as set out at 1 above, the Bank will release its charge on the residence and 248 acres known as Abbeville, and hand the title deeds relating thereto to Mr. JD Traynor. At the same time, the associated Letter of Guarantee for IR£350,000.00 will be cancelled. The remaining items of security, comprising in the main the deeds of Inisvickallaune, the deeds of a house and 13 acres in County Sligo, and a Life Policy for IR£1,000.00, will be held by the Bank as security pending liquidation of the remaining indebtedness of £110,000.00.*

It is to be further understood that, as part of the above arrangements, the remaining debt balance of IR£110,000.00 will stand, free of interest, in the Head Office Ledgers of the Bank at Bankcentre, Ballsbridge, Dublin with no transactions, save for reductions in clearance.

You will appreciate that the implementation of arrangements of this nature would in the normal course, give rise to certain legal requirements. However, since the fulfilment of the agreement outlined is a matter of honour, I am dispensing with such formalities confident in the knowledge that you will ensure beyond any doubt that the IR£110,000.00 will be cleared within a reasonable time.

As part of the arrangement referred to at 1 above a lodgement of IR£600,000.00 was received by me on the 21st January 1980, and is hereby formally acknowledged.

I am sending this letter to you in duplicate and I shall be obliged if you will kindly initial one copy and return it to me in the enclosed addressed envelope. This will signify your acceptance of the agreement set out in this letter and it will also be taken as specific authority to release security as appropriate.

*Yours sincerely
Patrick O’Keeffe
Deputy Chief Executive”*

3-35 Following the signature of this letter by Mr. Haughey, Mr. Traynor furnished Mr. O’Keeffe with a further bank draft for £100,000.00 together with a covering letter of 31st January, 1980, which was duly receipted. Then on 14th February, 1980, with another covering letter, Mr. Traynor furnished Mr. O’Keeffe with a final payment of £50,000.00. Mr. Haughey acknowledged that it seemed that his indebtedness to Allied Irish Banks had been settled for an aggregate payment of £750,000.00, subject to the £110,000.00 referred to in the agreement, viewed by Allied Irish Banks as a debt of honour.

3-36 The £110,000.00 was never paid. Nor did the Bank ever either insist on or even request payment. One of the questions which arises in connection with this settlement is whether it ought to be viewed as so favourable to Mr. Haughey as to amount to the conferral of a benefit on him.

3-37 On the face of the settlement letter the compromise did not appear to involve any discount in favour of Mr. Haughey. This is because effectively it stipulated that £750,000.00 was to be paid right away and a further £110,000.00 (as a debt of honour, but without carrying interest) within a reasonable time, making in all approximately £860,000.00. This was the sum described as having been agreed to be due. But the figure of £860,001.17 had already been discounted in that according to bank documents, the total amount due together with interest on the 7th day of December 1979 was £1,143,839.18 without taking recently accrued surcharge interest into account. This indebtedness was more than adequately secured against the very valuable Abbeville property and a number of other lesser properties owned by Mr. Haughey.

3-38 The reference to a debt of honour outstanding free of interest in the sum of £110,000.00 to be paid within a reasonable time throws an interesting light on the true meaning of both the letter and the terms of settlement. Apart from the fact that bank never requested the sum, no steps were ever taken by either Mr. Haughey or Mr. Traynor to comply with this element of the settlement. Mr. Haughey, in acknowledging that he had never paid the outstanding amount stated that he had never been called upon to make payment. When it was suggested to him that it may have been expected, that as a man of honour, he would pay the amount, Mr. Haughey responded that much stress was being placed upon honour, and he did not know what significance the Bank attributed to it, but it had never been sought from him or mentioned by the Bank: frankly, he had forgotten about it. As far as he was concerned the debt of honour was still there, and he had not dishonoured it, but the Bank had never come to him, to insist on payment. The fact remains that, as Mr. Haughey agreed, his Solicitor, Mr. Pat O’Connor, approximately some ten years later, sought the release of the title documents held as security for the £110,000.00, a request to which the bank acceded. Mr. Haughey had some recollection that at the time, in or about 1989 or 1990, the outstanding title deeds may have been needed for some purpose. He insisted however that they were given back

without demur and this did not surprise him, as he stated that he had more or less dismissed the outstanding £110,000.00 as fiction.

3-39 In this connection, it is also of significance, as related by Mr. Haughey, that Allied Irish Banks had let it be known to Mr. Traynor after the settlement that they were very glad that the matter had been resolved, and that they did not wish to see Mr. Haughey on their books anymore. Mr. Haughey agreed that this tended to confirm that there was no reality in the notion that the so-called debt of honour was treated by the Bank as a continuing obligation of Mr. Haughey.

3-40 The last level of indebtedness recorded in documentation, up to the start of December, 1979, was £1,143,839.18. Mr. Haughey was not disposed to agree that the Bank had dealt with him on unduly favourable terms, and felt that, having regard to the evidence of Mr. G Scanlon, what had been agreed was within the normal context of these types of settlements. In further response, he stated that he did think the settlement was reasonable, but did not accept that it was favourable or specifically favourable to him.

3-41 That the Bank should have written off the £110,000.00 as a formal debt, only to reincarnate it as a debt of honour, is also noteworthy in light of the record, as contained in the Bank's own documentation, of its previous dealings with Mr. Haughey. Given the constant complaints over undertakings not kept and broken promises on the part of Mr. Haughey in preceding years, the terminology appears singularly inappropriate and, noting the utter absence of any request or reminder in relation to payments throughout the years before the Bank returned its remaining securities at the request of Mr. Haughey's Solicitors, it is surprising that the Bank should frame an obligation on Mr. Haughey's part in terms of honour or moral blameworthiness rather than in terms of a strict legal duty. The discounting of the original debt from £1.143 million to £860,000.00 and effectively the writing off of £110,000.00 of that discounted sum can only be regarded as an attempt to recast the Bank's records so as to suggest that in fact Mr. Haughey's indebtedness had been effectively cleared off, in the ordinary way, when in fact it had been dramatically discounted.

3-42 In addition to the documentary evidence concerning Mr. Haughey's relationship with the Bank, culminating in the settlement of January, 1981, evidence was given by a number of former directors of the Bank who had held office at the relevant time. Given the lapse of time since Mr. Haughey was a customer at the Dame Street Branch, it was unsurprising that a number of witnesses such as Mr. Michael Phelan were, by the time of public sittings, deceased or unable on health grounds to testify. Nonetheless, a significant number of persons who were senior staff or directors of the Bank at the relevant time made themselves available to give evidence. Of that testimony, only a limited number of the matters recounted needs be recalled.

3-43 Before dealing with the evidence of a number of bank witnesses it should be mentioned that in reference to its dealings with Mr. Haughey as a whole, and in particular in reference to the settlement, the Tribunal, in its Opening Statement prior to the evidence presented on these matters included a short statement that had at its invitation been furnished to it by Allied Irish Banks recording the Bank's view of the settlement arrived at with Mr. Haughey. This was in the following terms:—

1. *AIB sought no advantage or favour arising out of the indebtedness to it on these accounts, and indeed exerted considerable pressure on the account holder to compel him to deal with his affairs when it could be said that he had reached the apex of his career, having just become Taoiseach.*
2. *AIB believe the compromise was commercially justified having regard to the protracted and difficult history of the accounts, to the fact that it was extricating itself from them and was to have no further dealings with the affairs of Mr. Haughey”*

3-44 Two officials who had dealt with the file around the time of the settlement gave evidence. They were Mr. Gerard A O'Donnell and Mr. Michael Kennedy. Mr. Gerard A O'Donnell had been the Advances Manager for Dublin West at the time, his area of responsibility including the Dame Street Branch. His duties comprised allowing or refusing extensions of credit that were beyond the discretion of branch managers, and supervising advances generally. He had enjoyed a good relationship with the Dame Street Manager, Mr. Michael Phelan, who had dealt with Mr. Haughey's accounts. Reflecting the content of the Bank files to which reference has already been made, Mr. O'Donnell recalled that Mr. Haughey's accounts had been troublesome and difficult although, since his role was supervisory, he had not dealt directly with Mr. Haughey. He recalled that, at a time at the end of 1979 or at the start of 1980, he had been working at his desk when he was approached by his Regional Manager, Mr. Michael Kennedy, who asked him for Mr. Haughey's file, which Mr. O'Donnell had then kept in a cabinet in his room. Mr. Kennedy had informed him that he was taking custody of the file, was not telling Mr. O'Donnell why it was being taken, and that Mr. O'Donnell was not to ask. This was an unusual instruction, and he could recall no similar one.

3-45 Mr. Michael Kennedy, (whose name had appeared on a number of occasions in the foregoing narrative of dealings on the accounts), confirmed that he at the time of the settlement had been the regional manager for Dublin West, and that his supervisory responsibilities included Mr. Haughey's troublesome accounts. He recalled having attended, together with the Chairman and the Secretary of the Bank, the lunch to which Mr. Haughey had been invited in September, 1976; he had also attended, along with Mr. Phelan, the meeting with Mr. Traynor on 17th December, 1979. In both instances, he confirmed the content of the memoranda already referred to. Mr. Kennedy recalled the occasion when he had sought Mr. Haughey's file from Mr. O'Donnell, and the instruction he had then given Mr. O'Donnell, and stated that to his best recollection

this was on or about 17th January, 1980, close to the time of the settlement. He thought that it was Mr. O’Keeffe who had asked him to request the file from Mr. O’Donnell, and the basis of his instruction to Mr. O’Donnell was because of the extremely confidential nature of the matter; as he saw, it given Mr. Haughey’s very high profile as a public figure, the less Mr. O’Donnell knew the better, and although Mr. O’Donnell was in any event a very responsible official, it was proper to keep him in a position of not being able to answer questions regarding the accounts.

3-46 Apart from excluding an official of Mr. O’Donnell’s seniority from not merely a part in, but knowledge of, the settlement, it would appear that the Board itself may not have been fully appraised of the terms, even the broad terms of settlement. This appeared from the evidence of a number of former directors.

3-47 Dr. Liam St. John Devlin stated that in his recollection while serving as a director the matter of Mr. Haughey’s accounts had never specifically been on the Board agenda. He appeared to have been aware of efforts to deal with Mr. Haughey’s accounts on the basis that they were troublesome but he thought that there was a feeling amongst the directors that it was better not to know the details of Mr. Haughey’s accounts in case there was a leak. Regarding the amount of the eventual settlement, Dr. Devlin thought that he recalled, whilst not sure of the matter, that there had been a director who inquired in this regard, but did not get a reply from management. This, as will appear below, was probably a reference to a matter which appeared from the evidence of Mr. Charles Greyston. Dr. Devlin felt that there was something of a consensus amongst the directors that management should resolve the matter, rather than inform the Board about it.

3-48 Professor Patrick Lynch had latterly been Deputy Chairman of the Board. Like Dr. Devlin he appeared to confirm that the matter was not formally on the Board agenda, and he recalled that it was from Mr. O’Keeffe, then Deputy Chief Executive and the official who appeared to have overall control of the settlement, that he heard that the matter of Mr. Haughey’s indebtedness had been satisfactorily resolved, but that no figure had been mentioned to him. Mr. Joseph McGlynn, at the time Group Managing Director, testified that all he could recall of the settlement was hearing that Guinness & Mahon had taken over the indebtedness, and feeling considerable relief; that while Mr. Haughey’s indebtedness reflected particularly large borrowings for a personal, as opposed to a corporate customer, he was not surprised that the matter had not proceeded to the Board since as he saw it, it was essentially a management matter. Mr. Denis Murphy’s recollection was that it was at a local and not at a main Board meeting that he had heard that the matter of Mr. Haughey’s indebtedness had been settled, but recalled that no details were given. Mr. John McGuckian had no recollection of any specific discussion at any Board meeting but felt that he may have heard at a Board meeting, that the matter had been resolved, but that he had not learned of the figures at the time,

or of the outstanding £110,000.00. Mr. Charles Greyston indicated some recollection of the settlement being referred to at Board level for consideration or ratification. From his evidence, the Tribunal has the clear impression that very little by way of information had been made available at the time. Mr. Greyston felt that the Board should not have been kept in the dark, and indeed acknowledged that it was only through the Tribunal that he had learned of the actual figures involved. He had a recollection of one director, Mr. C. Aliaga Kelly inquiring how much of a write-off had been allowed, and feeling that the answer did not deal with the question, in that no figures had been given. From his evidence it would appear that only a vague skirting around the details was provided, and it seemed to him that bank executives were not going out of their way to provide information.

3-49 Overall, the Tribunal is left with the impression that there was no enthusiasm on the part of senior officials to disclose to the Board the full details of Mr. Haughey's indebtedness, and the terms of settlement with him, and correspondingly there was no real appetite on the part of the Board in general (with the exception of Mr. Aliaga Kelly) to be burdened with full disclosure. It is likely that these two attitudes may have fed off one another.

3-50 Turning to the amount of the settlement, Mr. O'Donnell felt, and in particular having regard to the amount of the discount, that in accordance with the need to examine each case on its own merits the compromise was in all the circumstances commercially justifiable. As to the £110,000.00 that was left outstanding free of interest, Mr. O'Donnell stated that he could not say that the Bank had no confidence that it would recover this sum, but it would perhaps have been a reasonable assumption that the Bank had no great confidence that the sum would be repaid. Mr. O'Donnell's evidence was of course based on the knowledge he had recently acquired, since he had no involvement in the settlement at the time.

3-51 Mr. O'Kennedy, although not involved in negotiating the terms of settlement, was aware of them at the relevant time, having assisted in drafting the settlement letter. Of the settlement sum of £750,000.00, Mr. Kennedy stated that this reflected £695,000.00 for principal, plus £55,000.00 for interest. The £110,000.00 left as a debt of honour amounted in effect as a contra for suspense interest in a similar amount, and in Mr. Kennedy's view, this left an interest concession of £219,000.00, that is £1.079 million in total. He agreed that the £110,000.00 could be regarded as an interest free loan. Mr. Kennedy stated that his experience was that the Bank tended to go to great lengths to show forbearance, and avoid Court confrontations; that here it would have been very difficult to realise the security held, although he did not say the security was worthless. But there were concerns as to what would be realised if a forced sale occurred, and it was of course a consideration that Mr. Haughey had by then become Taoiseach. It was natural to seek to avoid a confrontation in these circumstances, and as Taoiseach with a large majority, it was necessary to

think of the Bank's business throughout the country and the possibility that steps taken could cause resentment or a flight of customers. Accordingly, it was not unreasonable to say that the terms of settlement had a degree of connection with Mr. Haughey having acquired the Office of Taoiseach. Had no settlement been reached, Mr. Kennedy said it was too difficult for him to say what legal steps would then have been taken, and he thought that it would have been a matter for the Board. Regarding the actual figures that had been in issue, Mr. Kennedy was reminded that according to a bank document of 7th December, 1979, the debt then had been assessed as £1.143 million. With further reference to the final form of the settlement letter, Mr. Kennedy said that he thought that the Law Agent, Mr. O'Connor, had also been involved in preparing the draft. As to the scale of Mr. Haughey's indebtedness being of significance, it was confirmed in the course of Mr. Kennedy's evidence (after a lesser figure had been mentioned in error) that the actual banking profits of Allied Irish Banks in 1979 had been in the region of £26 million.

3-52 In relation to the circumstances of the settlement, Dr. Devlin, as in the case of Mr. Kennedy, acknowledged a political dimension in the Bank's dealings with Mr. Haughey, stating that he had been aware of some effort to recover cheque books from Mr. Haughey, but that it seemed that action on such lines was not practical, as Mr. Haughey was a popular and powerful leader and a potential Taoiseach.

3-53 Mr. James Fitzpatrick too underlined Mr. Haughey's political position. He indicated that he had been aware in general terms that Mr. Haughey had been a difficult customer, and felt that what had been achieved was a good settlement from a most awkward situation. His view was that the full amount of principal that had been lent had been fully repaid, with some provision for interest also included, and that the settlement had achieved the objective of getting the account off the Bank's books. He went on to point out that Mr. Haughey had been a very powerful and prominent figure with a very large following in the country, and if the Bank had taken unreasonable actions against him, it could have been resented and damaging to the Bank's interest. He agreed with the suggestion that, if seeking to have some of his assets sold, it would be necessary to give serious consideration to the position he held in public life.

3-54 Likewise Mr. McGuckian acknowledged the political element in stating that the fact that Mr. Haughey had just become Taoiseach was probably a factor in the settlement. Professor Lynch did not agree with any of the other directors in relation to the significance of Mr. Haughey's political position, and he would not have discriminated in relation to him on that account. Regarding the amount of the settlement, Professor Lynch, with the benefit of the information he had obtained from the Tribunal regarding the amount of the settlement, felt that a fair proportion of what had been due was recovered, and that the situation had not been unique, since large sums had been foregone by the Bank in relation to members of the farming

community. However he also stated that it was in general terms unusual to write-off significant amounts of debt, and that it was erroneous to say that debts were written off in all cases, particularly where security was adequate and realised. Unlike the other bank Directors, Mr. Greyston stated in evidence that the amount written off seemed to him unusual.

3-55 As the Directors, apart obviously from the Chairman who was involved in the settlement, at the material time were unaware of the details of the settlement, it is difficult to draw any conclusions from their evidence as to whether the discount or forbearance was unusual or not. It is not unreasonable to infer that on balance the directors were aware of the difficulties encountered by the Bank in dealing with Mr. Haughey, and that in resolving what had become a fairly acute crisis in a relationship such as this, his position as a powerful political leader, culminating at the time of settlement in his election to the leadership of the Government, was a significant factor.

3-56 Evidence was given by another bank official, Mr. Gerry Scanlon, who although not directly involved in the settlement or in Mr. Haughey's day-to-day relationship with the Bank, testified as to his more remote knowledge of the Bank's relationship with Mr. Haughey and of the settlement. Though Mr. Scanlon ultimately progressed to become Chief Executive and Deputy Chairman of the Bank, at the time of the settlement he held the position of Central Advances Controller, based in Dublin and reporting to Mr. P O'Keeffe, the then Deputy Chief Executive. While he did not take part in the settlement negotiations, as a Senior Executive of the Bank the settlement was something of which he was generally aware. From the documentation he appears to have had an involvement in the mechanics, or at least a consideration of the mechanics, whereby effectively the indebtedness was removed from the books of the Dame Street Branch into the Bank's Head Office. In this way, the Branch's books were cleared, leaving no real trace either of the account or the settlement terms. Mr. Scanlon's view was that these steps were taken mainly for reasons of confidentiality. While he acknowledged that although all bank officials were bound by a strict code of confidentiality, he also recognized that, as he believed was appropriate, an extra special degree of confidentiality was accorded to this banking relationship. In the particular context of the settlement terms, this related to the substantial degree of forbearance in the recovery of what was due and that such forbearance was being accorded to the then Taoiseach. His recollection of the terms was that the settlement involved a figure of £750,000.00. That he did not appear to have a recollection of the continuing obligation characterised as a debt of honour is of some significance in clarifying the true import of this provision of the settlement. In this connection, Mr. Scanlon mentioned that in 1987, on the retirement of the then Assistant Chief Executive, he was given a file on the financial affairs of Mr. Haughey (amongst a small number of files relating to other accounts also passed to him). He explained that he put the file in his "*office undisturbed, because quite simply as far as [he] was concerned it was*

history. [He] did not need to read it or know what was in it. [He] knew the broad outlines of what had been agreed". This it will be recalled found an echo in Mr. Haughey's evidence that following the payment of £750,000.00 his obligations to the Bank had been fulfilled and the £110,000.00 outstanding was "*fiction*". Mr. Scanlon's perspective, combined with the fact that in 1990, while he was still Chief Executive, the remaining securities held by the Bank were returned to Mr. Haughey, is consistent only with the view that there was never any reality in any continuing obligation, and that the description of a debt of £110,000.00 as a debt of honour was at most a formula calculated to put a more marketable complexion on the terms of settlement, with a residual, if perhaps artificial, hope that something might come of it.

3-57 Mr. Scanlon, while disputing the appropriate figure to be used as an indicator of Mr. Haughey's indebtedness, did regard the discount of over £390,000.00 as unusual, but he stated that he did not regard the level of pain as exceptional. He did not wish to be drawn on the reasonableness or otherwise of the settlement, believing that the judgment of the people involved in effecting it had to be respected. It was not possible to ascertain from his evidence whether the settlement was exceptional, bearing in mind the degree of security held by the Bank. The account had proved unusually difficult, but particularly in the early 1970s, when the line of credit had not been significantly high, Mr. Haughey had been a valued client of the kind that any Manager would wish to have on his books. Being a prominent public figure at all times, he had been what in the jargon of the time could be described a "*KBI*," that is to say a Key Business Influencer. However, a dream relationship had become a banker's nightmare, despite rigorous attention given, and the amount of senior executive time that was required to be given to the account had been a great diversion. Mr. Haughey did appear to have been asset-rich but insofar as the Bank did not formally move against him, the other sanctions of dishonouring cheques or of withholding chequebooks from Haughey Boland would have connoted a slur on his character. He preferred not to offer an opinion on Mr. Kennedy's view on the impact that more vigorous bank action might have had on the Bank's customer base.

OTHER SETTLEMENTS WITH ALLIED IRISH BANKS' CUSTOMERS

3-58 In the course of public hearings in relation to Mr. Haughey's accounts in Dame Street, Counsel on his behalf raised the matter of other instances in which Allied Irish Banks may have compromised substantial outstanding borrowings from private customers in broadly comparable circumstances, including any other politicians. The Tribunal agreed that this was a proper and justified line of inquiry, and requested the assistance of the Bank in this regard. Before any such inquiries had been finalised, certain media reports appeared which brought into the public domain dealings had by Allied Irish Banks with another former Taoiseach, Dr. Garrett Fitzgerald, in relation to the disposal of borrowings incurred by him.

With the full cooperation of Dr. Fitzgerald, his arrangements with the Bank were included amongst the matters examined for possible comparative assistance, along with a number of other cases in which the Bank had compromised substantial private borrowings in circumstances which involved some degree of affinity with Mr. Haughey's case. In endeavouring to shed some light on the question of whether the degree of forbearance was especially unusual, the exercise conducted by the Tribunal with the assistance of the Bank, of examining comparative cases, proved to be of some help. At the request of the Tribunal, Mr. Vincent Clifford of Allied Irish Banks carried out an examination of cases in which the Bank had entered into discounted settlements in respect of large personal borrowings arising in or about the years 1979 and 1980. This was with a view to ascertaining how the Bank acted in relation to cases that were at least to some degree comparable. What was examined was restricted to personal as opposed to corporate borrowings, and the identities of the individual customers were fully safeguarded. On this basis, details were given in evidence of the enforcement strategies adopted by the Bank in some eight such broadly representative cases. It is not proposed to set out all the details related in evidence about those cases, which would unduly extend the length of this Chapter; what may be said by way of overview is that the vast majority of such borrowings arose in the agricultural sphere, when farmers, particularly in the 1970s, paid high prices to purchase or extend agricultural land and carry out farming activities thereon. In the cases under review, the loans appeared to have been sanctioned facilities for investment activities, as opposed to the funding of day to day activities on an unsanctioned basis, as seems to have arisen in relation to Mr. Haughey. It further appears however that in those cases, and in others reviewed by the Bank, many borrowers were required to sell lands or otherwise to reduce their overall wealth significantly, in order to fulfil the compromise agreements made with the Bank. In further contrast with Mr. Haughey's borrowings, the cases revealed that judgments were made by the Bank as to the viability of farming or other ventures being pursued, which as interest rates rose and land values declined, subsequently proved to have been misplaced, thereby affecting the initial assessment of the repayment capacity of the borrowers.

3-59 Examination of the eight cases referred to in evidence seems to indicate that the Bank had varying degrees of success in relation to the amounts that were recovered, but in most such cases, short of forcing a borrower from a dwelling house, the Bank proceeded as far as it could in forcing land sales, stock sales or other disposals to induce the maximum possible repayment. This, where necessary, was taken to the extent of requiring a borrower to remortgage his family home. In one instance, a borrower had been required to sell the majority of his assets, and some family money was added to the aggregate of repayments, leaving the Bank in a situation in which it ended up better placed than on foot of a forced sale through litigation. The respective fortunes of Bank and borrower varied from case to case according to the individual circumstances, and there

were instances of the Bank suffering significant shortfalls but, as stated by Mr. Clifford in evidence, the primary function vested in the lending officers in each instance was to maximise the recovery, or get back as much as could be obtained with the instruments at their disposal. Insofar as it may be feasible or fair to generalise in relation to these cases, it may be said that they showed a disposition by the Bank to use a wide range of enforcement strategies that was singularly in contrast with the absence of any steps taken to force Mr. Haughey to dispose of Abbeville lands.

3-60 As already mentioned the case of Dr. Garrett Fitzgerald afforded a further opportunity to compare the Bank's handling of Mr. Haughey's case with a case of substantial borrowings involving a prominent public figure. Dr. Garrett Fitzgerald's case concerned an investment he took up in the late 1980s. On ceasing to hold the positions of Taoiseach and leader of Fine Gael in 1987, Dr. Fitzgerald accepted an invitation to become a member of the Board of Guinness Peat Aviation. Certain share purchase entitlements were reserved to employees and directors of that company: partially on foot of that entitlement, and also to address other financial requirements, Dr. Fitzgerald obtained in April, 1988, a loan facility of \$322,000.00 from Allied Irish Banks, his existing bankers, through its retail section. That sum incorporated an amount of \$125,000.00 for the purchase of Guinness Peat Aviation shares and the loan was provided on a normal full recourse basis, meaning that the Bank was entitled to claim for both interest and principal against all of Dr. Fitzgerald's assets.

3-61 Then in August, 1989, Dr. Fitzgerald entered into a further loan arrangement with Allied Irish Banks, but in this instance with its Capital Markets subsidiary. Here, as with similar arrangements negotiated by other employees and directors of Guinness Peat Aviation, the loans involved recourse to the borrowers for interest, but as regards the capital amount of the loan, the recourse was limited to the actual company shares. The amount borrowed on foot of this scheme was \$188,000.00, and of this sum, \$82,000.00 was applied in part repayment of the 1988 loan, with the balance being used to purchase further Guinness Peat Aviation shares.

3-62 In 1992, Dr. Fitzgerald requested that both the preceding loans be amalgamated into one facility with the retail banking section of Allied Irish Banks. By that time, in addition to servicing interest, significant reductions on capital had been made by Dr. Fitzgerald in relation to both loans. Accordingly, both loans were refinanced by a new loan of \$248,000.00, the entirety of which was on a normal full recourse basis. This was notwithstanding the non-recourse element in the preceding loan with the Capital Markets arm of Allied Irish Banks, and in this regard, Dr. Fitzgerald candidly acknowledged in evidence that he had omitted to "*read the small print*", although it was not suggested that the Bank had acted in any underhand or sharp fashion in this regard.

3-63 In 1993, what had been expected to be a successful and profitable flotation of Guinness Peat Aviation transpired to be a debacle, the share price collapsed, and Dr. Fitzgerald was left facing an indebtedness with full recourse in the entire amount of the refinanced loan for \$248,000.00. Certain securities in relation to assignment of life assurance, a guarantee from Dr. Fitzgerald's wife and the share certificates had also been taken by the Bank.

3-64 Although Dr. Fitzgerald continued to enjoy an income from writing, lecturing and consultancy work, he had considerable outgoings, particularly in relation to his wife's declining health, and he was, in terms of the debt he faced, not a wealthy man. The sole asset of substance was the mortgaged family home at Palmerston Road, Dublin 6; an agreement was entered into with his son, Mr. Mark Fitzgerald, whereby the latter sold his nearby family home, and purchased the Palmerston Road premises, with a view to converting it into accommodation for both families. An independent valuation had assessed the price with vacant possession at £200,000.00, but discounted to £150,000.00 if Dr. Fitzgerald and his wife took up residence in an upstairs flat. That sum was paid to Dr. Fitzgerald, but by the time he had discharged the mortgage, contributed to the re-conversion works and paid certain other liabilities, he was left with a residue of only approximately £30,000.00. To advise him on his situation, he engaged an Accountant and also a retired Senior Bank Executive, Mr. Patrick Dowling. Although the latter had held a senior position in Allied Irish Banks prior to retirement, he was not acquainted with Dr. Fitzgerald and the introduction was made by Mr. Mark Fitzgerald.

3-65 In evidence, Mr. Dowling stated that in discussion Dr. Fitzgerald had initially been hopeful of discharging his indebtedness in full through income, but Mr. Dowling had had to dash those hopes as unrealistic, and was given reluctant permission to approach the Bank with a view to settlement. He dealt with Mr. Thomas Barry, Chief Manager of Allied Irish Banks Capital Markets, making full disclosure of Dr. Fitzgerald's position and placing some reliance on the significantly more advantageous positions of the preponderance of Guinness Peat Aviation employees and directors who had dealt only with the Capital Markets arm, and arguing that it was at least debatable that repayment to the Bank might be wholly or partly limited to the proceeds of the shares. He offered the £30,000.00 in settlement of the debt, in response to which the Bank concluded that a cash settlement was preferable to expending such limited assets as were available on legal costs, but sought an increase to a sum of £40,000.00. This was accepted, paid and, other than realising the very limited value of the shares pledged, the remaining securities released. Regarding the course taken by Mr. Mark Fitzgerald and his wife in ease of Dr. Fitzgerald, Mr. Dowling stated that he viewed it as one of the great acts of selfless family solidarity that he had experienced. Some other marginal matters arose briefly in evidence, such as the fact that Dr. Fitzgerald's borrowings were by no means entirely related to intended share purchases, and that if

the Bank had delayed in selling the shares, they might have availed of a partial recovery in their value, but in real terms, having converted the £40,000.00 to its equivalent of \$56,000.00, the settlement accepted constituted approximately 22% of the total outstanding.

3-66 In summary it would appear that in compromising his indebtedness with the Bank, Dr. Fitzgerald disposed of his only substantial asset, namely, his family home at Palmerston Road, a property which would now be worth a considerable sum of money. As in Mr. Haughey's case, there was a substantial discounting or forbearance shown in Dr. Fitzgerald's case. However in contrast with Mr. Haughey's case, Dr. Fitzgerald's case involved the effective exhaustion of his assets in order to achieve a settlement whereas Mr. Haughey's assets were retained virtually intact.

THE PRESS STATEMENT

3-67 On Friday, 28th January, 1983, the Evening Press published an article headed "*Huge interest in Haughey cash flow*" stated to be by a Special Correspondent. In what became a relative lengthy and discursive article referring to a variety of matters pertaining to Mr. Haughey's finances, the relevant portions were the first four paragraphs which read as follows:—

"The financial affairs of Charles Haughey have been a source of intense public speculation since the first day he came into politics. The suggestion that the bugged conversation between Ray MacSharry and Martin O'Donoghue referred to possible financial problems for Mr. Haughey should he lose the leadership comes as no surprise.

However a close associate of Mr. Haughey said that a former Fianna Fáil Minister who fancied himself as a possible compromise candidate had been traced as a source of the rumours and he was now lying low.

It has been rumoured in discreet financial circles for years that Mr. Haughey owed £1 million to a major bank and that the bank had held its hand because of his elevated political position.

Interest rates have been very high for the past few years and this correspondent can confirm that sources close to Allied Irish Banks insist that he owed them this sum last year."

3-68 Allied Irish Banks responded to the article by issuing, through its Group Public Relations Office on 31st January, 1983 a statement that was carried in the Evening Press edition of the following day, 1st February, 1983.

This was in the following terms:—

"Allied Irish Banks has issued the following statement through its Group Public Relations Office at Bankcentre:

Allied Irish Banks has a strict policy and indeed a duty to maintain confidentiality in regard to customers' dealings with the Group and each member of our staff completes a formal Declaration in that regard. When, as occasionally happens, statements are made by third parties which appear to be authoritative but are not, it can also be the case that a denial by the bank might itself be a breach of its duty of

confidentiality and generally the bank feels it best not to comment. Allied Irish Banks has found itself in this position on a few occasions recently.

However in the Evening Press on January 28th, in an article by a Special Correspondent dealing with the financial affairs of a well known figure it was stated that sources close to Allied Irish Banks insist that he owed them around £1 million last year. This statement is so outlandishly inaccurate that Allied Irish Banks feel bound, as a special matter, to say so positively and authoritatively.

For the future, Allied Irish Banks would hope that its commitment to the rule of confidentiality would be understood when it declines to respond to statements or suppositions put to it in the quest for information which it may not divulge.”

3-69 The Evening Press article was substantially correct in suggesting that Mr. Haughey owed the Bank £1 million. In fact his indebtedness was greater than £1 million. The article was inaccurate in suggesting that that sum was owed by Mr. Haughey to the Bank in 1982. The Bank’s response that “*this statement [was] so outlandishly inaccurate. . . .*” appears to have been intended to set the record straight. As is in fact the case, the article, with the exception of the reference to the wrong year was otherwise substantially correct. It was the Bank’s statement, and not the newspaper article that was in fact “*so outlandishly inaccurate*”. The Bank’s statement amounted to a complete misrepresentation of the true position. Mr. Haughey stated that neither he nor Mr. Traynor had anything to do with the statement and there is no evidence that it was prompted by any action either on his part or on Mr. Traynor’s part and indeed as he stated himself he felt the correct course should have been to have said nothing. Evidence was given by Mr. O’Connor, the Bank’s then Law Agent concerning aspects of the drafting of the statement, and although Mr. O’Connor recalled the circumstances in which the statement was issued, it does not appear that he had any role in drafting the second paragraph, that is, the paragraph containing the gravamen of the Bank’s response to the statements of fact contained in the newspaper article. The article was issued by the Bank’s Group as opposed to its Domestic PR Department. The Department at the time was headed up by an individual who had died approximately a year before the evidence of the Bank’s witnesses was taken. While the issue of a public statement concerning a customer’s private banking affairs, without that customer’s authorisation, is a step which no bank would take except in the most extreme circumstances, it would appear that the Board of the Bank was not involved in the issue of the statement or in this deviation from long-standing banking practice. It seems that the Board eventually became aware of the statement some time after its release, and the evidence of Professor Lynch probably best summarises the impression it made on Board members, when he said that having discussed it with some of the Directors, it was viewed with surprise relating to its wording, and perhaps surprise to the point of astonishment.

3-70 The statement reflected not so much the Bank’s attitude to its duty of confidentiality to its client, but perhaps more likely reflected its extreme sensitivity concerning the circumstances of the settlement of Mr. Haughey’s indebtedness to the Bank, and the connection between the terms of that

settlement and the degree of forbearance granted to Mr. Haughey and, as the newspaper article appeared to hint, his elevated political position.

PAYMENT BY MR. PATRICK GALLAGHER

Background

3-71 Of the £750,000.00 paid by Mr. Haughey to Allied Irish Banks in settlement of his indebtedness, £300,000.00 was provided by the late Mr. Patrick Gallagher who was then Managing Director of the Gallagher Group of companies. At that time, the Gallagher Group was one of the foremost construction companies operating in the State. The payment of £300,000.00 was not brought to the Tribunal's attention either by Mr. Haughey or by Mr. Gallagher but by Mr. Laurence Crowley, who was formerly an insolvency partner in the firm of chartered accountants now known as KPMG, and who was appointed receiver of the Gallagher Group in April, 1982. The relevant information was provided by Mr. Crowley on foot of inquiries made of him by the Tribunal which inquiries were prompted by the various documented references made by Mr. Haughey, in the course of his dealings with Allied Irish Banks, to the Gallagher Group as potential sources of funds to clear his indebtedness through lands purchases.

3-72 Mr. Crowley produced to the Tribunal a copy of an Agreement which was within the papers of the Gallagher Group on his appointment as receiver. The Agreement was in the following form:—

- "1. This Agreement made between CJ Haughey and Mrs. Maureen Haughey, Abbeville, Kinsealy, Co. Dublin hereinafter called 'the vendors' and Gallagher Group Limited, Seán Lemass House, St. Stephen's Green, Dublin 2 hereinafter called 'the purchaser'.*
- 2. Gallagher Group Limited have agreed to purchase the area identified and ringed in blue on the attached map of approximately 35 acres at £35,000.00 per acre.*
- 3. The above agreement is subject to the condition that the purchaser will provide the vendors with a stud farm of at least 60 acres of land with appropriate stables and within a radius of twenty miles of the General Post Office, preferably in North County Dublin. The new stud farm and the cost thereof will have to meet with the approval of the vendors. The cost of the new stud farm will be deducted from the purchase price.*
- 4. The transaction will be completed within six months of the vendors indicating in writing their approval of the new stud farm. The balance of the purchase price will be subject to interest at five points above the Associated Banks treble A rate for any period after the stipulated completion date during which completion is delayed.*
- 5. A deposit of £300,000.00 has been received and is hereby acknowledged. The balance of the purchase price will be payable on the completion date.*
- 6. In the event of the transaction not being completed before the 31st December, 1985, the deposit of £300,000.00 will be non-refundable, but Gallagher Group Limited will have no further obligation under this agreement.*
- 7. Should the events set out at No. 6 come into effect, the vendors agree to grant Gallagher Group Limited the right of first refusal for a further period of two years from the 1st January, 1986".*

3-73 The agreement was dated 27th January, 1980, and was signed by Mr. and Mrs. Haughey, and by Mr. Gallagher on behalf of the Gallagher Group. It was witnessed by Mr. Gallagher's brother, Mr. Paul Gallagher.

3-74 Mr. Crowley testified that following his appointment, he had located a copy of the Agreement within the files of the Gallagher Group. He considered that the form of the Agreement was unusual having regard to the following features:—

- (i) it was not subject to any of the usual conditions which are found in contracts for the sale of land;
- (ii) it was not subject to any of the Law Society general conditions of sale;
- (iii) clause 2 provided for a purchase price of £35,000.00 per acre which amounted to a total of £1.225 million, which appeared high in view of the fact that the lands did not have the benefit of planning permission and was zoned for agricultural use;
- (iv) the agreement was subject to conditions that the Gallagher Group would provide a stud farm of at least 60 acres of land within 20 miles of Dublin, which was to meet with the approval of Mr. and Mrs. Haughey, which was unusual in a commercial transaction, particularly as there was no mechanism provided for a resolution of any dispute between the parties;
- (v) a deposit of £300,000.00 had been received, which was non-refundable if the transaction was not completed by 31st January, 1985, subject to a right of first refusal for a further period of two years from 1st January, 1986, a very lengthy completion date having regard to the deposit which had been paid;
- (vi) having regard to the size of the deposit, the Gallagher Group had no further right to complete the contract save for the right of first refusal for two years, and there was no mechanism for determining how that right should operate;
- (vii) the company seal was not fixed to the contract.

3-75 It further appeared from the files of the Group that there were no records of any steps having been taken in furtherance of the agreement either by the vendors or the purchasers. In view of all these matters, Mr. Crowley had doubts as to whether the agreement and the payment of the deposit constituted a *bona fide* transaction, and he considered that he was obliged to investigate the agreement and the circumstances in which it was entered into, to ascertain the prospects of recovering the deposit from Mr. and Mrs. Haughey. He was advised by Messrs. Arthur Cox, Solicitors, that if the matter was to be pursued it should be pursued by a Liquidator, who could apply to have directors examined under S. 245 of the Companies Act, in view of the account which Mr. Gallagher had given to Mr. Crowley

as to the surrounding circumstances. It was recommended that Mr. Crowley should advise the Revenue Commissioners as the preferential creditor and the only party likely to benefit, in the event that the matter was pursued successfully. It would then be a matter for the Revenue Commissioners to decide whether or not they wished to apply for the appointment of a Liquidator to the Group.

3-76 As the matter was sensitive, Mr. Crowley arranged a meeting with Mr. Seamus Pairceir, Chairman of the Revenue Commissioners. A meeting took place at Dublin Castle on 10th May, 1984, which was attended by Mr. Crowley, Mr. Pairceir, Mr. Raymond O’Neill SC and a Revenue Official. The focus of the meeting was to assess the prospect of such a claim succeeding vis-à-vis the potential cost to the Revenue Commissioners in funding the liquidation. By letter of 14th May, 1984, Mr. Pairceir indicated that the Revenue Commissioners did not intend to proceed, for reasons both of the difficulty in undermining Mr. Gallagher’s version of events even on a Section 245 examination, and since the recovery of funds would not be a readily obtainable objective. On 22nd May, 1984, Mr. Crowley forwarded a copy of the agreement to Mr. Pairceir. There was no further response to that letter.

Circumstances surrounding agreement

3-77 Mr. Patrick Gallagher attended and gave evidence to the Tribunal on 21st May, 1999, some years prior to his untimely death. He stated that he and his late father had been political supporters of Mr. Haughey and that his father had died relatively early, leaving him to take over the building business at a young age; he had made some political contributions to Mr. Haughey in the 1970s which were limited to sums in the region of £2,000.00 to £3,000.00 and he had attended the celebration party that was held at Abbeville on the night Mr. Haughey became Taoiseach. The following Sunday, Mr. Gallagher and his brother had been having a drink in a local public house when a telephone message was received indicating that Mr. Haughey wished to see Mr. Gallagher at Abbeville. On attending there, Mr. Haughey informed Mr. Gallagher that as he was now Taoiseach, he would have to tidy up his financial affairs urgently and needed a sum of £750,000.00 or thereabouts. Mr. Gallagher had responded that he could carry some of what was required, since the company was going well; he had left the room and had discussed the position with his brother Paul in the context of what he viewed as a realistic bottom line of approximately £600,000.00 towards which they considered they should go halfway. On returning, Mr. Gallagher had informed Mr. Haughey that they would provide £300,000.00 but wanted something tangible in return to which end he wished to purchase some land at Abbeville. Mr. Haughey agreed to Mr. Gallagher’s proposal and suggested that the detail should be left to be developed between Mr. Traynor and Mr. Gallagher.

3-78 Mr. Traynor was well known to Mr. Gallagher as he had been a Director of the Gallagher Group before joining Guinness & Mahon. Mr.

Gallagher recalled that he met with Mr. Traynor on a number of occasions over the following weeks; the only persons involved in the discussions were Mr. Traynor, Mr. Gallagher and his brother Paul. Mr. Gallagher left the drafting of the Agreement to Mr. Traynor whom he trusted implicitly, and it was his impression that Mr. Traynor, was keeping Mr. Haughey apprised of how matters were proceeding. The Group's Solicitors did not advise on the Agreement.

3-79 In evidence, Mr. Haughey agreed with the background matters, and whilst he did not specifically remember it, accepted that there had been a meeting with Mr. Gallagher of the nature described: he differed somewhat as regards the details, feeling that the meeting took place in the context of him asking or suggesting that Mr. Gallagher should purchase some Abbeville lands, but would not quarrel with Mr. Gallagher's account that he had asked Mr. Gallagher for funds to pay Allied Irish Banks, whereupon Mr. Gallagher then suggested that he should take some lands at Abbeville in return. It was Mr. Haughey's understanding that Mr. Gallagher would proceed to see Mr. Traynor in relation to the details of the Agreement. Insofar as Mr. Gallagher appeared to have met Mr. Traynor the following week to this end, Mr. Haughey stated that he could not particularly recall Mr. Traynor being in touch with him as to the details, and was only involved in outlining such lands as were to be sold, but did recall that Mr. Michael McMahon, was brought in, as the tax expert in Haughey Boland with regard to the preparation of the agreement.

3-80 The Agreement was signed on 27th January, 1980 by Mr. and Mrs. Haughey and by Mr. Patrick Gallagher on behalf of the Gallagher Group, and was witnessed by Mr. Paul Gallagher. It is however clear from banking records which were available to the Tribunal, and which are referred to in some detail in the next section of this Chapter, that the payment of £300,000.00 was made by Mr. Gallagher at latest on 16th January, 1980, some eleven days prior to the finalisation and execution of the Agreement. In that regard, the Tribunal also heard evidence from Mr. John Cousins, who was the Financial Director of the Gallagher Group at the time. He recalled that Mr. Gallagher had asked him for a cheque for £300,000.00, and had informed him that the purpose of the cheque was in respect of a deposit on land. Mr. Cousins believed that the cheque was payable to Guinness & Mahon, and that he gave it to Mr. Gallagher. It would have required two signatures, that of Mr. Cousins, and either Mr. Gallagher or his brother Paul. The recollection of Mr. Cousins was that he wrote a single cheque for £300,000.00, and not two cheques for £150,000.00. He could not recall as to whether he wrote the cheque before or after Christmas of 1979.

The unusual features of the agreement

3-81 The features of the Agreement which Mr. Crowley had identified as unusual on his appointment as Receiver of the Gallagher Group and which

prompted him to raise the Agreement with the Revenue Commissioners with a view to proceedings being brought to challenge the Agreement, were outlined to both Mr. Gallagher and Mr. Haughey. Their evidence on those matters is summarised below.

Mr. Gallagher

3-82 Although Mr. Gallagher accepted that the non-refundable deposit of £300,000.00 was high in strict commercial terms, he regarded it primarily as a donation in order to assist Mr. Haughey, and the contract for the land purchase was a long-term strategy. It had not been the usual practice of the Gallagher Group to agree to a large non-refundable deposit. Mr. Gallagher agreed that it may have been non-refundable because the primary reason for the deposit was that Mr. Gallagher was rendering assistance to Mr. Haughey to reduce his indebtedness.

3-83 He accepted that it was unusual that the contract was not formalised between solicitors, but it was explained to him that it was a highly sensitive and confidential matter, and was better left between Mr. Traynor and himself. He considered that the entire matter was one of honour, and that he was helping an old family friend out of a serious predicament. It never occurred to him that Mr. Haughey or Mr. Traynor would abuse that trust. No steps were taken on either side to progress the contract prior to the collapse of the Gallagher Group in April, 1982. The deposit of £300,000.00 was paid in one cheque, which would have been drawn on the only clearing account of the Gallagher Group, which was at Bank of Ireland, Rotunda Branch, Dublin. Mr. Gallagher stated that he never discussed any potential arrangement involving the Gallagher Group with Mr. Haughey prior to the meeting at Abbeville on the Sunday after Mr. Haughey's election. He had no idea how the references in the Allied Irish Banks documents to dealings involving the Gallagher Group might have arisen, except that Mr. Haughey might have been aware that the Group was flush with money at that time. This would have been because Mr. Gallagher was dealing with Mr. Traynor in regard to another commercial matter at the time, and Mr. Traynor would have known of the position.

Mr. Haughey

3-84 Mr. Haughey did not necessarily accept that the Agreement was unusual, he believed that it had been prepared by two trusted advisers who seemed to believe that it was in order, met his overwhelming and immediate need for substantial funds, and had been described by Mr. Gallagher as having been in his view a commercial transaction. On that basis, Mr. Haughey said that he had no particular view of the agreement, but was inclined to feel, bearing in mind that Mr. Gallagher was a friend and anxious to help him, that it was reasonable in all the circumstances. As to Mr. Crowley having found no evidence whatsoever of any attempt by either side to implement the matters provided for in the agreement subsequent to the payment of the deposit, Mr. Haughey stated that for him the urgency had

gone from the situation, and as regards the Gallagher Group, they shortly afterwards encountered deep troubles and probably were not anxious to do anything. It was nonetheless put to Mr. Haughey that in two years there had been no attempt on the part of the Gallagher Group to provide an alternative stud farm, and no action whatsoever was taken by Mr. Haughey; in the circumstances it was suggested that, despite the form of the agreement, the payment of the £300,000.00 was in reality more connected with Mr. Haughey's newly acquired office as Taoiseach, and the immediacy of discharging his indebtedness to Allied Irish Banks. Mr. Haughey replied that he did not accept that.

3-85 It was put to Mr. Haughey that it had been Mr. Gallagher's evidence that his legal advice suggested that the agreement with Mr. Haughey was probably not capable of enforcement through the Courts, but that, despite the unusual nature of the agreement, he felt thorough belief and trust in Mr. Haughey that the agreement nonetheless had commerciality and would be completed by Mr. Haughey. Mr. Haughey responded that he thought Mr. Gallagher had gone further, and stated he was very satisfied with the agreement. Mr. Haughey was then reminded of the earlier evidence to the effect that Mr. Crowley had taken the view that, rather than being merely unusual, the agreement might not have been *bona fide*, so that the £300,000.00 might have been recoverable by him as Receiver; he accordingly took advice from leading Senior Counsel and Solicitors, and brought the matter to the attention of the Revenue Commissioners, with a view to their funding the appointment of a Provisional Liquidator to carry out inquiries under the Companies Acts into the transaction. Even though this course was not proceeded with, Mr. Haughey was asked whether, given all the circumstances, it might be thought that the agreement was no more than a sham, and a vehicle to enable Mr. Gallagher to advance a substantial payment to him, whilst yet having some basis of accounting for it within the Gallagher Group. Mr. Haughey replied that that was a very dramatic and a totally false statement.

3-86 Regarding such details in the agreement with the Gallagher Group as to the price of land per acre at Abbeville, and the area of the alternative stud farm, Mr. Haughey said that these were matters that were handled by Mr. Traynor and Mr. McMahon, and then negotiated with Mr. Gallagher, rather than being dealt with by him. Whilst Mr. Haughey could not say whether or not Mr. McMahon had been aware of the sources of the balance of £450,000.00, he did recall that Mr. McMahon had advised him that the £300,000.00 deposit would involve Capital Gains Tax, but did not advise him in relation to any similar liability on the balance.

3-87 Regarding Mr. Gallagher's recollection that the provision in relation to an alternative stud farm related to Mr. Haughey's concerns that the lands chosen for sale would have interfered with his daughter's stud farm, Mr. Haughey stated that there was nothing significant in that, and since the Gallaghers had approximately 15,000 acres of agricultural land in and near

Dublin, the provision of an alternative stud farm would not have been difficult for them. Put that Mr. Gallagher had also testified that he regarded the non-refundable £300,000.00 deposit as high in commercial terms, but that he considered it primarily as a donation to assist Mr. Haughey, with the contract for sale being a long-term strategy, Mr. Haughey replied that he could not agree or disagree: he had agreed the purchase and deposit, needed the money, and the transaction was handled by Mr. Traynor and Mr. McMahon.

3-88 With final reference to his dealings with Mr. Gallagher, Mr. Haughey stated that he supposed the reason he had approached Mr. Gallagher was because the sale of Abbeville lands had been involved, and therefore there was a direct immediate personal relationship between himself and Mr. Gallagher. He may possibly have thought about how much land ought to have been involved in any arrangement, together with its location and price, but not initially. These matters were dealt with in the negotiations between Mr. Gallagher and Mr. Traynor. As to whether the £300,000.00 was fixed by Mr. Haughey's needs at the time, rather than price considerations, Mr. Haughey stated that he could not remember more accurately; Mr. Gallagher had agreed in principal to advance money on the basis discussed, Mr. Traynor negotiated the details, and then the Agreement was drawn up by Mr. McMahon. Mr. Haughey stated that he could not recall at what stage he became aware that the Revenue were raising Capital Gains Tax on the £300,000.00. Nor could he recall whether or not he had had any further discussions with Mr. Gallagher after the agreement, although he thought this was likely; the position was that the Gallagher businesses had got into difficulties and folded in two years.

Earlier dealings between Mr. Gallagher and Mr. Haughey

3-89 Prior to the Agreement of 27th January, 1980, on foot of which the payment of £300,000.00 was made by Mr. Gallagher, there were two earlier agreements concluded between Mr. Gallagher and Mr. Haughey, which were also unusual in commercial terms. As with the January, 1980 Agreement, the Tribunal was not informed of the earlier agreements by either Mr. Gallagher or Mr. Haughey. Rather, they came to the attention of the Tribunal following inquiries made by the Tribunal regarding debits made in 1982 to an account of Mr. Haughey with Guinness & Mahon which were designated as payments to Merchant Banking Limited.

3-90 Merchant Banking was a private bank which had been owned by the Gallagher Group of companies and prior to the collapse of the Group, was controlled by Mr. Patrick Gallagher and his family. Mr. Patrick Shortall was appointed provisional liquidator over the assets of Merchant Banking on 4th May, 1982 and, following the making of an Order for the compulsory liquidation of the Bank, he was confirmed as official liquidator on 24th May, 1982. On his retirement from professional practice in May, 1989, Mr. Shortall was succeeded as official liquidator by Mr. Peter Fitzpatrick.

3-91 Mr. Shortall confirmed in his evidence that on his appointment as Official Liquidator, the books of Merchant Banking recorded that in July, 1976 loans of £2,500.00 and £6,000.00 respectively had been advanced to Mr. Haughey and to Larchfield Securities Limited, a holding company of which Mr. and Mrs. Haughey were Directors and of which Mr. Haughey's four children were shareholders. The loans were outstanding on the books of Merchant Banking. No repayment schedule had been agreed, no interest payments had been made and no demand for repayment of the loans had been raised in the intervening six years. The only formalities that had been attended to were the execution of promissory notes by Mr. Haughey in the case of the personal loan and by Mr. and Mrs. Haughey in the case of the loan to Larchfield Securities Limited, and in the latter case, that promissory note was executed after the advance had been made.

3-92 Mr. Shortall testified that following his appointment, he made demand for the repayment of both of the loans together with interest which had accrued and that all outstanding amounts were promptly discharged. The letters of demand had been addressed to Mr. Haughey and Larchfield Securities at Mr. Haughey's home at Abbeville in Kinsealy, and payment was received through Mr. Traynor. The total amounts received were £6,671.33 in respect of the loan to Mr. Haughey personally and £16,554.68 in respect of the loan to Larchfield Securities Limited.

3-93 The matter of these loans came to the attention of Mr. Peter Fitzpatrick who succeeded Mr. Shortall as liquidator of Merchant Banking, in October, 1990, when he received a letter from Mr. Haughey asking him to confirm to Mr. Haughey's Solicitors, Messrs. J.S. O'Connor & Company, that the account in the name of Larchfield Securities was settled in full, that the liquidator's report indicated that the loan was a normal banking transaction, and that there was no suggestion in the report of any impropriety of any kind. Shortly after, Mr. Shortall received a further letter directly from Mr. Haughey's Solicitors, requesting that he provide similar confirmation relating to the loan in Mr. Haughey's own name. Mr. Fitzpatrick testified that he did not know to what report Mr. Haughey and his solicitors were referring, and from inquiries which he made, he discovered that the only report in which reference was made to those loans was in a report lodged with the High Court which contained no more than passing reference to them. Accordingly, he furnished confirmation in the terms sought.

3-94 The Tribunal had expected to hear evidence from Mr. Patrick Gallagher in relation to these loans, and in advance of giving evidence Mr. Gallagher furnished the Tribunal with a statement of his intended evidence. However, Mr. Gallagher who was then residing in South Africa, had to return there for urgent medical care and resubmitted his statement in the form of an Affidavit. Mr. Gallagher's Affidavit was read into the record of the Tribunal at public sittings, and Mr. Haughey made no objection to Mr. Gallagher's evidence being submitted in that form.

3-95 In his Affidavit, Mr. Gallagher stated that his recollection of the loans was somewhat vague but that, from what he remembered, Mr. Haughey came into his office in approximately May of 1976, and informed him that he required a loan to build a house for his daughter at Kilmuckridge in County Wexford. Mr. Gallagher agreed that the Bank would lend the money to Larchfield Securities, which he described as Mr. Haughey's company. Mr. Gallagher said that he could not recall the details of the loan, and that he was uncertain as to why two separate amounts of £2,500.00 and £6,000.00 were advanced. Mr. Gallagher accepted that the loans contained unusual features, and he acknowledged that he was aware that no demand was ever made by the Bank for the repayment of the loans. However, Mr. Gallagher stated that he trusted Mr. Haughey implicitly, and that he never considered that the monies would not be repaid when Mr. Haughey was requested to do so and that this turned out to be correct, as the loans were repaid in June of 1982.

3-96 Mr. Haughey had little recollection of the circumstances surrounding these loans. He thought that Mr. Gallagher was mistaken in his view that the loans were raised to fund the construction of a house in Kilmuckridge, Co. Wexford for his daughter. While a house had been constructed in Kilmuckridge, it had never been intended for Mr. Haughey's daughter and Mr. Haughey's recollection was that it was financed through a Building Society mortgage. Mr. Haughey could provide no assistance as to why separate loans had been advanced although he speculated that the loan for £2,500.00 taken by him personally may have been raised by him on behalf of a constituent.

3-97 Mr. Haughey had no particular recollection of the loan repayment. He accepted that the demand letters were received by him, and that he must have transmitted them to Mr. Traynor. He assumed that Mr. Traynor would have repaid the loans with funds which were at his disposal, and he had no knowledge of debits made to an account in his name in Guinness & Mahon. Mr. Haughey recalled the request made of Mr. Shortall in October, 1990 for confirmation regarding the status of the loans and the manner in which they had been referred to in a report of the liquidator. He could not recollect precisely what had prompted those requests but thought it probable that the requests had been made following an issue that had arisen in the political arena.

3-98 Mr. Haughey did not accept that there was anything unusual about the terms governing the loans, or the manner in which they were administered, although he recognised that there were some bureaucratic shortcomings in the way in which the formalities surrounding the loans were handled by the Bank.

3-99 Whatever expectations Mr. Gallagher may have had in 1976, a sum of £8,500.00, which was not an inconsiderable sum of money by the standards of the time, was made available by him to Mr. Haughey on foot

of agreements which both by their terms and by the manner in which the parties conducted themselves, displayed characteristics which fell far short of what might reasonably be expected in the context of arms length commercial dealings. There was no security provided, there was no repayment schedule, interest was neither demanded nor paid during the currency of the loans, no demand was made for repayment until an Official Liquidator was appointed and no repayment was made until control of the Bank had passed from Mr. Gallagher to the High Court on the appointment of Mr. Shortall as official liquidator with consequent potential for full public exposure and scrutiny. While the making of these funds available to Mr. Haughey predates the commencement of the Tribunal's Terms of Reference, the Tribunal nonetheless considers that the similarity in the circumstances surrounding these advances, and the circumstances surrounding the provision of £300,000.00 to Mr. Haughey to enable him to discharge his liabilities to Allied Irish Banks in January, 1980, is significant to the Tribunal's consideration of the true nature of the latter payment.

BANKING EVIDENCE REGARDING FURTHER SOURCES OF FUNDS

3-100 Apart from the £300,000.00 provided by Mr. Patrick Gallagher, which the Tribunal is satisfied was attributable to part of the payment of £750,000.00 made by Mr. Haughey to Allied Irish Banks, there was a balance of £450,000.00 unaccounted for. As it was apparent from the information contained in the files held by Allied Irish Banks that the payments had been made by bank drafts drawn on Guinness & Mahon, the Tribunal took up inquiries with Guinness and Mahon in order to ascertain whether their records contained any information pointing to how those drafts were funded. The information provided by Guinness & Mahon in turn prompted the Tribunal to raise further inquiries of the Central Bank of Ireland and Bank of Ireland. With regard to the £750,000.00 which funded the settlement with Allied Irish Banks, Mr. Haughey accepted that £300,000.00 was attributable to the Gallagher payment. As to the remaining £450,000.00, he stated that he had not asked Mr. Traynor as to the source or sources of this, but he assumed that it came through Guinness & Mahon by way of loan, or in some other way.

Banking records

Evidence of Ms. Sandra Kells

3-101 Ms. Sandra Kells, former Financial Director of Guinness & Mahon, gave evidence in relation to the sources of the money which funded the Guinness & Mahon drafts payable to Allied Irish Banks, which were for £600,00.00, dated 18th January, 1980; £100,000.00 dated 31st January, 1980; and £50,000.00 dated 14th February, 1980. From Ms. Kells' evidence, and from the documents which Guinness & Mahon produced to the Tribunal and which were led in evidence, it is clear that the drafts were funded by debits to an account in Guinness & Mahon in Mr. Traynor's name with a designation "*special*". From the knowledge which the Tribunal has gleaned

from Guinness & Mahon’s review of accounts controlled by Mr. Traynor, it would appear that this designation meant that the account was opened for a short period and for a particular purpose.

3-102 The account was opened on Tuesday 11th December, 1979, which was the day on which Mr. Haughey was elected Taoiseach, and was five days before Mr. Traynor’s meeting with Mr. Phelan on 17th December, 1980. The account was opened with a lodgement of £150,000.00. There were no further funds lodged to the account until 16th January, 1980 when a sum of £355,000.00 was credited and a further sum of £50,000.00 was credited on the following 18th January, 1980. There was a fourth credit on 24th January, 1980 of £150,000.00 and a final credit of £80,682.55 on 13th February, 1980. The lodgements to the account are consolidated in the Table below:—

DATE	AMOUNT (£)
11/12/1979	150,000.00
16/01/1980	355,000.00
18/01/1980	50,000.00
24/01/1980	150,000.00
13/02/1980	80,682.55

3-103 The drafts referred to above were purchased with funds drawn from the account and following the debiting of those funds, there was a credit balance on the account of £35,862.55. The account was closed on 14th February, 1980, following the purchase of the last draft for £50,000.00 payable to Allied Irish Banks, and the balance of £35,862.55 was applied in a payment of £30,000.00 to Haughey Boland & Company No. 3 account, which was the account used by Haughey Boland for administering Mr. Haughey’s bill-paying service, and by a withdrawal of £5,862.55. The Tribunal is satisfied that the entire of the funds lodged to that account between 17th December, 1979 and 13th February, 1980 were applied for Mr. Haughey’s exclusive benefit.

Inquiries made by the Tribunal into sources of credits to Special Account

3-104 Having identified the drafts issued in favour of Allied Irish Banks, and the bank account in Guinness & Mahon from which they were funded, the focus of the Tribunal’s inquiries was directed to endeavouring to identify the sources of the five lodgements made to the Special Account.

3-105 Following the initial evidence of Ms. Sandra Kells in relation to the Special Account opened by Mr. Traynor and the payment of drafts to Allied Irish Banks, she gave further evidence on 18th May, 1999 in connection with the results of an examination made by Guinness & Mahon of all documents which could be retrieved from its microfiche records for the three month period from December, 1979 to February, 1980. This exercise was undertaken for the purposes of identifying documents which might be

material to the sources of the lodgements to the Special Account. In her evidence, Ms. Kells outlined the Guinness & Mahon procedure regarding the documenting of accounts and the retention of files. She indicated that if the Bank's procedures had been followed, it should have been possible to print out statements for all relevant accounts held during the period, but that had not proved possible in this instance.

3-106 From all of the bank statements retrieved by Guinness & Mahon from their microfiche records, two were identified as recording potentially material transactions. One appeared to relate to the first lodgement of £150,000.00 on 11th December, 1979, and the other to the fourth lodgement of £150,000.00 on 24th January, 1980. Both documents constituted extracts from Guinness & Mahon's own account with the Central Bank of Ireland.

3-107 The first extract recorded a debit of £150,000.00 to Guinness & Mahon's account with the Central Bank on 11th December, 1979 which was described on the face of the account statement as "*Re — Amiens SL A/C Rotunda Branch*". Ms. Kells, in her evidence, explained that this signified that a sum of £150,000.00 had been received by Guinness & Mahon from Rotunda Branch on 11th December, 1979 for crediting to an account held by Amiens Securities Limited. Despite Guinness & Mahon's practice of microficheing all account statements, they were unable to retrieve any statements for an Amiens account for December, 1979 although account statements for previous years had been identified. As all Amiens accounts in the bank were controlled by Mr. Traynor, and as the sum lodged to the Amiens account matched precisely in terms of both date and amount, the sum which was lodged to the Special Account, Ms. Kells agreed, and the Tribunal is satisfied, that the probability is that the transaction recorded on Guinness & Mahon's Central Bank account was the source of the opening lodgement to the Special Account. In other words, the Tribunal is satisfied that the source of the lodgement was a transfer of funds from a bank that had a branch known as Rotunda Branch.

3-108 The second extract from Guinness & Mahon's account with the Central Bank showed that on 24th January, 1980, the same date as the credit entry across the Special Account, a cheque for £150,000.00 was presented to the Central Bank by Guinness & Mahon for special clearance, and that this cheque was for crediting to an account of Mr. Traynor. Ms. Kells, in her evidence, confirmed that no other accounts in the name of Mr. Traynor showed a credit entry of £150,000.00 on that date, and that it was probable, and the Tribunal is satisfied, that the source of the lodgement to the Special Account in the sum of £150,000.00 on 24th January, 1980 was a cheque in that amount which was specially cleared through the Central Bank on that date.

3-109 The Tribunal pursued its inquiries into the sources of these two lodgements with the Central Bank, and ultimately with Bank of Ireland, although little useful evidence or information was obtained. The Tribunal

sought the assistance of the Central Bank in relation to the two credit transactions on Guinness & Mahon's account with the Central Bank. The Central Bank was able to provide the Tribunal with a copy statement for 24th January, 1980, which showed that the cheque for £150,000.00 presented by Guinness & Mahon for special clearance was debited to the account of Bank of Ireland with the Central Bank. Evidence was given by Mr. Paul O'Brien, who explained the procedure for the special or express clearance of large cheques between retail banks through current accounts held with the Central Bank at that time. Such a cheque would be exchanged by the collecting bank for what was known as a payment docket issued by the paying bank. The docket was then produced to the Central Bank, and the account of the paying bank was immediately debited, and the account of the collecting bank was immediately credited. This meant that the proceeds of the cheque, which in the ordinary course would have taken three days to clear through the collection system, were available to the customer of the collecting bank to whom the funds were payable on the same day as the cheque issued. The Central Bank also confirmed that the only bank in the State with a branch known as the Rotunda Branch was Bank of Ireland.

3-110 Mr. Gerry Grehan, who was the then Manager of the Bank of Ireland, Rotunda Branch, testified that there were no records available for transactions across accounts of the Rotunda Branch of Bank of Ireland dating from December, 1979 and January, 1980. Ms. Assumpta Reid, the Manager of the Operations Section of the Bank of Ireland, confirmed that no microfilm or microfiche records were available from that period.

3-111 From all of the evidence available to the Tribunal, it appears that both the first lodgement of £150,000.00 to the Special Account on 17th December, 1980 and the fourth lodgement of £150,000.00 to the account on 24th January, 1980 originated in the Bank of Ireland: the first constituted a transfer of funds from the Rotunda Branch of the Bank and the second represented the proceeds of a cheque drawn on the bank. Neither of these lodgements can have related to the payment of £300,000.00 made by Mr. Patrick Gallagher, as that payment was not made, on the basis of the evidence of Mr. John Cousins, by way of two cheques but by a single cheque for £300,000.00. In view of the quantum of that payment, the only lodgement to the account which can have related to it was the lodgement of £355,000.00 which was credited to the account on 16th January, 1980.

3-112 Extensive further inquiries were made in the course of the Tribunal's private investigations with a view to discovering the sources of the relevant payments and in particular the source of the first payment, by virtue of having been made from the Rotunda Branch of the Bank of Ireland. However, the death of then Manager and many of his senior colleagues, along with the absence of relevant records rendered it, to date, impossible for the Tribunal to identify positive sources. The further inquiries referred to were pursued to the extent of the Tribunal exercising its limited jurisdiction

to hear evidence in private, including such evidence as was available relating to the identity of the holders of substantial accounts in Bank of Ireland, Rotunda Branch, of whom separate but inconclusive inquiries were made.

Mr. Haughey's knowledge of the sources of additional funds

3-113 As already indicated, Mr. Haughey accepted that £300,000.00 of the £750,000.00 paid to Allied Irish Banks was attributable to the payment made by Mr. Patrick Gallagher. Mr. Haughey could not assist the Tribunal as to how the remaining £450,000.00, has been raised. He testified that he had not asked Mr. Traynor about the source of the monies, and had assumed that a loan had been raised through Guinness & Mahon, even though he had not been so informed by Mr. Traynor, and had not signed any loan documents. Mr. Haughey accepted that he had not subsequently repaid any monies to Guinness & Mahon, but observed that his accountant, Mr. Des Peelo, felt that a loan that had later been raised in the Cayman Islands would have been used to pay off such indebtedness.

3-114 Mr. Haughey testified that he knew nothing of the Special Account opened by Mr. Traynor in Guinness & Mahon or the credits to it. He only knew that £750,000.00 had been made available, that £300,000.00 related to the Gallagher payment, and that Mr. Traynor had assembled the balance. It was not the case that he had any discussion with Mr. Traynor as to the other sources, and it may have been that Mr. Traynor had been respecting the fact that the contributions were made to him in confidence. Indeed, Mr. Traynor probably regarded it as protective of Mr. Haughey that he did not know the identities of any other subscribers.

3-115 Insofar as the Gallagher £300,000.00 was not a loan, and the Tribunal's inquiries indicated that the remaining £450,000.00 did not constitute borrowings, Mr. Haughey accepted that Mr. Traynor would have had to raise that balance by other means, and he confirmed that Mr. Traynor would have had authority to receive donations on his behalf. He agreed that over the years Mr. Traynor had asked a number of businessmen for such donations, but stated that he could not say whether the probability was that in this instance the £450,000.00 was comprised of donations.

3-116 Mr. Haughey stated that he could not see why supporters or friends with no ulterior motive should not come to the aid of a politician whose work was valued, but who had encountered financial difficulties. As to any suggestion that such support had not been sought or received until Mr. Haughey became Taoiseach, he responded that that was putting an entirely false coincidental aspect on matters: on becoming Taoiseach, he had decided that it was necessary to settle his indebtedness with Allied Irish Banks for two reasons, firstly, the public perception, and secondly, the pressure being exercised by the Bank, so he therefore asked Mr. Traynor

to negotiate to enable him to proceed as Taoiseach with a clean sheet. When it was suggested to Mr. Haughey that it was incredible that the debt would be settled without Mr. Haughey, as beneficiary, knowing the source of the funds supplied, Mr. Haughey replied that he had not known those sources and could not invent them.

3-117 As to why Mr. Traynor should have kept any donations received confidential, if they were not inappropriate, Mr. Haughey stated that that was Mr. Traynor's way of doing business, showing consciousness of Mr. Haughey's position and its sensitivity: Mr. Traynor would almost certainly have felt it was in everyone's interests that Mr. Haughey should not have known the identity of any donor. This was not discussed between them, but was inherent in their dealings. It was certainly not the case that Mr. Traynor dealt with any of Mr. Haughey's political affairs; Mr. Haughey was insistent that Mr. Traynor was not a political person, and insofar as he would have made any contribution to the Country's affairs, he would do so through relieving Mr. Haughey of financial responsibilities. Mr. Haughey did not discuss political issues with Mr. Traynor; their discussions were addressed to the state of the economy and the nation, in a vague and general way.

CONCLUSIONS

3-118 Having assessed and considered the entire series of events relating to Mr. Haughey's borrowings at Dame Street and their resolution, together with other relevant matters, the Tribunal is of opinion that the degree of forbearance shown in the settlement to Mr. Haughey constituted an indirect payment, or benefit equivalent to a payment, in circumstances within Term (a) of the Tribunal's Terms of Reference.

3-119 The range of possible instances falling within (a) is wide, and can involve widely differing degrees of moral turpitude or culpability. Here, just as it was intimated at the start of the chapter that no question of any acts or decisions referable to any received benefit arises, it is similarly not suggested that such benefit was motivated by a wish to influence the manner in which Mr. Haughey discharged his office as Taoiseach. What the evidence rather discloses is a deference towards Mr. Haughey and a disinclination to address or curb his excesses as a banking customer which built up over several years, which became increasingly pronounced when he was appointed a Government Minister, and which attained particular prominence when the settlement was arrived at in the immediate aftermath of his becoming Taoiseach.

3-120 Whilst consideration of settlements made by the Bank with other private customers for possible comparative purposes has proved of relatively limited assistance, it nevertheless in general indicates a more robust disposition on the part of Allied Irish Banks, particularly when the security held in relation to Mr. Haughey's dwelling house and lands at Abbeville, Kinsealy, and elsewhere is taken into consideration. Whilst no

recourse was had to these, the other cases in general reveal that, although the bank on occasion suffered serious losses in recoupment of the envisaged repayments of principal and interest for loans assessed as viable, it nonetheless was prepared to and did require the maximum feasible disposals of land or other assets, even on occasion to the extent of remortgage of a dwelling house, in seeking to recover entitlements. Whilst coincidentally also involving another former Taoiseach, the case of Dr. Garrett Fitzgerald probably contained more distinctive than analogous features; the settlement reached by the Bank with him undoubtedly involved a proportionately greater degree of discounting than was allowed in Mr. Haughey's settlement, but any attempted comparison is gravely complicated by such matters as the radically different amounts involved, basis of repayments made, relative significance in terms of banking profits, and possible elements of anomaly between the positions of Dr. Fitzgerald and other Guinness Peat Aviation borrowers, as well as the fact that, at the time of Dr. Fitzgerald's settlement, he had for several years ceased to hold any position in active political life. Nonetheless, some degree of affinity with the unnamed agricultural borrowers referred to in evidence was apparent, insofar as the exigencies of settlement still required Dr. Fitzgerald to dispose of his family home. Insofar as the Tribunal has been able to make any comparative appraisal, the basis of settlement with Mr. Haughey cannot be regarded as typical on the part of the Bank.

3-121 It is clear from the evidence that, even before Mr. Haughey had returned to office as a Government Minister after the June, 1977 General Election, the Bank had shown a clear reluctance to confront a consistent pattern of drawings in excess of sanctioned limits on the part of Mr. Haughey. There is little reason to doubt the accuracy of the memorandum of the meeting of 1st October, 1976, which notes Mr. Haughey declaring that he could be "*a very troublesome adversary*" if more forceful measures were taken against him. Even when further agreed arrangements had not been honoured on his part by the following April, the Bank was content to confine its response to an expression of disappointment, with a conclusion that "*all in all, we have little option but to let matters run*". If any analogy is apposite in assessing the disposition of the Bank, it is that of an ineffectual football referee who, faced with continuing fouls by an unruly player, does no more than tell that player that unless he stops, disciplinary action will be taken, but takes none. When Mr. Haughey again became a Government Minister, and particularly when a real prospect of his becoming Taoiseach emerged, a preparedness to confront him was even less evident: interviews were difficult to arrange, and when held took place in Departmental Offices or Leinster House, and the comparative docility shown by the Bank at managerial and executive level would appear to have been confirmed by their reluctance to have the matter considered or assessed at Board level, which could have afforded a degree of independent guidance. Matters reached their dénouement very soon after Mr. Haughey became Taoiseach, and from assessment of both the evidence of surviving senior Officials and Directors, it cannot realistically be doubted that the office

attained by Mr. Haughey impacted significantly upon the final terms of settlement.

3-122 Apart from the significance of so substantial a sum as one exceeding £390,000.00 being discounted for purposes of the settlement, the provision in its terms in relation to the interest free debt of honour in the amount of £110,000.00 is noteworthy. Given the constant complaints over breached undertakings and promises on the part of Mr. Haughey in preceding years, the terminology appears singularly inappropriate and, noting the utter absence of any request or reminder in relation to payment throughout the years before the Bank returned its remaining securities held at the request of Mr. Haughey's Solicitors without demur, it would seem that the import of this provision did not extend beyond couching the Bank's level of recoupment from Mr. Haughey in more favourable terms.

3-123 Allowance is made for the difficulties faced by the Bank in dealing with Mr. Haughey who, far from being the Key Business Influencer somewhat spuriously described by Mr. Scanlon, had become a truculent and uncooperative customer who did not hesitate to make use of his public positions in seeking to obtain more favourable treatment from his bankers. Recalling the evidence of Mr. Michael Kennedy, it can be understood that concerns over upsetting a powerful new Taoiseach or affronting elements of the customer base who supported Mr. Haughey may have played a significant role in the Bank's approach to settlement. Other matters advanced on behalf of the Bank have likewise been taken into consideration, but in the light of the securities held, and all the evidence as to what transpired between Bank and customer, it must be concluded that a discounting to a settlement figure of approximately two thirds of the final sum due constituted a benefit referable to the office held by Mr. Haughey.

3-124 Regarding the press release issued by the Group Public Relations Office of Allied Irish Banks in response to the Evening Press article of 28th January, 1983, it need only be said, as was borne out by virtually all of the evidence heard, that this was an unhappy, misleading and inaccurate document. The fundamental premise of the article was to ventilate that it had been rumoured "*for years*" that Mr Haughey had owed £1 million to a major bank and that sources close to Allied Irish Banks stated that he owed them this sum last year, that is, 1982. With the exception that the article was incorrect as to the relevant year for the Bank to describe it as "*outlandishly inaccurate*" is disingenuous in the extreme. It may reasonably be said that the content of the press release reflected an appreciable degree of sensitivity on the part of the Bank in relation to the disposal of Mr Haughey's indebtedness, and that the course taken in issuing the press release is confirmatory of the fact that Mr Haughey's office as Taoiseach impacted on the settlement.

3-125 As to the agreement of 27th January, 1980, between Mr. and Mar's Haughey and the Gallagher Group Limited, it may be said without hesitation

that the misgivings felt by Mr. Laurence Crowley as Receiver were well founded. Whilst the late Mr. Patrick Gallagher did seek to suggest at one point in his evidence that some commercial benefit of substance had been procured for the Gallagher Group under the agreement, this was done without conviction, and the overall content of his evidence was to the effect that, having as a young man somewhat in awe of Mr. Haughey taken over the substantial business established by his father, he responded to Mr. Haughey's urgent personal entreaty to him for financial aid upon becoming Taoiseach, and the £300,000.00 was paid under his direction primarily as a donation to assist Mr. Haughey. Having regard to all the unusual features, frailties and absence of any independent advice afforded to Mr. Gallagher in relation to the agreement, the payment of the £300,000.00 to Mr. Haughey must clearly be regarded as a payment which enabled the discharge of 40% of the monies paid to Allied Irish Banks on foot of its settlement with Mr. Haughey, and in all the circumstances was a payment falling within Term of Reference (a). This conclusion is distinguishable from the view, expressed elsewhere in this part of the Report, in regard to the decision of the Revenue Commissioners not to institute High Court proceedings referable to the £300,000.00 payment, which reflected different considerations, available evidence, and legal advice made available by the Receiver.

3-126 As to the £450,000.00 balance of the monies paid on foot of the settlement, the Tribunal has conducted lengthy and painstaking inquiries in relation to the source or sources, in the course of both public sittings and ongoing private investigations, the latter having been pursued to the extent of hearing evidence in private. Whilst identification of such source or sources to a standard warranting further public sittings has not been forthcoming, the Tribunal is nonetheless of the view that it has been established that the likelihood of this sum having been funded by virtue either of further borrowings or realisation of assets can be dismissed as reasonable possibilities, and that the clear probability is that this sum was funded by a further donation or donations procured at the time of the settlement by or on behalf of Mr. Haughey. Having regard to all material evidence, including the extensive and regular dealings had between Mr. Haughey and Mr. Traynor, the leading role directly undertaken by Mr. Haughey in procuring the assistance of Mr. Gallagher, the degree of familiarity possessed by Mr. Haughey in relation to the identity and involvement of other benefactors who came to his assistance as related in other evidence, and the concerns expressed in evidence by Mr. Haughey regarding indebtedness to Agricultural Credit Corporation at a time when he perceived opposing political connections on the part of a connected individual, the Tribunal is not disposed to accept that a person of Mr. Haughey's intelligence, insight, political experience and qualifications as both accountant, barrister and senior politician was ignorant in relation to the identities of any other benefactor or benefactors.

MR. HAUGHEY'S FINANCES 1979-1986

FUNDS AVAILABLE TO MR. HAUGHEY

4-01 The only material accessible to the Tribunal in relation to the operation of the bill-paying service by Haughey Boland from 1979 to 1986 were copies of the account statements of the Haughey Boland No. 3 account from 1st January, 1985 to 31st December, 1986. Statements were no longer available for any years prior to 1st January, 1985 as Allied Irish Banks' records for earlier years had been destroyed by the time the Tribunal was established.

4-02 As has already been referred to, there were no records in the possession of Deloitte & Touche relating to the bill paying service provided to Mr. Haughey by them up to January, 1991. These records were furnished to Mr. Traynor after the bill-paying service has been transferred to Mr. Stakelum. Despite making a number of Orders in that regard, including an Order against Mr. Haughey, the Tribunal has been unable to trace those records. For the years from 1st January, 1985, Deloitte & Touche were able to assist the Tribunal by estimating the expenditures from the Haughey Boland No. 3 Account, that is the client account out of which payments were made on behalf of Mr. Haughey, referable to those expenditures. The starting point of the exercise was the examination of the bank statements available from Allied Irish Banks in order to identify debits to the account which appeared to relate to payments made on behalf of Mr. Haughey. In identifying those payments, Deloitte & Touche had regard to the pattern of debits to the account and the cheque number sequences. It was of assistance to Deloitte & Touche in adopting this approach that payments on behalf of Mr. Haughey accounted for the majority of the debit transactions on the account; that all payments were made once monthly; and that dedicated cheque books were kept for payments on behalf of Mr. Haughey. While Mr. Carty, quite understandably, was anxious to point out in his evidence that he could not be entirely certain about the accuracy of the conclusions of his firm in estimating expenditures from the No. 3 account referable to Mr. Haughey, the Tribunal is satisfied that the exercise was reasonably accurate. The results of the exercise for the years 1985 and 1986 were as follows:—

- January, 1985 to 31 December, 1985 — £189,000.00
- 1 January, 1986 to 31 December, 1986 — £177,000.00

4-03 As there were no records of Mr. Haughey's expenditures for the years prior to January, 1985, the sole source of information to the Tribunal, in endeavouring in the first instance to identify the funds available to Mr. Haughey prior to 1985 was banking records retained by Guinness & Mahon.

4-04 The Tribunal received considerable assistance in its work from Guinness & Mahon and heard evidence from Ms. Sandra Kells, then

Financial Director of the Bank, on no less than seventeen occasions. As Guinness & Mahon was a relatively small bank in comparison with the main retail banks and as it had computerised its records at a relatively early stage, the Bank was in a position to provide the Tribunal with records, including bank statements some dating back as far as twenty years prior to the establishment of the Tribunal. In the case of most high street banks, because of the volume of records generated, common retention policies would have precluded the retention of such relatively aged records.

4-05 A computer system was installed in Guinness & Mahon in or around 1977. The system generated two sets of statements for each account in the Bank; one for the customer and one for the Bank. The Bank's copies were kept for three years and were then sent outside the Bank for microficheing after which the hard copies were destroyed. In 1983, the Bank installed a more refined Ibis System which automatically generated monthly statements in electronic form which were outsourced for transfer to microfiche and which separately recorded in what were termed “*daily input logs*” details of all transactions across all accounts in the Bank. The Bank also kept a customer file which was retained in the Bank during the subsistence of the banker customer relationship. Once an account was closed, the customer file was retained for twenty years. Had the system operated as was intended, it should have been possible for Guinness & Mahon to provide the Tribunal with complete sets of bank statements for all accounts held with the Bank from 1977 and technically it should have been possible to identify the source or sources of all funds lodged to accounts held in the Bank from 1983.

4-06 While Guinness & Mahon was able to retrieve a considerable body of account statements from its microfiche records, a number of the Amiens account statements, which were accounts controlled by Mr. Traynor could not be retrieved. It is unclear whether this was due to unintentional errors in the Bank's system of microficheing statements or whether it was due to deliberate intervention to prevent or interfere with the recording system.

MR. HAUGHEY'S ACCOUNTS WITH GUINNESS & MAHON

4-07 The earliest record of an account in Mr. Haughey's name in Guinness & Mahon was in July, 1976. This was some two months after Mr. Traynor was appointed to an executive position in the Bank as Deputy Chairman. In the years from 1st January, 1979, Mr. Haughey held four operating accounts with Guinness & Mahon. The last of these accounts closed on 9th June, 1987 after the debit balance on the account in the sum of £282,880.73 was cleared. Between January, 1979 and June, 1987, there were substantial debit balances on all of Mr. Haughey's accounts. While there was no record of any facility letter having been issued by Guinness & Mahon to Mr. Haughey, there was a record of a Credit Committee decision made on 3rd April, 1989 recording that a facility of £200,000.00 was approved for Mr. Haughey for a period of one year. The purpose of the

facility was described as personal; the decision recorded that the facility had already been drawn down and that the borrowings were unsecured. There was no record of any further facility to Mr. Haughey or any extension of the 1985 facility although there were significant debit balances on Mr. Haughey's accounts prior to that date and his borrowings with the Bank were not ultimately discharged until May, 1987.

4-08 In her evidence to the Tribunal, Ms. Kells provided details of four accounts in Mr. Haughey's name for which Guinness & Mahon was able to retrieve from its microfiche records a full set of statements.

- (i) **Resident Current Account No. 1 (28500/01/50)** (subsequently 0335600) which was characterised by Ms. Kells as Mr. Haughey's principal operating account. The account was relatively active until June, 1983 when it became virtually dormant. It is clear from the designations on the account statements that payments to Haughey Boland were debited to the account. The total sum credited to the account between 1st January, 1979 and June, 1987 was £1,245,531.00. Excluding transfers from other accounts in Mr. Haughey's name in Guinness & Mahon, the net amount lodged to the account was £1,243,083.00: the bulk of these lodgements were made between February, 1979 and May, 1983.
- (ii) **Resident Current Account No. 2 (3356019)** which was opened in May, 1983 and closed in January, 1984. The total sum lodged to the account was £211,344.50 and although the account was open for a seven month period, it was active only between May and September, 1983.
- (iii) **Joint Account No. (04532/01/11)** (subsequently 2318008) was opened in November, 1981 and closed in September, 1984. The total sum lodged to the account was £229,756.82 and again while this account was open for a period of nearly three years, the only activity on the account, in terms of payments from the account, was during the three month period between November, 1981 to January, 1982.
- (iv) **Resident Loan Account No. 86256/01/11** which was open from 2nd September, 1981 to 1st October, 1981: the total sum lodged to and drawn from the account was £74,996.83.

Details of the payments that appear to have been made from these accounts and the sources of lodgements to the accounts, insofar as they are ascertainable, are dealt with below:—

Resident current account no. 1

4-09 The Tribunal has extracted from the account statements each of the lodgements to the account and each of the payments from the account and has consolidated this information in tables which are comprised in

Appendix C and D. It is apparent from the designations on the account statements that a sizeable number of payments from the account were to Haughey Boland & Company and it follows that these payments would have funded the bill-paying service provided by that firm for the benefit of Mr. Haughey. The total funds drawn from the No. 1 account between 1st January, 1979 and May, 1987 when the account was closed and designated as payments to Haughey Boland was £252,000.00. The details of the payments are as follows:—

DATE	PARTICULARS	DEBIT (£)
06/09/79	Haughey Boland & Co.	10,000.00
30/11/79	Haughey Boland	2,000.00
15/01/80	Haughey Boland	10,000.00
06/05/80	Haughey Boland & Co.	10,000.00
?7/12/80	Haughey Boland & Co. No. 3A/C	70,000.00
18/02/81	Haughey Boland & Co.	10,000.00
19/03/81	Haughey Boland	10,000.00
04/05/81	Haughey Boland	20,000.00
31/07/81	Haughey Boland	20,000.00
06/09/82	M/S Haughey Boland & Co.	10,000.00
22/09/82	Haughey Boland & Co.	10,000.00
07/10/82	Haughey Boland & Co.	10,000.00
05/04/83	Haughey Boland & Co.	10,000.00
05/05/83	Haughey Boland & Co.	20,000.00
25/05/83	Haughey Boland & Co.	10,000.00
03/04/85	Haughey Boland	20,000.00

4-10 As is clear from the debits designated as payments to Haughey Boland, those debits were made in even or round sum denominations ranging from £2,000.00 to £70,000.00. There were a series of further drawings of that type from the account which, although not specifically designated, were in all probability also applied to the bill-paying service. The dates and amounts of those further payments were as follows:—

DATE	PARTICULARS	DEBIT (£)
27/02/79	Withdrawn	5,000.00
06/06/79	Withdrawn	25,000.00
29/06/79	Withdrawn	20,000.00
27/07/79	Withdrawn	2,000.00
?3/01/81	Withdrawn	30,000.00
11/08/81	Withdrawn	20,000.00
22/06/82		20,000.00
08/04/83	Withdrawn	20,000.00
02/06/83	Drawn	10,000.00
11/01/84	Drawn	500.00

Accordingly, the total payments from the account representing funding to the bill-paying service was £404,500.00.

4-11 The lodgements to the account, for each of the years that the account operated are dealt with below.

The year 1979

4-12 There were seven lodgements to the account in 1979 as follows:—

DATE	AMOUNT (£)
13/02/79	15,000.00
20/02/79	18,750.00
23/02/79	20,000.00
07/03/79	3,575.00
12/03/79	2,425.00
21/09/79	34,998.58
26/10/79	10,000.00

From the Bank's original files, it is clear that the lodgement of £34,988.58 on 21st September, 1979 represented the proceeds of a cheque provided by Mr. Traynor which was lodged to the account by Mr. Pat O'Dwyer, Banking Manager, on Mr. Traynor's instructions. This lodgement was in all probability connected with Mr. Haughey's annual loan from the Agricultural Credit Corporation. It is also clear that the final lodgement in that year of £10,000.00 on 26th October, 1979 represented the proceeds of a Haughey Boland & Company cheque also lodged to the account by Mr. O'Dwyer on Mr. Traynor's instructions. From Mr. Paul Carty's evidence to the Tribunal, it is apparent that this cheque was debited to the Haughey Boland No. 3 account; the account used to administer the bill-paying service. Deloitte & Touche were not able to provide the Tribunal with any other records relating to the payment.

4-13 Mr. Haughey was unable to assist the Tribunal as to the sources of these lodgements although he agreed that they were unconnected with his salary cheques or with earnings of the Stud business.

4-14 By the end of 1979, the No. 1 account was overdrawn by £57,341.49.

The year 1980

4-15 There were two credits to the account in 1980 as follows:—

DATE	AMOUNT (£)
10/09/80	40,000.00
31/12/80	150,000.00

It appears probable that both these lodgements represented the proceeds of borrowings by Mr. Haughey in his own name from the Agricultural Credit Corporation and from Northern Bank Finance Corporation which are addressed in detail in a separate Chapter of the Report. Mr. Haughey in his evidence did not dispute the Tribunal's analysis of the probable sources of these lodgements.

4-16 By the end of 1980, the account was overdrawn by £17,016.85.

The year 1981

4-17 There were two lodgements to the account in 1981 which were as follows:—

DATE	AMOUNT (£)
04/07/81	33,726.81
12/07/81	13,726.81

Due the absence of records in Guinness & Mahon, the Tribunal has been unable to trace the sources of these lodgements and Mr. Haughey himself could not provide any assistance. By December, 1981, the overdraft on the account had grown to £127,464.77.

The year 1982

4-18 There were four lodgements to the account in 1982 which were as follows:—

DATE	AMOUNT (£)
04/03/82	64,135.37
22/06/82	1,000.00
09/09/82	1,000.00
13/09/82	75,000.00

Due to the unavailability of records from Guinness & Mahon, the Tribunal has been unable to trace the sources of these lodgements although it is probable that the lodgement of £75,000.00 on 13th September, 1982 represented the proceeds of an Agricultural Credit Corporation annual loan. Mr. Haughey could not throw any light on the sources of these lodgements although he agreed that it seemed reasonably conclusive that the £75,000.00 was referable to his borrowings from the Agricultural Credit Corporation.

4-19 By the end of 1982, the overdraft on the account stood at £156,977.28.

The year 1983

4-20 There were four lodgements to the account in 1983 which were as follows:—

DATE	AMOUNT (£)
04/01/83	200,000.00
10/01/83	100,000.00
04/05/83	20,000.00
19/05/83	30,000.00

From the evidence of Ms. Sandra Kells, it appears that the probable source of the lodgement of £200,000.00 to the account on 4th January, 1983 was a transfer of sterling funds from an account of Guinness Mahon Cayman Trust with Guinness & Mahon. The account in question was account number 36561/02/68 designated Guinness Mahon Cayman Trust Sundry Sub-Company Account. From the records of the Bank, it appears that on the instructions of Mr. Traynor, Mr. Pádraig Collery, debited a sum of Stg.£182,430.85 from the account on 4th January, 1983. This sum was transferred to another Guinness Mahon Cayman Trust Sterling Account designated “S”; a sum of Stg.£173,600.00 was then withdrawn from the S Account and was converted from sterling to Irish Pounds yielding £200,000.00. Although this conversion did not take place until the following day, 5th January, 1983, the Irish pound equivalent was credited to Mr. Haughey’s account on 4th January, and it is clear from an inter-office memorandum from Mr. Collery to Mr. Traynor that as far as Mr. Collery was concerned, the transaction was completed on 4th January, 1983. Strictly speaking these funds should not have been credited to the account until 5th January, 1983 and it appears to be a measure of the extent to which Mr. Traynor controlled operations within the Bank that the funds were available to Mr. Haughey in advance of the actual completion of the transaction.

4-21 It appears from the transactions across Mr. Haughey’s account on that date that there was an immediate need for these funds as on the same day, that is 4th January, 1983, there was a payment from the account of £154,433.88 designed “NBFC”. A Guinness & Mahon inter-office memorandum recorded instructions from Mr. Traynor to Mr. O’Dwyer to transfer that sum from the account to Northern Bank Finance Corporation Limited. This debit therefore represented the repayment of borrowings by Mr. Haughey to Northern Bank Finance Corporation which are addressed in a separate Chapter of the Report.

4-22 In his evidence, Mr. Haughey stated that he could not confirm or deny that Guinness Mahon Cayman Trust was the source of this lodgement although he conceded that if this appeared to be the result of the Tribunal’s investigations, he would accept that result. He also conceded that if the Tribunal had established that the lodgement had been introduced to his

account to fund the repayment of his loan from Northern Bank Finance Corporation, he would accept that evidence.

4-23 There was evidence to suggest that Mr. Haughey borrowed funds from Ansbacher Cayman around this time and that aspect of the evidence is addressed in detail in Chapter 5 of the Report. The Tribunal cannot however conclude that the funds which were transferred from Ansbacher Cayman to Mr. Haughey's account represented the drawdown of that loan as the lodgement does not match the funds borrowed. It appears to the Tribunal more probable that the transfer reflected a payment to Mr. Haughey from a customer or person connected with Ansbacher Cayman. As Ansbacher Cayman is established outside the jurisdiction, it cannot be compelled to provide documentation to the Tribunal and in the absence of assistance which was not forthcoming, the Tribunal cannot, in this instance, identify Mr. Haughey's benefactor.

4-24 The source of the lodgement of £100,000.00 on 10th January, 1983 was in all probability the proceeds of a cheque in that amount drawn on Allied Irish Banks. Ms. Kells in her evidence referred the Tribunal to a copy of Guinness & Mahon's account statement with the Central Bank which showed that on 7th January, 1983 an Allied Irish Banks' cheque for £100,000.00 was presented by Guinness & Mahon to the Central Bank for special clearance. No other account within the Bank was credited with a sum of £100,000.00 on or around that date. Allied Irish Banks could not provide the Tribunal with any information regarding this transaction as no records dating from that period had been retained by them.

4-25 As Mr. Haughey's relationship with Allied Irish Banks concluded in January, 1980, this cheque cannot have represented the proceeds of borrowings by Mr. Haughey from the Bank and this was readily accepted by Mr. Haughey in evidence. Mr. Haughey also accepted the Tribunal's analysis as to the probable source of this lodgement as representing the proceeds of a cheque drawn on Allied Irish Banks. He informed the Tribunal that he had no discussions with Mr. Traynor around this time regarding the raising of any other loan and he did not know if Mr. Traynor had approached anybody on his behalf to seek a contribution, a donation or a loan but that he did not personally approach anybody in that regard.

4-26 The Tribunal is satisfied that the likelihood is that this lodgement represented funds provided by a customer of Allied Irish Banks for the benefit of Mr. Haughey.

4-27 Of the two lodgements to the account in May, 1983 of £20,000.00 on 4th May and £30,000.00 on 19th May, the Tribunal was unable to trace the source of the first lodgement but did hear evidence regarding the source of the second lodgement. That lodgement represented a transfer of funds from an account of Amiens Securities Limited, Account No. 2041006 being an account which was controlled by Mr. Traynor. Following further inquiries

made, it appears that the ultimate source of the lodgement was a loan account in the name of the late Mr. P.V. Doyle which is addressed in a separate Chapter of the Report.

4-28 By the end of 1983, the account was overdrawn by £44,646.40.

The year 1984

4-29 As already indicated, the account was virtually dormant from mid 1983. There were however four small lodgements to the account in 1984 which were as follows:

DATE	AMOUNT (£)
20/01/84	500.00
20/04/84	2,447.69
08/03/84	1,008.09
11/12/84	911.33

The second lodgement on 20th January, 1984 of £2,477.69 represented a transfer of funds from Mr. Haughey's No. 2 Current Account No. 03356019. The lodgement on 8th March, 1984 of £1,008.09 represented the proceeds of a cheque payment. Mr. Haughey could not assist the Tribunal regarding the sources of any of these lodgements.

4-30 The overdraft on the account as of December, 1984 had increased to £179,546.11. This was due to an internal book-keeping exercise within Guinness & Mahon whereby Mr. Haughey's overdrafts were consolidated on one account. Mr. Haughey's joint account with Mr. Harry Boland was closed and the debit balance of £115,859.06 was transferred to this account.

The year 1985

4-31 There were two lodgements to the account in 1985 as follows:

DATE	AMOUNT (£)
02/01/85	326.23
09/04/85	20,000.00

The Tribunal has been unable to trace the source of the first lodgement. The source of the second lodgement was a transfer of funds from Account Amiens Securities Limited, No. 08116008 which was another of the Amiens accounts controlled by Mr. Traynor. A payment of £75,000.00 from this account of Amiens Securities Limited was also made to Celtic Helicopters in the previous month, March 1985, in respect of the initial capitalisation of the company. These payments are dealt with in a separate Chapter of the Report.

4-32 The overdraft on the account by the end of 1985 had grown to £217,037.12.

The years 1986 and 1987

4-33 There were no credits to the account in those years save for the final payment credited to the account on 29th May, 1987 in the sum of £285,000.00 which represented part of the proceeds of a payment by Mr. Ben Dunne which has been referred to as the Tripleplan payment. This payment is addressed in detail in a separate Chapter of the Report.

Resident current account no. 2 — no. 3356019

4-34 As has already been indicated, this account operated between May 1983 and January, 1984. Guinness & Mahon were able to retrieve from their microfiche records a full set of statements for the account.

4-35 There were also payments from this account which were designated as payments to Haughey Boland & Company and there were also a number of round sum payments which although not expressly designated as Haughey Boland payments were in all probability payments to fund the bill-paying service. There were three debits designated as payments to Haughey Boland, the details of which are as follows:—

DATE	AMOUNT (£)
16/06/83	10,000.00
15/07/83	10,000.00
28/07/83	10,000.00

4-36 In addition there were the following round sum payments from the account which also, very probably, represented payments to Haughey Boland:—

DATE	AMOUNT (£)
04/05/83	20,000.00
09/05/83	30,000.00

In total therefore the Tribunal is satisfied that £80,000.00 was drawn from this account between May, 1983 and July, 1983 to fund the bill-paying service.

4-37 There were four lodgements to the account, the details of which are as follows:—

DATE	AMOUNT (£)
09/05/83	80,000.00
13/05/83	10,000.00
02/06/83	10,000.00
14/09/83	80,000.00

The source of the lodgement of £80,000.00 on 9th May, 1983 was a payment from Amiens Securities Limited account 2041006 which was controlled by Mr. Traynor. This was the same Account from which a sum of £30,000.00 was transferred to Mr. Haughey's No. 1 account on 19th May, 1983. The ultimate source of these funds was a loan account in the name of the late Mr. PV Doyle which is dealt with in a separate Chapter of the Report.

4-38 The lodgements on 13th May and 2nd June of £10,000.00 each were transfers from other accounts of Mr. Haughey held in Guinness & Mahon. The latter lodgement was from his No. 1 account and the former lodgement was from an account in the joint names of Mr. Haughey and Mr. Harry Boland. The source of the lodgement of £80,000.00 on 14th September, 1983 appears to have been the proceeds of annual borrowings by Mr. Haughey from the Agricultural Credit Corporation.

4-39 Mr. Haughey in evidence claimed that he had no knowledge of the Number 2 account or the Amiens accounts but that he accepted the analysis of the accounts which had been undertaken by the Tribunal.

Joint account no. 02318008 in the name of H Boland and CJ Haughey

4-40 This account was opened in November, 1981 and closed in September, 1984. Guinness & Mahon were also able to retrieve from their microfiche records an entire set of statements for the account. There were very few movements across this account: in all there were nine transactions covering both lodgements to and payments from the account. Throughout its operation, the account was overdrawn; the balance was cleared in September, 1984 by a transfer of funds from Mr. Haughey's No. 1 account in what appears to have been a consolidation exercise to which reference has already been made.

4-41 Of the five payments from the account amounting to £150,000.00, it appears probable that they all represented payments to the bill-paying service although only two of the payments were expressly designated on the account statements as payments to Haughey Boland. The five payments were as follows:—

DATE	AMOUNT (£)
02/11/81	70,000.00
29/01/82	50,000.00
13/05/83	10,000.00
20/01/84	5,000.00
20/01/84	15,000.00

4-42 There were four lodgements to the account, the details of which were as follows:—

DATE	AMOUNT (£)
18/01/82	53,897.76
05/05/83	10,000.00
20/01/84	50,000.00
11/09/84	115,859.06

Excluding the final lodgement to the account which was a transfer from Mr. Haughey's No. 1 account, there was £113,897.76 introduced to this account and utilised for the purpose of the bill-paying service. As Guinness & Mahon cannot retrieve any documents pertaining to the lodgement of £53,897.76 on 18th January, 1982, the Tribunal has been unable to track the source of the lodgement. However, as the statement indicates a value date subsequent to the date of the lodgement, it is probable that these funds represented the proceeds of cheques or instruments drawn on another bank rather than a transfer from an existing account in Guinness & Mahon. The lodgements of £10,000.00 on 5th May, 1983 and £50,000.00 on 20th January, 1984 were transfers from accounts in Guinness & Mahon, the first being a transfer from an account of Amiens Securities No. 2041006 from which transfers were also made to Mr. Haughey's No. 1 and No. 2 current accounts in May, 1983 and the latter was a transfer from an account in the name of Mr. Traynor account No. 70086028.

4.43 The account was in the joint names of Mr. Haughey and Mr. Harry Boland. Mr. Boland is a qualified Accountant and was jointly with Mr. Haughey, a founding member of the firm of Haughey Boland. Mr. Boland, in evidence, informed the Tribunal that he was never aware that the account existed until it was brought to his attention by Guinness & Mahon in January, 1999. Mr. Boland held no accounts with Guinness & Mahon personally although during a bank strike in the 1970s, Guinness & Mahon had facilitated his practice. Mr. Boland confirmed that he never received any personal payment from the account and in particular, that he never received a draft for £50,000.00 as appeared to be suggested from a designation on the account statements. The Tribunal accepts Mr. Boland's evidence that he never opened the account, that he never authorised any other person to open the account and that he never gave a general form of authorisation to open accounts in his name. This appears to be borne out by the address on the account which was recorded as c/o Mr. P O'Dwyer, an official of Guinness & Mahon, who was then, Banking Manager. This designation would have ensured that the monthly statements which it was the Bank's practice to dispatch to account holders were not sent to Mr. Boland.

4-44 Mr. Haughey in his evidence stated that he had no knowledge of this account but that he accepted the Tribunal's analysis and that he further accepted that it appeared that the primary purpose of the account was to fund a debit in favour of Haughey Boland of £75,000.00 in November, 1981.

4-45 It is curious that an account should have been held in the Bank in the name of an account holder who had no knowledge of the account. At the time this account opened, Mr. Haughey was heavily indebted to Guinness & Mahon and the Tribunal considers that it is possible that Mr. Traynor attached Mr. Boland's name to this account to deflect attention within Guinness & Mahon from the growing level of Mr. Haughey's indebtedness to the Bank.

Resident loan account no. 86256/01/11

4-46 This account operated from 2nd September, 1981 to 1st October, 1981 and appears to have been opened for the primary purpose of the repayment and crediting of the Agricultural Credit Corporation loan which was taken by Mr. Haughey from year to year. On 1st October, 1981 £58,490.58 was paid from the account and on the same date, a draft for £15,600.05 was issued. The proceeds of the ACC loan of £74,996.83 were then lodged to the account, thereby reducing the debit balance to zero prior to the closure of the account. Again Mr. Haughey denied any knowledge of the account.

AMIENS ACCOUNTS

4-47 As has already been explained in Chapter 2, there were a series of accounts in Guinness & Mahon in the name of Amiens Investments Limited and Amiens Securities Limited which were controlled by Mr. Traynor. These accounts served a number of purposes, some of which were directly connected with the system employed by Mr. Traynor for the operation of the Ansbacher accounts whereby Irish currency funds which customers of Ansbacher wished to lodge to their off-shore holdings were credited to these Amiens accounts, and likewise funds which customers of Ansbacher wished to withdraw in Irish currency from their off-shore holdings were drawn from these accounts. The confidential memorandum accounts which recorded the balances of individual customers in the pooled Ansbacher accounts in Guinness & Mahon were then credited and debited accordingly to reflect the credit and debit transactions across the Amiens accounts. The accounts were also used to collect and hold funds intended for a specific purpose such as the initial investment in Celtic Helicopters in March, 1985 and they were also used to obscure transactions including payments to Mr. Haughey.

4-48 As explained earlier, the accounts in Mr. Haughey's name were virtually dormant from mid-1983 and, with the exception of a payment of £20,000.00 in April, 1985, the bill-paying service was not funded from accounts in Mr. Haughey's own name after January, 1984. The Tribunal has been able to track the sources of some of the payments to the bill-paying service from 1st January, 1985 as statements of the Haughey Boland No. 3 account are available from that date. However, as there are no statements for the Haughey Boland No. 3 account for the years prior to that date, as

there were no active accounts in Mr. Haughey's name in Guinness & Mahon after mid-1983 and as there were no accounts in Mr. Haughey's name in any other banks (apart from loan accounts), there was no material which the Tribunal could use as a starting point in seeking to identify the immediate sources of payments to the bill-paying service in the year from January, 1984 to January, 1985. It is however clear that Amiens accounts were used prior to January, 1985 in connection with Mr. Haughey's finances and there is no reason to believe that they were not used to fund his expenses during that period.

4-49 Statements for the Haughey Boland No. 3 account were available from 1st January, 1985 and Deloitte & Touche carried out the exercise to which reference has already been made of estimating the expenditures from the No. 3 account made in connection with Mr. Haughey's bills. It will be recalled that for 1985, the payments were estimated at £189,000.00 and for 1986 they were estimated at £177,000.00. In the course of its work, the Tribunal scrutinised both the Haughey Boland No. 3 account, in terms of lodgements and the Amiens Securities Limited and Amiens Investments Limited accounts in Guinness & Mahon in terms of withdrawals. For the years 1985 and 1986, the Tribunal's inquiries in connection with the Amiens accounts focused on accounts of Amiens Securities Limited, account number 08116008 and account number 08880018.

4-50 The first of these accounts, 08116008 operated from January, 1985 to April, 1985 and in that three month period, a sum of £372,132.77 was lodged to the account. From the Bank's daily input logs in relation to transactions on this account, it is clear that there were a number of transactions which related directly to Mr. Haughey's finances. In particular, there were three payments from the account to the Haughey Boland No. 3 account, two of which were direct payments and one of which was transmitted through Mr. Haughey's No. 1 current account. The details of the three payments are as follows:—

- (i) 25th January, 1985 — £25,000.00;
- (ii) 21st March, 1985 — £10,000.00;
- (iii) 9th April, 1985 — £20,000.00.

The third of these payments was lodged to Mr. Haughey's No. 1 account and transferred from that account to the bill-paying service.

4-51 There were also drawings from this account which feature in other Chapters of the Report, namely, a withdrawal on 28th March, 1985 of £75,000.00 which was transferred to an account of Celtic Helicopters Limited and which represented the initial funding of the company. and a withdrawal of £52,495.86 on 30th April, 1985 which was transferred to an account in the name of Mr. PV Doyle and which represented a payment of interest on that account. In total, the drawings from the account connected

with Mr. Haughey's affairs between January and April, 1985 were £182,495.86 representing about 50% of the activity on the account.

4-52 In the course of its scrutiny of the account, the Tribunal also sought to trace the sources of lodgements to the account and identified a lodgement on 19th February, 1985 of £50,000.00 representing the proceeds of a cheque signed by Dr John O'Connell in respect of a payment to Mr. Haughey by Mr. Mahmoud Fustok together with a series of cheque lodgements provided by Mr. PV Doyle.

4-53 Following the closure of account number 8116008, Mr. Traynor appears to have utilised another Amiens Securities Account number 08880018 during the latter part of 1985 up to July, 1986. Guinness & Mahon were able to retrieve from their microfiche records copies of the statements for the account and were also able to retrieve, in a number of instances, copies of the Bank's daily input log for separate transactions on the account. From the documentary evidence available, it is clear that the following payments from that Amiens Securities account were made to the bill-paying service.

DATE	AMOUNT (£)
01/10/85	10,000.00
20/12/85	10,000.00
14/02/86	10,000.00
24/03/86	10,000.00
16/07/86	50,000.00

4-54 In all therefore, there appears to have been £90,000.00 worth of funding for Mr. Haughey's expenditures provided out of the account. During that period, there were also lodgements to the account which were connected to Mr. Haughey's finances and most notably lodgements of £40,000.00 representing a transfer of funds from Mr. PV Doyle's No. 2 loan account which is dealt with in detail in Chapter 5 of the Report. During the latter part of 1986, evidence heard by the Tribunal suggests that the demands of the bill-paying service may also have been met through funding from the Leader's Allowance Account and that is addressed separately in the Report.

5

BORROWINGS IN MR. HAUGHEY'S NAME

5-01 In the years from 1979 to 1987, Mr. Haughey had borrowings in his own name from Guinness & Mahon, Northern Bank Finance Corporation and the Agricultural Credit Corporation. The Guinness & Mahon borrowings arose primarily through overdrafts on Mr. Haughey's various accounts while the Northern Bank Finance Corporation and the Agricultural Credit Corporation borrowings arose from loans made available by those institutions to Mr. Haughey. The Tribunal also heard evidence in connection with applications made by Mr. Haughey to the Central Bank for exchange control approval to borrow sterling funds from Ansbacher Cayman Limited.

NORTHERN BANK FINANCE CORPORATION

5-02 The Tribunal heard evidence from Mr. John Trethowen, a Senior Manager of National Irish Bank attached to the Bank's Head Office. National Irish Investment Bank is a subsidiary of National Irish Bank and prior to 1988, it was known as Northern Bank Finance Corporation. In the 1970s and 1980s, Northern Bank Finance Corporation was a merchant bank which primarily provided funding to the commercial sector.

5-03 From documents produced to the Tribunal, it is apparent that a loan for £150,000.00 was made by Northern Bank Finance Corporation to Mr. Haughey in his own name in December, 1980. The only document which was available in relation to this loan was a bank ledger sheet comprising an extract from the original ledgers maintained by the Bank. The Bank's file in connection with the loan, which would have included copies of facility letters, bank authorisations, correspondence that may have passed between the Bank and Mr. Haughey or his representatives and copy statements was not available. Mr. Trethowen explained that, in accordance with the Bank's destruction policy, the file would have been destroyed six years after the account became obsolete, and in the case of Mr. Haughey's loan account, the file would probably have been destroyed in or about 1988.

5-04 It is clear from the contents of the extract ledger, and it was confirmed by Mr. Trethowen in evidence, that the loan made to Mr. Haughey was a term loan for a term of one year: it was drawn down on 30th December, 1980; the initial repayment date was 11th January, 1982; and the loan was extended for a further term of one year to January, 1983. Interest payments set out in the table below were made by Mr. Haughey to Northern Bank Finance Corporation.

DATE	AMOUNT (£)
29/04/81	7,777.39
29/10/82	13,382.60
04/05/82	15,365.36
03/11/82	15,871.14

The loan was cleared by a payment of £154,433.88 on 4th January, 1983.

5-05 In his evidence, Mr. Haughey recalled having discussions with Mr. Traynor in or around Christmas 1980 regarding the raising of a loan from Northern Bank Finance Corporation. While Mr. Haughey had no actual memory of any formalities surrounding the raising of the loan, he thought it likely that Mr. Traynor had arranged the loan on his behalf as, to Mr. Haughey's knowledge, the then Managing Director of Northern Bank Finance Corporation was a personal friend of Mr. Traynor. Mr. Haughey may have signed the necessary documentation himself or for that matter Mr. Traynor may have signed it on his behalf. Mr. Haughey considered that the Tribunal's analysis was correct and that the purpose of the loan was to reduce his indebtedness to Guinness & Mahon.

5-06 The Tribunal is satisfied that the proceeds of this loan accounted for the lodgement of £150,000.00 to Mr. Haughey's No. 1 current account with Guinness & Mahon on 31st December, 1980. The Tribunal is also satisfied that the source of the interest payments to Northern Bank Finance Corporation detailed above were debits to Mr. Haughey's No. 1 account with Guinness & Mahon, as is apparent from entries on the face of the account statements. The Tribunal is further satisfied that the source of the repayment of the loan to Northern Bank Finance Corporation on 4th January, 1983 was a debit to Mr. Haughey's No. 1 current account with Guinness & Mahon on the same date. It will be recalled that there was a lodgement of £200,000.00 to Mr. Haughey's No. 1 account on the same date, the source of which was a transfer of funds from a sterling account of Ansbacher Cayman and the Tribunal is satisfied that these latter funds were introduced to the account to cover the repayment of the Northern Bank Finance Corporation loan.

AGRICULTURAL CREDIT CORPORATION

5-07 Mr. Haughey had personal borrowings from the Agricultural Credit Corporation dating back for many years. Each year a seasonal loan was made available to Mr. Haughey which was known as a Stocking loan. These loans were advanced by the Agricultural Credit Corporation in support of the farming community and were intended to cover the initial cost of stock; the loans together with interest were then repayable at the end of the season.

5-08 In the years from 1979 to 1987, Mr. Haughey had loans from the Agricultural Credit Corporation from year to year. As found by the McCracken Tribunal, his then loan of £105,000.00 was repaid on 2nd December, 1987 by a bank draft of £105,000.00 which was drawn on an account of Amiens Investments Limited with Guinness & Mahon and was payable to Agricultural Credit Corporation. The McCracken Tribunal Report concluded that this payment appeared to have been made in anticipation of the receipt of funds from Mr. Ben Dunne. In each of the previous years, with the exception of the years 1985 and 1986 when the capital sum was rolled over, the loans were repaid with interest usually in September and in

most years the current years' loan was advanced within a matter of days. In 1985 and 1986, the capital sum was rolled over but interest payments on the previous years loans were discharged.

5-09 The table below sets out details of the repayments made by Mr. Haughey and the advances made by the Agricultural Credit Corporation in each year from 1979 to 1987.

DATE	AMOUNT REPAID (£)	DATE	AMOUNT ADVANCED (£)
10/09/79	35,159.03	11/09/79	35,000.00
02/09/80	41,490.40	02/09/80	50,000.00
02/09/81	58,490.58	29/09/81	75,000.00
02/09/82	88,568.14	08/09/82	75,000.00
01/09/83	87,187.47	09/09/83	80,000.00
05/09/84	91,420.94	24/09/84	90,000.00
28/08/85	12,544.08	Loan rolled over	
04/11/86	15,901.00	Loan rolled over	
03/12/87	105,000.00		

5-10 From an investigation of accounts in Guinness & Mahon and with the assistance of the evidence of Ms. Sandra Kells, the Tribunal has been able to identify the sources of the repayments made by Mr. Haughey to the Agricultural Credit Corporation and the application of the loans advanced to him and that information is set out below in tabular form.

YEAR	SOURCE OF REPAYMENT	APPLICATION OF LOAN
1979	Charles Haughey No. 1 Current Account	Charles Haughey No. 1 Current Account
1980	JD Traynor Account No. 30386/01/50	Charles Haughey No. 1 Current Account
1981	JD Traynor Account No. 30386/01/50	Charles Haughey Loan Account No. 86256/01/11
1982	JD Traynor Account No. 30386/01/50	Charles Haughey No. 1 Current Account
1983	Charles Haughey No.1 Current Account	Charles Haughey No. 1 Current Account
1984	JD Traynor Account No. 70086028	JD Traynor Account No. 70086028

5-11 In the years 1980, 1981 and 1982, when the loans were repaid out of accounts of Mr. Traynor, and the loan proceeds were paid into Mr. Haughey's current account, it is clear from the evidence of Ms. Kells that Mr. Traynor's account was recouped from Mr. Haughey's account following the lodgement of the proceeds of the current year's loan to Mr. Haughey's account. In some instances, these transactions involved manipulation of the recording of debits and credits across Mr. Haughey's and Mr. Traynor's accounts in Guinness & Mahon. In 1982 for example, the Agricultural Credit

Corporation was paid £88,568.14 on 2nd September from Mr. Traynor's account, following a transfer of that sum from Mr. Haughey's current account. On 13th September, the proceeds of the current year's loan of £75,000.00 were paid into Mr. Haughey's account. It was not until the following day, 14th September, that the debit of £88,568.00 which had in fact been made on 2nd September was posted or recorded on Mr. Haughey's account statement. The Tribunal believes that the only logical reason for postponing the recording of the debit to Mr. Haughey's account was to conceal the extent of Mr. Haughey's overdraft and this in turn may be a measure of the pressure that was being exerted on Mr. Traynor by the Bank regarding Mr. Haughey's level of indebtedness.

5-12 The Tribunal has been unable to identify the sources of the interest payments of £12,544.08 and £15,901.00 respectively made on 28th August, 1985 and 4th November, 1986 when Mr. Haughey's loan was rolled over. The payments were not debited to Mr. Haughey's accounts in Guinness & Mahon, which were by then dormant, nor were they debited to any of Mr. Traynor's accounts or to the Amiens accounts of which Guinness & Mahon have been able to retrieve statements. What is clear however is that these payments amounting in total to £24,445.08 were payments made for the benefit of Mr. Haughey.

5-13 It is evident from the records of the Agricultural Credit Corporation, and it was accepted by Mr. Haughey in evidence that it was Mr. Haughey rather than Mr. Traynor who was in direct contact with the Corporation regarding these borrowings. Mr. Haughey confirmed that it was he who dealt personally with the Corporation although he believed that Mr. Traynor may have arranged the ultimate discharge of his borrowings in December, 1987. Mr. Culligan, the then Chief Executive was apparently personally known to Mr. Haughey. It was Mr. Haughey who contacted the Corporation in advance of the repayment of the loans from year to year, and it was Mr. Haughey who negotiated new loans and the roll-over of capital in the years 1985 and 1986. Whatever level of knowledge Mr. Haughey may have had in relation to the details of other aspects of his financial affairs, there can be no doubt that he had direct and first hand knowledge of the details of his borrowings, and was personally responsible for the conduct of his relationship with the Corporation. It further appears from Mr. Haughey's own evidence that he has some knowledge of the manner in which the funding of his repayments was arranged by Mr. Traynor. Mr. Haughey, in his own evidence, recalled that Mr. Traynor had arranged or provided bridging finance for his benefit to cover the repayments. This degree of involvement and knowledge on Mr. Haughey's part is contrary to the thrust of much of his evidence in relation to other aspects of his financial affairs in which he claimed to have had little involvement or knowledge.

5-14 There were certain unusual features to Mr. Haughey's relationship with the Corporation and of the Corporation's handling of his borrowings. In the first place, there was a degree of secrecy and confidentiality

attaching to Mr. Haughey's affairs over and above that accorded to other customers. Mr. Haughey's file was not stored with the general body of loan files but instead was retained in the personal custody of Mr. John Hickey, former Deputy Chief Executive, to whom the file was entrusted by Mr. Culligan with the express instruction that it should be handled exclusively by him. It was Mr. Hickey's understanding that this additional precaution was implemented at Mr. Haughey's request.

5-15 On the introduction of computerisation by the Corporation, further steps were taken to secure the confidentiality of Mr. Haughey's affairs. Mr. Haughey's loan account was not identified in the computer records by reference to Mr. Haughey's name but was identified by reference to a code which was accessible only to senior personnel. This coding system was used exclusively for recording accounts of senior employees of the Corporation and Mr. Haughey was the sole customer to whom this facility was extended.

5-16 Mr. Hickey, in evidence, stated that he did not consider that either of these measures amounted to a special privilege accorded to Mr. Haughey and that these measures were taken, in recognition of Mr. Haughey's national profile and the natural curiosity that might reasonably be expected to arise in relation to his affairs. It seems to the Tribunal that this may not have been the dominant purpose of these measures. The Tribunal considers that the concern of the Corporation was not solely the curiosity of its staff but extended to the possibility of disclosure to the media at a time when there was considerable interest in Mr. Haughey's affairs. In his evidence, Mr. Haughey speculated that his request may have arisen from a particular concern on his part regarding the potential for adverse political comment regarding the existence of borrowings by Mr. Haughey from the Corporation which was then a State owned Company.

5-17 A further unusual feature of Mr. Haughey's relationship with the Corporation was that his borrowings were to all intents and purposes unsecured. In 1982, Mr. Haughey asked Mr. Culligan not to register a chattel mortgage which he had executed and to which his borrowings were subject as this would expose his affairs to public comment. The Corporation, in the person of Mr. Culligan, acceded to this request. Mr. Hickey, in his evidence to the Tribunal, asserted that the Corporation was already fully secured by reason of the earlier registration of a floating chattel mortgage for all present and future advances executed by Mr. Haughey on 2nd July, 1976. Whether the Corporation was or was not secured is in the view of the Tribunal beside the point as it is clear from the contemporaneous documents that Mr. Culligan's views was that the Corporation, having acceded to Mr. Haughey's request, was unsecured.

5-18 The Tribunal does not consider that the advantages that accrued to Mr. Haughey by virtue of the additional measures taken by the Corporation to secure the confidentiality of his affairs or by virtue of the non registration

of his chattel mortgage were sufficiently tangible to constitute benefits conferred on Mr. Haughey within the meaning of paragraph (a) of the Tribunal's Terms of Reference. Nonetheless, these measures were undoubtedly special privileges extended to Mr. Haughey by reason of the Public Offices which he held. The Tribunal believes that it was inappropriate for Mr. Haughey to seek these special privileges by reference to his office and that it was equally inappropriate for the Corporation, as a State owned institution, to facilitate Mr. Haughey in that manner.

ANSBACHER CAYMAN

5-19 Documents made available to the Tribunal by the Central Bank on foot of an Order of the Tribunal suggest that Mr. Haughey borrowed the sterling equivalent of £400,000.00 from Ansbacher Cayman in December, 1982. The Tribunal heard evidence in relation to these documents from Mr. Brian Halpin, an Authorised Officer of the Central Bank. On 8th December, 1982 it appears that Mr. Haughey made an application to the Central Bank for exchange control permission to borrow the sterling equivalent of £400,000.00 from Ansbacher Cayman under its former corporate title of Guinness Mahon Cayman Trust. The purpose of the loan was stated to be the conversion, development and extension of Abbeville Stud. The application envisaged that the loan would be repaid in full by 31st January, 1985 and that interest would be payable half yearly at the rate of 1% over the cost of three month funds. The security for the loan was described as the joint and several guarantees of Mr. Haughey and his wife, Mrs. Maureen Haughey and in addition, it was confirmed that the title deeds of the Stud would be deposited with Mars Nominees Limited of 17 College Green on behalf of Ansbacher Cayman and that an undertaking would be given to formalise security should that be required. The letter of application was signed by Mr. Haughey and was personally delivered by Mr. Traynor to Mr. Ben Breen, who was then General Manager of the Central Bank. On the following day, 9th December, 1982, the application was approved and this was confirmed by a letter from an official of the Bank to Mr. Traynor.

5-20 The Central Bank records establish that a further application was made on 22nd January, 1985 which attached a copy of the original letter of application together with the original grant of approval and a copy of a letter from Mr. John Furze of Ansbacher Cayman outlining the new terms under which the Bank was prepared to extend the loan facility. What was required was approval for the extension of the loan in the same sum, Stg.£350,000.00 (which was the approximate equivalent of £400,000.00) and the incorporation of a new payment schedule up to 31st January, 1986 at the same interest rate as before. The application was approved on 5th February, 1985.

5-21 An application for approval for a further extension of the borrowing to 31st December, 1988 and for payment of interest was made by letter dated 21st January, 1987 from Mr. Traynor to Mr. O'Grady-Walsh, who was

by then General Manager of the Central Bank. The application was referred to the Exchange Control Department which queried one aspect of the application by telephone with Mr. Traynor, who apparently confirmed that he was seeking permission to pay interest on the borrowing up to 31st December, 1986. A letter of approval dated 23rd January, 1987 from Mr. Brian Halpin was forwarded to Mr. Traynor by Mr. O'Grady-Walshe with a covering letter of the same date.

5-22 In his evidence, Mr. Haughey accepted that he made an application to the Central Bank for exchange control approval: he believed that the letter dated 8th December, 1982 had been drafted by Mr. Traynor and provided to him for signature. He could not recall but believed that he must have discussed the matter with Mr. Traynor. The documentation forwarded to the Central Bank on 22nd January, 1985 seeking a further approval included a copy letter dated 2nd January, 1985 from Ansbacher Cayman addressed to Mr. Haughey and signed by Mr. John Furze. The letter was a relatively straight forward facility letter but it opened by referring to recent telephone discussions and was signed by Mr. Haughey and Mrs Maureen Haughey. In his evidence, Mr. Haughey stated that he never, at any time, spoke to Mr. Furze in relation to the contents of the letter or in relation to any other matter and that he had met Mr. Furze on only one occasion which was at Mr. Traynor's funeral. Mr. Haughey however accepted that he probably received the letter and that he must have signed it and transmitted it to Mr. Traynor.

5-23 There was no lodgement of £400,000.00 to Mr. Haughey's accounts with Guinness & Mahon in December, 1982 or at any other time. There was a lodgement of £200,000.00 to Mr. Haughey's No. 1 account in January, 1983, which funded the repayment of the Northern Bank Finance Corporation loan and the source of which was a transfer of sterling funds from an account of Ansbacher Cayman with Guinness & Mahon but there was no other lodgement of £200,000.00 to any of Mr. Haughey's accounts. The lodgement of £200,000.00 in January, 1983 may, of course, have represented a partial drawdown of the loan. It is equally possible that the proceeds of the loan were lodged to an Amiens account or some other account for which Guinness & Mahon were unable to retrieve statements from its micro-fiche records or that the loan was drawn-down on a piece-meal basis as required.

5-24 The Tribunal sought information from Ansbacher Cayman in relation to Mr. Haughey's borrowings. Despite lengthy correspondence with the Solicitors for Ansbacher Cayman in this jurisdiction and despite the provision of a waiver of confidentiality by Mr. Haughey, Ansbacher Cayman did not provide any information to the Tribunal.

FUNDS PROVIDED FOR MR. HAUGHEY'S BENEFIT BY MR. PV DOYLE AND MR. MAHMOUD FUSTOK

THE LATE MR. PV DOYLE AND THE GUINNESS & MAHON LOAN

6-01 There were two loan accounts in Guinness & Mahon in the early 1980s in the name of the late Mr. PV Doyle. Both the estate of Mr. Doyle and Mr. Haughey accepted that the proceeds of these loans were applied for the benefit of Mr. Haughey. The loan accounts came to the attention of the Tribunal in the context of inquiries which the Tribunal was pursuing regarding the source of funds lodged to Mr. Haughey's accounts in Guinness & Mahon, and the source of funds lodged to Amiens Securities accounts from which payments were made to Mr. Haughey's accounts and to his bill-paying service.

6-02 In May 1983, there were three transfers from Amiens Securities Account No. 2041006 to Mr. Haughey's accounts as follows:—

DATE	AMOUNT (£)	APPLICATION
05/05/83	10,000.00	Account H Boland and CJ Haughey
09/05/83	80,000.00	CJH Haughey No. 2 current account
19/05/83	30,000.00	CJ Haughey No. 1 current account

6-03 These transfers were funded by lodgements to the same Amiens account from PV Doyle Loan Account No. 6346006. The dates and amounts of the lodgements were as follows:—

DATE	AMOUNT (£)
05/05/83	40,000.00
10/05/83	30,000.00
02/06/83	50,000.00

The total sum advanced to Mr. Doyle on foot of this account was £120,000.00 and the total sum transferred to Mr. Haughey's accounts was also £120,000.00.

6-04 Mr. Doyle had a second loan account with Guinness & Mahon which was designated a No.2 loan with an Account No. 06346014. This loan was for £50,000.00 which was drawn down in five tranches of £10,000.00 each. Four of these tranches, that is £40,000.00, was transferred to Amiens Account No. 08880018 on 23rd December, 1985, 29th January, 1986, 14th February, 1986 and 17th April, 1986 respectively and funded payments from the Amiens account to the bill-paying service. The fifth £10,000.00 tranche drawn down on 23rd December, 1985 funded a cheque for £10,000.00 payable to Frank Glennon Limited.

6-05 Both of these loans to Mr. Doyle were subject to facility letters issued by Guinness & Mahon. On 14th April, 1983, in advance of the draw down of the No. 1 loan, a facility letter was issued for an unsecured loan of £120,000.00 repayable on 30th May, 1985. A further facility letter was issued on 29th April, 1985 extending the term of the loan to 30th April, 1987. While there was no record of the issue of a third facility letter, the loan was again extended in May, 1987 to 30th April, 1988 and the facility was increased to £160,000.00. Each of these extensions was sanctioned by the Credit Committee of the Bank and the relevant minutes of the Committee recording the extensions were referred to by Ms. Kells in the course of her evidence. The No. 2 loan was also subject to a formal facility letter, and as with the No. 1 loan, the letter provided for an unsecured loan repayable by 31st December, 1987.

6-06 Ms. Kells gave evidence to the Tribunal in relation to interest payments made in respect of these loans. Four interest payments were made on the No. 1 account as follows:—

DATE	INTEREST PAYMENT (£)
30/04/85	52,495.86
09/06/87	9,966.74
31/07/87	45,000.00
24/08/87	5,000.00

6-07 The evidence heard by the Tribunal established that the source of the first interest payment was a transfer from Amiens Securities Account No. 08116008 being the account from which payments were made to the bill-paying service in the early months of 1985. The source of the lodgement of the second interest payment in June, 1987 was a transfer from Amiens Securities Account No. 10407014 and the sources of the interest payments in July and August, 1987 were cash lodgements to the Bank. There were two lodgements to the No. 2 Loan Account in respect of interest both made on 26th January, 1987 in the sums of £2,000.00 and £13,000.00 respectively. The source of the smaller lodgement of £2,000.00 was a cash lodgement to the Bank and the source of the larger lodgement of £13,000.00 was a transfer from the same Amiens Securities Account No. 10407014 which funded the interest payments to the No. 1 account in 1987.

6-08 According to the Guinness & Mahon statements for each of these accounts, the loans were cleared in full on 26th February, 1988 by a payment of £126,312.40 to the No. 1 Account and £48,182.27 to the No. 2 Account. The daily input log of the Bank showed that the clearing of both loans was part of a single transaction. As far as the Bank was concerned, there were no loans outstanding in the name of Mr. Doyle as of 26th February, 1988.

6-09 The Tribunal had the benefit of the evidence of Mr. George Carville, Mr. David Doyle and Mr. Haughey himself in relation to this matter. Mr. Carville was formerly the Deputy Managing Director and Secretary of the Doyle Hotel Group. In his evidence to the Tribunal, he related his recollection of a conversation which he had with Mr. Doyle regarding arrangements made by Mr. Doyle for the benefit of Mr. Haughey. Mr. Carville's best recollection of the words used by Mr. Doyle at the time was that he, Mr. Doyle, had facilitated or accommodated Mr. Haughey who was then financially embarrassed. In the course of that conversation, Mr. Doyle assured Mr. Carville that he need have no concern about the arrangements as Mr. Haughey had agreed to pay the interest on the loan and refund the capital. Mr. Doyle made no reference to any further arrangement which he had entered into for the benefit of Mr. Haughey.

6-10 Mr. Traynor was also a close financial adviser to the Doyle family and the Doyle Hotel Group. Whilst he did not have an official position in the Company, he was consulted on all strategic decisions. After Mr. Doyle's death, Mr. Traynor was appointed a Director of the Group. Mr. David Doyle confirmed Mr. Traynor's role as a trusted adviser and also related to the Tribunal the virtual daily contact between Mr. Traynor and the Doyle family arising from Mr. Traynor's habit of lunching at one or other of the Doyle Hotels. Mr. Haughey himself was also aware of Mr. Traynor's close involvement with the Doyle family, and it was Mr. Haughey's view, that after Mr. Doyle's death, Mr. Traynor was effectively managing the finances of the Doyle family.

6-11 Mr. Carville and Mr. David Doyle, in their evidence, referred to a meeting which they attended at the request of Mr. Traynor in March, 1988, shortly after Mr. Doyle's untimely death. At that meeting, Mr. Traynor informed them that Mr. Doyle had an account with Guinness & Mahon at the date of his death and there was a liability of £150,000.00 due to the Bank on foot of the account. Mr. Traynor explained that this was an account which had been opened to facilitate Mr. Haughey at a time when Mr. Haughey was financially embarrassed, with the intention that interest would be serviced and that the capital would be repaid by Mr. Haughey, and that while some payments had been made, these had ceased and there was no possibility of Mr. Haughey repaying the loan.

6-12 Mr. Carville and Mr. David Doyle formed the view that as interest was running on the loan and that as it appeared that there was no prospect for recovery from Mr. Haughey, they should recommend to Mrs. Margaret Doyle, as they subsequently did, that the loan should be repaid by the Doyle family. This was precisely what occurred and a cheque for £150,230.00 was provided. The cheque, which was dated 23rd March, 1988 was signed by Mrs. Margaret Doyle and was drawn on an account of PV Doyle Holdings Limited, which was the Doyle Hotel Group Holding Company. The Company was ultimately reimbursed by the Estate of Mr. Doyle. The cheque was presumably provided to Mr. Traynor and was

lodged to account Amiens Securities Limited No. 10407014 on 28th March, 1988. This was the same Amiens account from which funds had been transferred on the previous 25th February, to clear the loans in Mr. Doyle's name on the books of Guinness & Mahon.

6-13 Mr. Haughey, in his evidence, recalled that Mr. Traynor had informed him that Mr. Doyle was assisting with his financial affairs and Mr. Haughey thought it was probable that he was so informed by Mr. Traynor at the outset of the arrangement which was in the Spring of 1983. Mr. Haughey's best recollection of what he was told by Mr. Traynor was that Mr. Doyle was helping out with regard to Mr. Haughey's situation. Mr. Haughey was unaware that any loans had been advanced by Guinness & Mahon to Mr. Doyle for the purpose of providing assistance to Mr. Haughey and he knew nothing of the loan accounts in Guinness & Mahon, the manner in which the funds were made available for his benefit via and through the Amiens accounts, the interest payments made, the discussions between Mr. Traynor, Mr. Carville and Mr. David Doyle in the aftermath of Mr. Doyle's death, and the clearing of the loans. Mr. Haughey's understanding of the arrangement with regard to the provision of assistance by Mr. Doyle was that Mr. Doyle had made an outright donation for Mr. Haughey's benefit.

6-14 The funds which passed from Mr. Doyle's account to Mr. Haughey's account were routed through Amiens Securities Accounts as were all interest payments other than those made by cash lodgements. Although it was Mr. Carville's recollection that he was informed by Mr. Doyle that Mr. Haughey would service the loans, it is apparent from the evidence of Ms. Kells that this was not the position. It is clear that some of these interest payments were provided for directly by Mr. Doyle or were provided out of funds lodged by persons connected with Mr. Doyle and in particular by Mr. David Doyle.

6-15 The internal bank documents referred to by Ms. Kells in the course of her evidence revealed that there were lodgements to the Amiens accounts from which interest payments were made to Mr. Doyle's loan accounts of cheques provided by Mr. Doyle and drafts provided to Mr. Traynor by Mr. David Doyle at times proximate to the making of interest payments from those accounts. In particular, Ms. Kells' evidence established the following:—

- (i) On 22nd March, 1985 there were two cheques for £3,500.00 each lodged to Amiens Securities account number 8116008, and on 15th April, 1985, there was a further cheque for £2,000.00 lodged. Each of the cheques for £3,500.00 was dated 20th March, 1985, one of them was drawn on PV Doyle No. 2 account and the other was drawn on PV Doyle Construction Limited account, both being with Bank of Ireland, Pembroke Branch. Both cheques were payable to cash and both cheques were signed by Mr. Doyle. The following entry had been made on the cheque-stub of the cheque drawn

on Mr. Doyle's No. 2 account, "*to Cash Loan H*". The cheque for £2,000.00 was also drawn on Mr. Doyle's No. 2 Account, was dated 3rd April, 1985, was signed by Mr. Doyle, and was payable to Mr. Desmond Traynor. The cheque-stub recorded "*Des Traynor G&M*".

The Tribunal was also provided with a copy of the statement of Mr. Doyle's No. 2 account dated 28th February, 1985. The entries on the statement of course predated the drawing of the two relevant cheques, but what was material to the Tribunal's inquiries were the handwritten notes which had been made on the copy statement, and which appeared to record a reconciliation of subsequent drawings on the account. The cheque for £3,500.00 dated 22nd March, 1985 was recorded in the notes as "loan", while the cheque for "2,000.00 dated 3rd April, 1985 was recorded as "G&M". As indicated earlier, an interest payment of £52,495.86 was made from this same Amiens account, to which all three cheques were lodged, to Mr. Doyle's No. 1 loan account on 30th April, 1985.

- (ii) On 26th January, 1987 there was a lodgement of £27,000.00 to Amiens Account No. 10407014 comprising the proceeds of four bank drafts drawn on various branches of Bank of Ireland. These drafts were payable to fictitious persons and in evidence, Mr. David Doyle confirmed that they had been drawn for his benefit. On the same date there were two lodgements to Mr. Doyle's No. 2 Account, one for £13,000.00 and one for £2,000.00. The Bank's internal documents show that the source of the lodgement of £13,000.00 to Mr. Doyle's No. 2 Account was a transfer of funds from Amiens Account No. 10407014, being the account to which Mr. David Doyle's drafts had been lodged on the same day. The Bank's internal documents showed that the lodgement of Mr. Doyle's drafts to the Amiens account and the lodgement of £2,000.00 in cash to Mr. Doyle's No. 2 Account were both part of the same lodgement.
- (iii) On 14th May, 1987 a cheque for £9,966.74 was lodged to Amiens Account No. 10407014. This cheque which was dated 13th May, 1987 was drawn on PV Doyle No. 1 account with Bank of Ireland, Pembroke Branch and signed by Mr. Doyle. According to Mr. Carville, this was a personal account of Mr. Doyle and it appeared to Mr. Carville that the cheque details had been completed by Mr. Doyle's secretary and that the cheque had been signed by Mr. Doyle. As detailed earlier, an interest payment in precisely the same sum of £9,966.74 was made to Mr. Doyle's No. 1 Loan Account on the following 9th June, 1987 by a transfer from this same Amiens account.

6-16 The Tribunal is satisfied that not only were the proceeds of these cheques used to meet interest payments but that, as is clear from the

entries made in his cheque-stubs, Mr. Doyle must have known the purpose for which he was providing the cheques, namely, the payment of interest in respect of his loans which were connected with Mr. Haughey. While it has not been possible to track every payment into the Amiens Accounts, given the manner in which Mr. Traynor conducted his affairs, the Tribunal considers it probable that all of the interest payments made to the No. 1 Account were funded by Mr. Doyle as were direct cash payments to the loan accounts. The total of the interest payments made to the two accounts was £127,462.60: £112,462.60 on the No. 1 loan and £15,000.00 on the No. 2 loan.

6-17 Mr. David Doyle explained in evidence that he had had an account for some years which was managed by Mr. Traynor and which he understood was an account with Guinness & Mahon. Initially the funds in the account were held in sterling and were subsequently converted to US dollars. He was unclear as to whether the account was held in Dublin or in London although he informed the Tribunal that he received statements with a Guinness & Mahon banner. When he wished to make lodgements to his account he would simply hand cheques or funds to Mr. Traynor, when lunching at one or other of the Doyle Hotels, and when he wished to make a withdrawal he would telephone Mr. Traynor or Mr. Traynor's secretary, and would in due course receive funds usually by way of bank draft. As far as Mr. David Doyle was concerned, the drafts which were lodged on 26th January, 1987 were funds intended for lodgement to his account and he was adamant that he did not know that part of these funds had been used to make interest payments in respect of the loan in his late father's name. Whatever purpose was intended by Mr. David Doyle, it is clear from the Bank's documents that part of the proceeds of these drafts together with £2,000.00 in cash which was lodged to Guinness & Mahon at the same time was used by Mr. Traynor to make an interest payment against the No. 2 loan. In view of the manner in which Mr. Traynor operated the Amiens Accounts, including the manner in which they were associated with the operation of the Ansbacher accounts, it is always possible that some other person's account was ultimately debited with these payments. However, the Tribunal believes that it would be stretching credulity to accept that the use of Mr. David Doyle's funds to make these payments was purely coincidental.

6-18 The Tribunal is in no doubt that Mr. Carville and Mr. David Doyle faithfully recounted to the Tribunal their recollections of what Mr. Traynor informed them about Mr. Doyle's loans shortly after Mr. Doyle's death, and the Tribunal has no hesitation in accepting their account of what Mr. Traynor told them. Mr. Traynor's version did not however accord with the evidence to be gleaned from the records of the Bank which established that Mr. Doyle made at least some of the interest payments due on those loans and that he was aware that he was so doing. Mr. Haughey's understanding, again based on what he was told by Mr. Traynor, was that this was an outright donation by Mr. Doyle and Mr. Haughey knew nothing of any loan

arrangement or any liability on his part. There may well have been reasons for Mr. Traynor giving this explanation to Mr. Carville and Mr. David Doyle. In particular, Mr. Traynor may have been concerned to protect the confidentiality of Mr. Doyle's personal dealings with Mr. Haughey or indeed he may have wished to obscure the true nature of Mr. Doyle's support of Mr. Haughey.

6-19 The Tribunal considers it far more probable that Mr. Doyle intended to make funds available in support of Mr. Haughey. While these funds were borrowed from Guinness & Mahon by Mr. Doyle, and while there can be no doubt that Mr. Doyle had considerable assets, he may well have had cogent reasons for structuring his finances in this way. The fact that these funds were borrowed by Mr. Doyle from Guinness & Mahon does not, in the view of the Tribunal, detract from the substance or effect of the transaction, namely the provision of funds by Mr. Doyle for the benefit of Mr. Haughey.

6-20 The movement of funds from Mr. Doyle's account to Mr. Haughey's account in the case of the No. 1 loan and from Mr. Doyle's account for the benefit of Mr. Haughey in the case of the No. 2 loan was via the Amiens Accounts. There can have been no logical reason for routing the funds through the Amiens account except to place a distance between Mr. Doyle's accounts and Mr. Haughey's accounts, in other words, to obscure the source of the funds lodged to Mr. Haughey's account.

6-21 What remains to be considered is whether the payments by Mr. Doyle to Mr. Haughey were made in circumstances which suggest that the motive for making the payments was connected with any Public Office held by Mr. Haughey or had the potential to influence the discharge of such office. The payments amounting in total to £301,957.27 were undoubtedly substantial payments even on today's values. At the time, they approximated to a multiple of 5.68 times Mr. Haughey's then annual salary. There was no evidence to suggest that these payments were motivated by any other consideration on the part of Mr. Doyle than a desire to assist Mr. Haughey financially. Mr. Haughey himself characterised the payments as donations to him, and the Tribunal considers that, in the light of the secrecy surrounding the payments, and the manner in which they were represented by both Mr. Doyle and Mr. Traynor as loans, the only possible inference is that they were connected with Mr. Haughey's Public Office and as such must have had the potential to influence the discharge of such offices.

MR. MAHMOUD FUSTOK, DR. JOHN O'CONNELL AND THE AMIENS LODGEMENT

6-22 In the course of examining the Amiens Securities accounts in Guinness & Mahon and in particular Account No. 08116008, it came to the attention of the Tribunal that that was a lodgement to the account on 19th February, 1985 of a sum of £50,000.00. The Guinness & Mahon internal

documents, and in particular the Bank's daily input log, established that the source of the lodgement was a cheque for £50,000.00 dated 18th February, 1985 payable to cash, and drawn on an account of Dr. John O'Connell with Bank of Ireland, O'Connell Bridge Branch. Dr. O'Connell confirmed that the proceeds of this cheque were intended for the benefit of Mr. Haughey.

6-23 Dr. O'Connell had a close professional and personal relationship with Mr. Haughey over a long number of years. Dr. O'Connell was elected to the Dáil as a Labour candidate in 1965 and, save for the years between 1987 and 1989 when he was appointed to the Seanad, he served continuously as a TD until 1993. He became an independent TD in 1981 and joined the Fianna Fáil Party in 1985. He was appointed Minister for Health by the then Taoiseach, Mr. Albert Reynolds, in March, 1992 and held office until February, 1993.

6-24 Dr. O'Connell gave evidence to the Tribunal on a number of occasions relating to various aspects of the Tribunal's inquiries. On two of those occasions, his evidence related to this cheque and the circumstances surrounding it. He informed the Tribunal that the cheque represented a payment by the late Mr. Mahmoud Fustok, a Saudi Arabian diplomat and businessman, to Mr. Haughey. Dr. O'Connell was closely acquainted with Mr. Fustok who he had originally met in 1979 through a friend of his son, a Dr. Barbir to whom Mr. Fustok was related. Mr. Fustok was a significant figure in the international bloodstock world. He had substantial bloodstock interests with establishments in France and in the United States. He was related by marriage to the Royal Family of Saudi Arabia.

6-25 Mr. Fustok travelled regularly to Ireland and it was his habit to attend Goff's Bloodstock Sales in County Kildare. On one such occasion, in the early 1980s, when he was in the company of Dr. O'Connell, he was introduced by Dr. O'Connell to Mrs Eimear Mulhern, Mr. Haughey's daughter. Following that introduction, Mr. Fustok was invited to Abbeville where he met Mr. Haughey. Over the years, Mr. Fustok and Mr. Haughey appear to have developed a close acquaintanceship, and on at least two occasions, Mr. Haughey spent holidays as a guest of Mr. Fustok at his racing stables outside Paris.

6-26 Mr. Fustok's younger brother, Mr. Kamal Fustok and a series of his relatives were granted Irish citizenship, based on residency, pursuant to the Irish Nationality and Citizenship Acts, 1956 and 1986. Of the fifteen such naturalisation, all but one was granted between June, 1981 and December, 1982 and the final naturalisation was granted in May, 1990. All of these applications for naturalisation were sponsored and promoted by Dr. O'Connell and Mr. Haughey was involved with them to varying degrees. The circumstances surrounding the naturalisations are addressed in detail in Chapter 17 of the Report.

6-27 In his initial evidence in July, 1999, Dr. O'Connell recounted that he had been dining with Mr. Fustok in London some short time prior to 19th February, 1985 when Mr. Fustok informed him that he owed money to Mr. Haughey, and asked Dr. O'Connell to transmit a payment on his behalf. Dr. O'Connell agreed to do so, and subsequently received a cheque from Mr. Fustok which he lodged to his own account with Bank of Ireland, and drew a cheque on his own account which he delivered to Mr. Haughey. In his initial evidence, Dr. O'Connell explained that he had contacted Mr. Haughey in relation to the matter and upon a query being raised by Dr. O'Connell, Mr. Haughey informed him that he should make his cheque payable to cash. In his later evidence in March, 2006, Dr. O'Connell thought that the request made to him by Mr. Fustok may have been relayed by telephone, and that in advance of receipt of monies from Mr. Fustok, Dr. O'Connell may have telephoned Mr. Haughey to inform him of the matter, and that in the course of that telephone conversation Mr. Haughey may have instructed him how to make his cheque payable. Furthermore, in the interim, Dr. O'Connell had discussed the entire matter with Dr. Barbir, who it will be recalled was a friend of Dr. O'Connell's son and was related to Mr. Fustok, and Dr. Barbir had reminded Dr. O'Connell that he had informed him, at the time, that he had been asked by Mr. Haughey to lodge the cheque to an account in Guinness & Mahon and that Dr. O'Connell had done so. The Tribunal subsequently raised the matter with Dr. Barbir but he was not in a position to assist the Tribunal.

6-28 What is clear from the evidence is that the payment of £50,000.00 from Mr. Fustok to Mr. Haughey was transmitted through Dr. O'Connell, and that Dr. O'Connell made his cheque payable to cash at Mr. Haughey's request. Although Mr. Haughey had no recollection of the matter or of the mechanics of the payment to him, he accepted that the lodgement to the Amiens Account represented the proceeds of Mr. Fustok's payment; he accepted that it was he who instructed Dr. O'Connell to make his cheque payable to cash; and his evidence was that Dr. O'Connell delivered his cheque to Mr. Haughey personally. Mr. Haughey felt that what may have prompted him to ask Dr. O'Connell to make his cheque payable to cash was a concern surrounding issues of confidentiality.

6-29 Mr. Haughey's explanation for this payment was that it related to the purchase of a yearling by Mr. Fustok from Abbeville Stud; the bloodstock business which by then was managed and operated by Mr. Haughey's daughter, Mrs. Eimear Mulhern. Mr. Haughey could not identify the yearling in question nor the date of the sale. He believed that Mr. Fustok may have purchased the yearling as a gesture of goodwill in that Mr. Fustok had decided against a proposal made by Mr. Haughey that he should establish a racing stables in Ireland.

6-30 There were no records available to the Tribunal in relation to the business of Abbeville Stud dating from 1985. Mrs. Mulhern, who managed and operated the Stud, recalled in evidence that she had known that Mr.

Fustok had purchased a yearling from Abbeville but she was not directly involved in the sale and she had no knowledge of the payment of £50,000.00 made by Mr. Fustok in 1985.

6-31 Mr. Fustok, not being resident within the jurisdiction, could not be compelled by the Tribunal to attend to give evidence. The Tribunal corresponded with him and made inquiries of him regarding this matter, and in response to those inquiries, he informed the Tribunal that he had purchased a horse from the Haughey family in 1985 for which he had paid £50,000.00. As he purchased and sold so many horses, and as his records did not extend as far back as 1985, he could not provide details of the horse in question. While the Tribunal sought the attendance of Mr. Fustok for the purposes of hearing his evidence, he did not accede to the Tribunal's request.

6-32 While the Tribunal has no difficulty in accepting that Mr. Fustok may have purchased a yearling from Abbeville Stud, the Tribunal cannot accept that the payment of £50,000.00 lodged to the Amiens Account represented Mr. Fustok's payment for such yearling. Had the payment made by Mr. Fustok to Dr. O'Connell, and by Dr. O'Connell to Mr. Haughey, related to the purchase of a yearling, it would presumably have been lodged to the bank account of the Stud and Mrs. Mulhern would presumably have been aware of the payment. It also seems to the Tribunal unlikely that a payment of such a magnitude could have represented the market value of a yearling sold privately by Abbeville Stud at that time.

6-33 The Tribunal also considers that the clandestine and secretive manner in which this payment was made, and was channelled through Dr. O'Connell's bank account, is of significance in determining the true nature of the payment. Dr. O'Connell's explanation that the transmission of the payment through him arose because Mr. Fustok did not have a contact address for Mr. Haughey is not, in the view of the Tribunal, a credible explanation.

6-34 In all of the circumstances, the Tribunal is of the view that the payment of £50,000.00 made by Mr. Fustok to Mr. Haughey was a substantial payment which at the time was well in excess of Mr. Haughey's then gross State annual entitlements of £31,024.00. The Tribunal is satisfied that Mr. Fustok's motive for making the payment was connected with Public Offices held by Mr. Haughey and both had the potential to and did influence the discharge of those offices in connection with the grant of Irish citizenship to relatives of Mr. Fustok and in particular to Ms. Faten Moubarak. That aspect of the Tribunal's findings is addressed in detail in Chapter 17 of the Report.

THE PARTY LEADER'S ALLOWANCE ACCOUNT

7-01 The Party Leader's Allowance is a payment made by the Exchequer to the leaders of political parties to assist in financing the political activities of their parties. Typically, the Allowance is used to defray the salaries of officials employed by political parties, and to meet the expenses associated with the operation of parties, including the office and administrative costs. As it is recognised that the party or parties in Government have direct access to the resources of the Civil Service, the structure of the Allowance provides for additional payments to the parties in opposition. Subject to that inbuilt differential, the Allowance is calculated by reference to the size of a party's parliamentary representation.

7-02 The Allowance is provided for by the Ministerial and Parliamentary Offices Act, 1938 as amended. It is paid by a payable order issued by the Department of Finance in favour of the party leader. Prior to 2001, there was no statutory control on the disbursement of the Allowance, nor was there any statutory accountability imposed on political parties. In 2001, certain amendments to the law governing the Allowance were made. The Tribunal understands that these amendments were passed in response to evidence heard by the Tribunal, at the instance of the Taoiseach, Mr. Bertie Ahern, and have introduced significant statutory controls in terms of both the application of the Allowance and in terms of accountability to the Public Office Commission.

THE LEADER'S ALLOWANCE ACCOUNT

7-03 During Mr. Haughey's tenure as Leader of Fianna Fáil, the Allowance was payable to Mr. Haughey, and was lodged to and administered through a bank account held with Allied Irish Banks, Lower Baggot Street, Dublin 2, Account No. 30208-062. This was a current account in the joint names of Mr. Haughey, Mr. Bertie Ahern and Mr. Ray McSharry. From Mr. Ahern's evidence, the Tribunal understands that it was traditional within Fianna Fáil for the Chief Whip of the Party to be named as an account holder and signatory on the Leader's Allowance Account. Prior to Mr. Ahern's appointment as Chief Whip, and prior to the death of the late Mr. George Colley, the account was in the name of Mr. Haughey, Mr. Sean Moore and Mr. Colley. The account mandate required that drawings on the account, including cheques, should be signed by any two of the account holders. There were also two deposit accounts maintained, one in Allied Irish Banks, Lower Baggot Street, and one in the Agricultural Credit Corporation, in which surplus funds were deposited, and on very rare occasions, funds were transferred to the current account from these accounts.

7-04 As the account was in the joint name of Mr. Haughey, it was an account which fell full square within the Tribunal's Terms of Reference, and was an account which the Tribunal was obliged to scrutinise. What drew

the Tribunal's particular attention to the account was not information regarding any transaction across the account itself, but was information regarding a lodgement to an account in Guinness & Mahon. It was apparent to the Tribunal from an examination of documents made available to the Tribunal by Guinness & Mahon, that a lodgement of £25,000.00 on 20th June, 1989 to an Amiens Account No. 10407006, controlled by Mr. Traynor, represented the proceeds of a cheque for £25,000.00 which was drawn on the Leader's Account. The cheque was dated 16th June, 1989, the day following the General Election, and it was signed by Mr. Ahern and by Mr. Haughey. This information led to the Tribunal making inquiries in the course of its private confidential work, and ultimately led to a series of public sittings of the Tribunal. Those public sittings involved nothing short of a labyrinthine inquiry. The Tribunal heard evidence from 45 witnesses, some of whom returned to give evidence on further occasions, arising from additional information and documents which came to the attention of the Tribunal in the course of its continuing private inquiries. The Tribunal's inquiries stemming from its consideration of the Leader's Account ranged in various directions, and touched on many matters including donations made to the Fianna Fáil Party, donations made to Mr. Haughey, and donations made to defray the costs of medical treatment for the late Mr. Brian Lenihan.

7-05 The difficulties which the Tribunal encountered in the course of these inquiries arose from the fact that the records relating to the operation of the account were not available to the Tribunal. In pursuing its inquiries, the Tribunal was largely dependent on the provision of banking records relating both to the Leader's Account, and to other bank accounts through which funds emanating from the Leader's Account, or intended for the Leader's Account or other accounts, passed. There was a paucity of documentation available to the Tribunal in relation to the Leader's Account itself and the only documents available were statements of the account from 1984, microfiche copies of some cheques drawn on the account during 1991, and some documents relating to the sources of certain lodgements to the account, and the application of certain of the cheques drawn on the account in 1991.

ADMINISTRATION OF THE ACCOUNT

7-06 The account was administered by Ms. Eileen Foy who was an employee of Fianna Fáil from 1977, initially as Secretary to the Head of the Research Office, which was then part of the Leader's Office. The Leader at the time was Mr. Jack Lynch. During Mr. Lynch's tenure, the Head of Research was responsible for the administration of the Leader's Allowance, and as Ms. Foy was Secretary to the Head of Research, she was involved in clerical and administrative work in relation to the bank accounts through which the allowance was operated. In 1977, when Fianna Fáil were returned to Government, the Head of Research left the employment of the Party, and

Ms. Foy became Secretary to a number of backbench TDs and Senators, but she retained the function of administering the Leader's Allowance. When Mr. Haughey succeeded Mr. Lynch as Leader in December, 1979, he asked Ms. Foy to work as Secretary to the then Chief Whip, Mr. Sean Moore. The Chief Whip's Office was attached to the Taoiseach's Office, and Ms. Foy continued to operate the Leader's Allowance while working as Secretary to Mr. Moore. Fianna Fáil was in opposition from 1982 to 1987 and, while in opposition, Ms. Foy commenced working directly for Mr. Haughey and, on Fianna Fáil returning to Government, Ms. Foy continued to operate the Leader's Account, as one of Mr. Haughey's private secretaries, until his retirement as Taoiseach and as Leader of Fianna Fáil in February, 1992. During all of that time, Ms. Foy was responsible for the administration of the Leader's Account.

7-07 The administration of the Leader's Allowance represented only a small part of Ms. Foy's duties; she typically devoted no more than a few days per month to that aspect of her work. She made all lodgements to the account, which she made personally across the counter at the branch in Lower Baggot Street. She was also responsible for all drawings on the account, which were made by cheques written on the account. From her evidence, it appears that a wide range of expenses were met from the account: the main areas of expense arose in connection with political research, dealings with the press and the running of the Party Leader's office. The expenses covered salaries, office equipment, stationery, travel, overnight expenses, printing for political events such as conferences and launches, and incidental expenses connected with the *Árd Fheis*.

7-08 Ms. Foy was responsible for dealing with all of these expenses and administering the bank account. It was her practice to collect together current invoices, and to prepare a list of the payments to be made. She then prepared cheques for signature, and would insert, in the case of each cheque, the date, the name of the payee, the amount in words and the amount in figures. She would also complete the cheque stub recording the selfsame details, together with the purpose for which each payment was made.

7-09 Ms. Foy entered details of all cheques drawn on the account in a ledger which she kept for that purpose, and in which she recorded the date of each cheque, the payee, the sum and the purpose for which the cheque was drawn. During the period that she administered the account on behalf of Mr. Haughey, she used two or perhaps three such ledgers. It was Ms. Foy's practice to retain the paid invoices, which she kept together with the ledgers and the cheque-stubs in a filing cabinet, and these records filled one or possibly two separate cabinets.

7-10 Having completed the cheques, Ms. Foy then set about having them signed. It was her recollection that it was Mr. Ahern rather than Mr. MacSharry who co-signed the cheques drawn on the account. Mr.

MacSharry was appointed European Commissioner in 1989, and would not have been available from that time to sign cheques, but even prior to that time, it appears that it was Mr. Ahern who primarily, if not exclusively, fulfilled that function. Mr. Ahern, in his evidence to the Tribunal, confirmed that Ms. Foy was a meticulous administrator, and that it was her practice to furnish him with full details of cheque payments. In fact, it was Mr. Ahern's recollection that Ms. Foy frequently provided him with more information than he might have necessarily required.

7-11 Having obtained Mr. Ahern's signature, Ms. Foy would then proceed to have the cheques signed by Mr. Haughey. She presented the cheques and invoices to Mr. Haughey in the same manner as she presented them to Mr. Ahern. She would have had her list with her, together with the invoices to which the cheques related, and she would have explained the payments to Mr. Haughey in turn. She dealt with any query which Mr. Haughey might raise, and Mr. Haughey then proceeded to sign the cheques. Occasionally, if Mr. Haughey was particularly busy or was otherwise unavailable to Ms. Foy, she would leave all of the material on his desk, and Mr. Haughey would attend to signing the cheques when it was convenient for him, and return them to Ms. Foy.

7-12 It is clear from the small number of copy cheques available to the Tribunal, and it was confirmed by Ms. Foy, that it was her invariable practice to arrange for Mr. Ahern to sign cheques before Mr. Haughey, with the result that Mr. Ahern's signature appears above Mr. Haughey's signature on the cheques of which the Tribunal heard evidence.

7-13 Over the years, a practice developed whereby Mr. Ahern would pre-sign cheques. In other words, Mr. Ahern would sign blank cheques in advance of the details being completed by Ms. Foy, and without any information about the intended payee or the intended amount of a cheque. Ms. Foy explained that the practice became more prevalent after Fianna Fáil was returned to Government in March, 1987. Mr. Ahern was a very busy Minister, and was not always readily accessible to Ms. Foy. On other occasions, Ms. Foy would have known that there were some additional invoices that had to be paid, or that it might be necessary to draw cheques over holiday periods, when Mr. Ahern would not be available to sign them, and she would ask him to pre-sign blank cheques. It appears that this practice, which the Tribunal understands was adopted for what was termed administrative convenience, was progressive, and that by 1990 and 1991, Mr. Ahern would pre-sign as many as twenty cheques. Ms. Catherine Butler, who was also a special adviser to Mr. Haughey and who shared an office with Ms. Foy, recalled observing Mr. Ahern, on one occasion, pre-signing a full book of blank cheques.

7-14 Whilst the Tribunal appreciates that this practice arose for reasons of administrative convenience, and in circumstances where the Tribunal is satisfied that Mr. Ahern had no reason to believe that the account was

operated otherwise than in an orthodox fashion, it was nonetheless an undesirable practice, and in the absence of an internal or external audit, it left the Leader's Allowance and the Leader's Allowance Account vulnerable to misuse or misappropriation.

7-15 In February, 1992, when Mr. Haughey resigned as Taoiseach, the administration of the Allowance ceased to be a function of the Taoiseach's Office. Since that time, the allowance and the bank account through which it is operated have been managed by Fianna Fáil Headquarters in Mount Street, and have been subject to an external audit by an independent firm of auditors. The Tribunal understands, from the evidence of Mr. Ahern, that these changes were not introduced as a result of any misgivings regarding the prior system, but arose for purely practical reasons due to the retirement of Ms. Foy from her position. As there was no other official within the Taoiseach's office familiar with the administration of the allowance, it was logical to pass that function to Fianna Fáil Headquarters, which had the necessary expertise and capacity in the person of Mr. Sean Fleming, who was then Financial Controller of the Fianna Fáil Party and a qualified Chartered Accountant.

PATTERN OF LODGEMENTS TO AND DRAWINGS FROM THE LEADER'S ACCOUNT

7-16 As has already been indicated, there was a paucity of documentation available to the Tribunal regarding the operation of the Leader's Allowance Account itself. Given the passage of time, the documentation which would have been retained by Allied Irish Banks had been destroyed in accordance with the Banks' destruction policy. All that was available to the Tribunal were copies of the account statements from 1984 to 1992, together with copies of cheques and some other internal documents regarding drawings on the account dating from 1991. All of these documents were retrieved by Allied Irish Banks from their microfiche records, and were produced to the Tribunal with the consent of the Fianna Fáil Party.

7-17 In scrutinising lodgements to the account, the Tribunal had the benefit of the records of the Department of Finance and the evidence of Mr. Patrick Mackey, Assistant Accountant with the Accounts Branch of the Department of Finance, which branch was responsible for the payment of the Leader's Allowance. According to the records held by the Department of Finance, the following allowance was paid to Mr. Haughey as Leader of Fianna Fáil in the years from 1984 to 1992.

YEAR	LEADER'S ALLOWANCE RECEIVED (£)
1984	181,215.00
1985	189,950.00
1986	196,612.00
1987	78,056.00
1988	90,666.00
1989	93,107.00
1990	113,207.00
1991	123,137.00
1992	12,033.00

The allowance was paid in monthly instalments by a payable order in favour of Mr. Haughey.

7-18 Ms. Foy's evidence to the Tribunal was that she was the person exclusively charged with the task of making lodgements to the account. Mr. Haughey passed the monthly payable order from the Department of Finance to her, and she in turn personally lodged the payable order to the account across the counter at the branch of Allied Irish Banks in Lower Baggot Street. These monthly lodgements were reflected in the statements of account for the years for which they were available to the Tribunal. It was clear to the Tribunal from the face of the account statements, and both Ms. Foy and Mr. Haughey agreed in their evidence, that in certain years additional lodgements were made to the account over and above instalments of the Leader's Allowance.

7-19 Details of the lodgements to the account for each of the years from 1984 to 1992 are comprised in Appendix E and the table below summarises that information.

YEAR	TOTAL SUM LODGED (£)	PARTY LEADERS ALLOWANCE (£)	EXCESS (£)
1984	212,074.42	181,215.00	30,859.42
1985	189,940.79	189,950.00	-10.21
1986	330,530.32	196,612.00	133,918.32
1987	117,012.06	78,056.00	38,956.06
1988	89,468.41	90,666.00	-1,197.59
1989	313,409.28	93,107.00	220,302.28
1990	119,207.50	113,207.00	6,000.50
1991	223,560.84	112,137.00	111,423.84
1992	20,135.59	12,033.00	8,102.59

There were accordingly excess lodgements to the account for each of the years 1984, 1986, 1987, 1989, 1990 and 1991. Of those years, there were significant excesses in 1986, 1989 and 1991 of £133,918.32, £220,302.28 and £100,423.84 respectively. In the other three years, 1984, 1987 and

1990, the excesses were not of a significant order, and it is clear from the entries on the bank statements that some of these excess lodgements represented transfers from the two deposit accounts operated in connection with the Leader's Allowance, one in the same branch of Allied Irish Banks in Baggot Street and the other in the Agricultural Credit Corporation.

7-20 The pattern of expenditures on the account showed multiple drawings of uneven sums, and certainly reflected expenditures of the type referred to by Ms. Foy, Mr. Haughey and Mr. Ahern in their evidence, and which was a pattern of expenditure that would be expected from an operating account meeting various monthly outgoings. There were also some drawings from the account, including the £25,000.00 lodged to the Amiens account on 20th June, 1989, which did not on their face accord with the general pattern of drawings, and were not of a type or an order that might be expected from an account intended to meet recurring expenditures incurred in connection with the operation of a political party. The drawings identified by the Tribunal as being, at least at first sight, unusual and requiring further scrutiny, are set out in the Table comprised in Appendix F. What distinguished those drawings from the other multiple drawings on the account was their quantum, which was in excess of the general run of drawings on the account, and/or their denomination, which in the main was of an even or round sum amount.

7-21 As the records kept by Ms. Foy were unavailable, the Tribunal was obliged to enter upon a close scrutiny of the drawings from and lodgements to the account in order to identify firstly, whether and if so to what extent, funds held in the account were applied for Mr. Haughey's personal benefit, and secondly, the source of such funds that may have been applied for that purpose.

DRAWINGS FROM THE LEADER'S ALLOWANCE ACCOUNT

7-22 All drawings on the account were by way of cheques prepared by Ms. Foy. In the course of her evidence, she agreed that there were three categories of cheques prepared by her during the period that she administered the account on behalf of Mr. Haughey. Firstly, there were cheques associated with the employment of officials by the Fianna Fáil Party, primarily representing salaries, which were recurring and were drawn from month to month. In the case of these cheques, Ms. Foy had all of the information available to her to enable her to complete all the details on the cheques before approaching either Mr. Ahern or Mr. Haughey for their signatures. The second category of cheques comprised those drawn to meet outstanding invoices, and again Ms. Foy had all of the relevant information available to her to enable her to complete the cheques, in advance of having them signed. The third category of cheques were those that Ms. Foy would be asked to prepare by Mr. Haughey for a certain sum with either the payee left blank, or the cheques made payable to cash.

According to Ms. Foy, Mr. Haughey would inform her of the purpose for which these cheques were required, and she would enter this information in the cheque-stubs and in the ledger which she kept. Ms. Foy thought that this third category of cheques where she left the payee blank or identified the payee as cash arose on very rare occasions. Mr. Haughey agreed with the broad thrust of Ms. Foy's evidence in this regard, and thought that it was only on very few occasions that cheques were brought to him by Ms. Foy with the payee blank or made payable to cash.

7-23 During the course of its inquiries, the Tribunal identified the following drawings or apparent drawings from the account.

Cheque for £25,000.00 dated 16th June, 1989

7-24 The cheque which drew the Tribunal's attention to the Leader's Allowance Account was dated 16th June, 1989, was for £25,000.00 and was payable to cash. The cheque was signed by Mr. Ahern and by Mr. Haughey. From the evidence of Ms. Sandra Kells, and from the contents of the internal Guinness & Mahon documents to which she referred, the Tribunal is satisfied that this cheque was lodged to an account of Amiens Securities Limited Account No. 10407006 with Guinness & Mahon, on 20th June, 1989. This was one of the series of Amiens accounts in Guinness & Mahon which were operated and controlled by Mr. Traynor.

7-25 From the evidence of Ms. Kells and Mr. Paul Carty, it is clear that the Amiens accounts controlled by Mr. Traynor were a direct source of funds to the Haughey Boland No. 3 account, which was in turn used to administer Mr. Haughey's bill-paying service. The Amiens accounts were also operated in conjunction with the Ansbacher accounts, and in particular for the purposes of facilitating customers of Ansbacher Cayman in the making of lodgements to and withdrawals from their off-shore holdings in Irish Pounds. The operation of the Amiens accounts and their use as a source of funds to Mr. Haughey's bill-paying service is more fully addressed elsewhere in the Report. Account number 10407006 was a direct source of a payment of £5,000.00 to Haughey Boland & Company on 30th June, 1989, and was also a source of funds to other Amiens accounts from which drawings were made to the bill-paying service. On the same date as the lodgement of the Leader's Allowance cheque, three drafts of £25,000.00 each payable to cash, which had been provided by Mr. Mark Kavanagh on behalf of Customs House Docks Development Company Limited as a contribution to the Fianna Fáil Party, and which are considered in detail at a later point in this Chapter, were also lodged to this same account. The Tribunal is satisfied that in all probability the proceeds of the Leaders Allowance cheque were used to fund Mr. Haughey's personal expenditures.

7-26 Neither Ms. Foy nor Mr. Haughey had any recollection of the cheque. Ms. Foy confirmed from the Guinness & Mahon microfiche copy of the cheque that, apart from the signatures on the cheque, she had completed

the date and the amount of the cheque in figures and in words, although she was not convinced that the word “*cash*” was in her handwriting. Although she had no specific recollection of the cheque, she thought it likely that this was one of the third category of cheques that she had prepared, that is, cheques which Mr. Haughey asked her to complete with the payee left blank or with the payee entered as cash, and for which she was given an explanation by Mr. Haughey, and details of which she recorded in the cheque-stub and in the ledger which she kept.

7-27 Ms. Foy, testified that she had never been in Guinness & Mahon; that she had never posted or forwarded a cheque to Guinness & Mahon; that she had no dealings with Guinness & Mahon other than telephoning Ms. Williams on behalf of Mr. Haughey to enable Mr. Haughey to speak to Ms. Williams; that she had never heard of any bank account in the name of Amiens Securities Limited; and that she did not lodge the cheque to the Amiens account, and had no idea how the cheque was so lodged. While Ms. Foy had on her own admission a poor recollection of these matters, the Tribunal believes that, had she been instrumental in the transmission or lodgement of the cheque, her recollection would have been assisted by sight of the copy cheque made available to the Tribunal by Guinness & Mahon.

7-28 Mr. Ahern had no recollection of signing any cheque for £25,000.00 payable to cash. He believed that, had he signed a cheque for that amount, he would have recalled it. In that connection, Mr. Ahern indicated that, during his time as Taoiseach, the largest cheque drawn on the Leader’s Account payable to cash had been for £1,000.00, which was around the time of a Fianna Fáil Árd Fheis. Mr. Ahern observed that 16th June, 1989, the date of the cheque, was the day immediately following the 1989 General Election, when he would have been attending at the Election count, and was unlikely to have been available in Leinster House or Government Buildings to sign it. Mr. Ahern also highlighted the proximity of that date to the General Election, when he would have been heavily committed outside Leinster House, when there would have been particular pressure on expenses met from the Leader’s Allowance Account, and when it is likely that he would have pre-signed a large number of cheques. Mr. Ahern believed that, as he had no memory of the cheque, the only logical conclusion was that it must have been a cheque that he had pre-signed.

7-29 Mr. Haughey also had no recollection of the cheque. He denied having any role in the transmission of the cheque to Guinness & Mahon, nor could he assist the Tribunal as to who might have lodged the cheque to the Amiens account. While Mr. Haughey could not assist as to the authorship of the word “*cash*”, he was clear in his view that it had not been written by him. In the course of his evidence, Mr. Haughey speculated that it was possible that Fianna Fáil may have been indebted to Mr. Traynor, but it was the Tribunal’s clear impression that Mr. Haughey himself had little confidence in that theory.

7-30 The position therefore is that not one of the three persons involved in the completion and signing of this cheque had any recollection of it, the purpose for which it was written, the manner in which it was transmitted, or the circumstances surrounding the lodgement of its proceeds to the Amiens account in Guinness & Mahon, controlled by Mr. Traynor. If, as Mr. Ahern supposed, the cheque was pre-signed by him, he could not be expected to know anything about it. Despite the passage of time and the absence of records, the Tribunal would have expected both Mr. Haughey and Ms. Foy to have had some recollection of the cheque, particularly bearing in mind that a copy of the cheque was available to them and that, apart from drawings to meet the medical expenses of the late Mr. Brian Lenihan, it represented one of the largest debits to the account. Mr. Haughey's suggestion that Fianna Fáil might have been indebted to Mr. Traynor was discounted by Mr. Haughey as quickly as it was made, and is not in the view of the Tribunal a plausible explanation.

7-31 In all of the circumstances, the Tribunal is compelled to the conclusion that the cheque represented funds drawn from the account on Mr. Haughey's instructions, with the intention that they be applied for his own personal use. The Tribunal also believes that Mr. Haughey must have misrepresented the purpose for which the cheque was drawn to Ms. Foy as being a legitimate Party expense and that, in all probability, the cheque was transmitted by Mr. Haughey to Mr. Traynor for lodgement to Guinness & Mahon.

Drawings from account in 1991

7-32 Allied Irish Banks were able to provide the Tribunal with some information regarding drawings from the account dating from December, 1990, in the form of copy cheques retrieved from their microfiche records. Many of these cheques were clearly for entirely orthodox purposes, connected with expenses intended to be met from the Leader's Allowance. Some of the cheques made available related to the exceptional drawings which had been identified by the Tribunal at the outset as warranting further inquiry and others, not so identified at the outset, nonetheless warranted further scrutiny. Details of those cheques are set out in the table below.

DATE	AMOUNT (£)	PAYEE
20/12/1990	2,403.90	Adare Manor
04/02/1991	8,332.32	AIB
04/04/1991	4,532.81	Le Coq Hardi
04/04/1991	5,000.00	Cash
15/05/1991	4,570.49	AIB
28/06/1991	4,106.08	Le Coq Hardi
31/07/1991	2,000.00	AIB
11/09/1991	10,000.00	Cash
18/09/1991	7,500.00	AIB

DATE	AMOUNT (£)	PAYEE
26/09/1991	2,027.94	Le Coq Hardi
10/10/1991	5,750.00	Celtic Helicopters
29/10/1991	2,726.00	Celtic Helicopters
29/10/1991	1,757.40	Le Coq Hardi
29/10/1991	1,000.00	Cash
19/12/1991	2,660.29	Le Coq Hardi

7-33 Five of the above cheques, amounting to £15,084.52, were payable to Le Coq Hardi Restaurant; two amounting to £8,476.00 were payable to Celtic Helicopters; two amounting to £15,832.32 were substantially applied in the purchase of French Franc drafts; one for £2,403.90 was payable to Adare Manor; and five amounting to £22,570.49 were payable to AIB or to cash. The total of the drawings represented by these cheques was £64,367.23. In the course of public sittings, the Tribunal endeavoured to ascertain the facts and circumstances surrounding these payments.

7-34 The evidence available to the Tribunal, based on the records produced by Allied Irish Banks, established that the cheques, dated 4th February, 1991 for £8,332.32 payable to AIB and 18th September, 1991 for £7,500.00 payable to Cash, were applied in the purchase of French Franc bank drafts, the first dated 4th February, 1991 for FF61,605 and the second dated 18th September, 1991 for FF63,000, each payable to Charvet, Paris. From the evidence of Allied Irish Banks, it is clear that the balance of the cheque for £7,500.00 dated 18th September, 1991 which was not applied in the purchase of the French Franc draft was withdrawn in cash.

7-35 Although Ms. Foy had no recollection of the individual cheques, she did recall frequent payments made to Le Coq Hardi Restaurant, which was a regular venue for entertainment by the Fianna Fáil Party and by Mr. Haughey. Ms. Catherine Butler, another of Mr. Haughey's personal advisers, recalled that Le Coq Hardi forwarded a monthly account to Ms. Foy, together with the original bills signed by Mr. Haughey. This practice arose following a query which she had received from the proprietor of the Restaurant regarding an outstanding account. Ms. Butler likewise recalled that Le Coq Hardi Restaurant was used frequently by Mr. Haughey for both Party and personal entertainment.

7-36 Ms. Foy also recalled making payments to Celtic Helicopters for travel costs. While she did not characterise such payments as being frequent, she did recall that such payments arose from time to time. Invoices were either posted directly to the Taoiseach's Office, or handed to Ms. Foy by Mr. Haughey, and Ms. Foy assumed that Mr. Haughey has brought them from his home. Ms. Butler was also of assistance: it was her recollection that Celtic Helicopters was used both for Party purposes and also by Mr. Haughey personally.

7-37 In relation to the cheques payable to cash, Ms. Foy, although having no recollection, accepted that she was the person who would have cashed the cheques at the Bank. She could not recall ever obtaining cash amounting to £10,000.00, or furnishing cash of that magnitude to Mr. Haughey. Her sole memory of cashing cheques related to the cashing of Mr. Haughey's monthly salary cheque, to which she attended. She did however recall that the Bank, at a relatively early stage in her dealings, expressed concern regarding her personal security, and suggested that she should be accompanied when attending the Bank to make cash transactions. From that time onwards, Ms. Foy, when undertaking cash business, was driven to and from the Bank by Mr. Haughey's driver. Ms. Foy could not shed any light on the purpose for which cash in amounts of up to £10,000.00 might have been needed, but she was clear that there was no requirement for any cash, including petty cash, in the operation of the Leader's Office.

7-38 When Ms. Foy initially gave evidence to the Tribunal in July, 1999, the Tribunal had no information regarding the application of the cheques dated 4th February, 1991 for £8,332.32 and 18th September, 1991 for £7,500.00. At that time, Ms. Foy could not identify how those cheques were applied save that, as regards the first of the cheques which was payable to AIB, she speculated that the cheque might have been applied in the purchase of a bank draft. By the time Ms. Foy returned to give evidence on a second occasion in October, 1999, the Bank had identified and retrieved from its microfiche records further relevant documentation, from which it was evident that Ms. Foy was correct in her earlier supposition, and that the cheque of 4th February, 1991 and the later cheque of 18th September, 1991 had both been applied in purchasing French Franc drafts payable to Charvet, Paris, a prominent and exclusive French shirt maker and designer. Whilst the name Charvet, was familiar to Ms. Foy, she could not recall for what purpose the drafts might have been paid. Ms. Catherine Butler, whilst having no knowledge of these two payments, vividly recalled an earlier incident relating to Charvet which she dated from between 1987 and 1990. On that occasion, when Mr. Haughey's office was in Old Government Buildings, a parcel had arrived from Charvet, which was opened by Mr. Haughey in her presence, and the contents of which were revealed to her. She testified that, when she suggested to Mr. Haughey that she would forward the Charvet invoice to Mr. Haughey's Secretary in Abbeville for payment, Mr. Haughey responded by asking her to give it to Ms. Foy instead, and intimated that he would reimburse Ms. Foy.

7-39 Mr. Ahern accepted that all of these cheques had been signed by him, although he could not recall any of them. He believed that the only logical conclusion was that they fell into the category of cheques which he had presigned. The Tribunal had heard evidence that the practice of presigning was progressive and that, by 1991, Mr. Ahern would presign a large number of cheques at any one time, and indeed Ms. Butler recalled Mr. Ahern presigning an entire book of blank cheques.

7-40 Mr. Haughey likewise had little recollection of these cheques, although he accepted that cheques drawn on the Account were paid to Adare Manor, Celtic Helicopters, and Le Coq Hardi Restaurant, and were applied in the purchase of bank drafts for payment to Charvet. He could not assist the Tribunal at all regarding any of the other cheques payable to AIB or to cash. Mr. Haughey tacitly accepted that these cheques represented personal payments on his behalf, but explained that where payments were made from the Leader's Account for items which were personal to him, they would be reimbursed by him through a relatively informal system operated by Ms. Foy, whereby she kept a balance of what Mr. Haughey owed to the account, and of what the account owed to Mr. Haughey. From time to time she would strike a balance either in Mr. Haughey's favour, or in favour of the account, and would inform Mr. Haughey what he owed to the account or what the account owed to him. This aspect of Mr. Haughey's evidence will be dealt with more fully at the completion of this Chapter of the Report. What is however clear from the evidence heard by the Tribunal in connection with these cheques, and what was accepted by Mr. Haughey, was that funds from the account were used to meet his personal expenditures. It is also clear to the Tribunal that expenditures of this type, identified as having been paid from the Leader's Allowance Account in 1991, were not exceptional to that year, and that it is likely that similar expenditures were made from the account during each of the years prior to 1991.

Drawings from account and lodgements to Haughey Boland no. 3 account

7-41 From a review of drawings from the Leader's Allowance Account, and lodgements to the Haughey Boland No. 3 account, which was used by Haughey Boland to fund Mr. Haughey's bill-paying service, there appears to be a direct correspondence between two debits to the Leader's Allowance Account and two credits to the Haughey Boland No. 3 account in 1986. Details of those debits and credits are as follows:—

DEBIT TO LEADER'S ACCOUNT		CREDIT TO HAUGHEY BOLAND NO. 3 ACCOUNT	
DATE	AMOUNT (£)	DATE	AMOUNT (£)
24/06/1986	10,000.00	24/06/1986	10,000.00
29/10/1986	25,000.00	29/01/1986	25,000.00

7-42 While Ms. Foy accepted that these transactions appeared to match, she had no recollection of the purpose for which cheques for £10,000.00 and £25,000.00 debited to the account on 24th June, 1986 and 29th October, 1986 might have been drawn. All cheques prepared by her otherwise than in respect of recurring payments or invoices were on Mr. Haughey's instructions, and where cheques were made payable, or where the payee was left blank, she was told by Mr. Haughey the purpose of the

payments, and entered those details in the relevant cheque stubs, and in the ledgers which she maintained. She did not have any recollection of having been told by Mr. Haughey that any such cheque was for his personal use.

7-43 These two transactions were also brought to Mr. Haughey's attention in the course of his evidence. Whilst Mr. Haughey did not necessarily accept that the lodgements to the Haughey Boland No. 3 account represented the proceeds of cheques drawn on the Leader's Allowance Account, it was his view that, if that was the case, the cheques would have represented reimbursements to Mr. Haughey for expenditures which he had previously made on behalf of the Fianna Fáil Party.

7-44 It appears to the Tribunal beyond mere coincidence that exactly equivalent sums were drawn from the Leader's Allowance Account, and lodged to the Haughey Boland No. 3 account on precisely the same dates. Furthermore, although Mr. Haughey did not accept that the lodgements represented drawings from the Leader's Allowance Account, he did not deny that the Leader's Allowance Account may have been a source of funds to him, subject to the explanation that such funds represented reimbursements properly made to him. Accordingly, it appears to the Tribunal that these two debits amounting to £35,000.00 represented drawings from the account applied by Mr. Haughey for his own personal use.

Payments to Mr. John Ellis

7-45 There were two drawings from the Leader's Allowance Account, one in December, 1989 and one in March, 1990, relating to cash withdrawn from the account on the instructions of Mr. Haughey, and provided to Mr. John Ellis. Whilst these drawings arose in the course of the Tribunal's scrutiny of expenditures on the account and, in the absence of records regarding the operation of the account, assisted the Tribunal in its overall appreciation of the operation of the account, the drawings also fell full square within paragraph (c) of the Tribunal's Terms of Reference, which require the Tribunal to determine whether any payments were made from money held in accounts in Mr. Haughey's name to any person who holds or held public office.

7-46 Mr. John Ellis was at the time a Fianna Fáil TD for the constituency of Sligo/Leitrim. In December, 1989, and again in March, 1990, he was in considerable financial difficulties following the failure of a business venture with which he had been involved. Bankruptcy proceedings against him were threatened on both occasions, initially by Manorhamilton Mart and subsequently by Swinford Mart. These proceedings had serious consequences for the Government, which at the time had a majority of just one seat in Dáil Éireann. If Mr. Ellis had been declared a bankrupt, he would have been obliged to resign his seat, with the consequent loss of the Government's majority.

7-47 Mr. Haughey learned of the threatened bankruptcy proceedings on both occasions. On the first occasion, the proceedings were subject to considerable media coverage, and on the second occasion, he may have learned of them from Ms. Catherine Butler, who was informed of them by a third party. In December, 1989, Mr. Haughey approached Mr. Ellis and advised him that the Fianna Fáil Party would endeavour to save him from bankruptcy. Mr. Haughey called Mr. Ellis to his office and furnished Mr. Ellis with a sum of £12,400.00 in cash, which was the sum required to meet his liabilities to Manorhamilton Mart. Mr. Ellis was represented by Messrs. Kevin P Kilrane & Co, Solicitors of Mohill, Co. Leitrim, and he immediately brought these funds to his Solicitors' town agents, who forwarded them, either by means of Mr. Ellis' personal cheque or by bank draft, to the Solicitors acting on behalf of Manorhamilton Mart.

7-48 Mr. Ellis' financial difficulties were not resolved by that payment, and in March, 1990, he was again subject to threatened bankruptcy proceedings, this time by Swinford Mart. Mr. Haughey made a further approach to Mr. Ellis, and on foot of that approach on 22nd March, 1990 Mr. Ellis attended Mr. Haughey's office, where he was provided with a sum of £13,600.00 in cash. This he brought to his Solicitors who lodged the cash sum to their client account, and on the following day forwarded their own cheque to the Solicitors acting for Swinford Mart.

7-49 It appears from the records available to the Tribunal in relation to the Leader's Allowance Account, and from the evidence of Officials of Allied Irish Banks, that there were debits to the Leader's Allowance Account matching these cash amounts, and that these debits were recorded on the dates that Mr. Ellis attended Mr. Haughey's office. From the entries on the account statements, it is clear that these debits represented cheques drawn on the account.

7-50 Ms. Foy recalled Mr. Ellis meeting with Mr. Haughey in his office, and one of the two payments made to him. She agreed that it was she who would have gone to the Bank to obtain cash on Mr. Haughey's instructions, and that she would have given it to Mr. Haughey. Ms. Butler likewise recalled the provision of funds to Mr. Ellis, and she believed that it was she who informed Mr. Haughey of the impending bankruptcy proceedings in March, 1990. It was Ms. Butler's understanding that the funds provided to Mr. Ellis were by way of loan and were repayable by him in due course.

7-51 Mr. Haughey also recalled the events surrounding these payments to Mr. Ellis, and confirmed the circumstances in which the payments arose. It was not Mr. Haughey's impression that the funds were repayable by Mr. Ellis. Whilst it was Mr. Ellis' understanding that the payments were provided out of Fianna Fáil Party funds, there is no evidence to suggest that the Leader's Allowance Account was recouped out of Fianna Fáil Party funds in respect of these payments.

7-52 There can be no doubt that the cash sums of £12,400.00 and £13,600.00 amounting in total to £26,000.00 were paid out of the Leader's Allowance Account to Mr. Ellis. As the records relating to the drawings and lodgements to the account are missing, it is unclear whether these payments were in fact met out of instalments of the Leader's Allowance provided by the Exchequer. It appears to the Tribunal that the dominant purpose of these payments was not to benefit Mr. Ellis personally, but to save Mr. Ellis' seat in the Dáil and thereby to protect the Government majority. It is at best doubtful that such a purpose could ever have been contemplated as a legitimate use for the Leader's Allowance.

Expenditures in connection with the late Mr. Brian Lenihan's medical treatment

7-53 These drawings which dated from June, 1989, are dealt with in considerable detail in a subsequent section of this Chapter.

LODGEMENTS TO THE LEADER'S ALLOWANCE ACCOUNT

7-54 The Tribunal's inquiries into the sources of lodgements to the Leader's Allowance Account led the Tribunal in a number of directions which could not have been anticipated at the outset, and which touched on aspects of political donations made to the Fianna Fáil Party, and funds raised for the purposes of defraying expenses in connection with Mr. Lenihan's medical treatment in the United States. The extent of those inquiries and the findings of the Tribunal can best be dealt with chronologically for each of the years in which it was evident that there were funds lodged to the account in excess of instalments of the Leader's Allowance.

Lodgements to the account in 1986

7-55 In 1986 there was £330,530.32 lodged to the Leader's Allowance Account. The Leader's Allowance for that year was £196,612.00, and accordingly the excess sum lodged to the account was £133,918.32. There were nineteen lodgements to the account in that year, of which twelve appear to relate to instalments of the Leader's Allowance. Of the additional lodgements, the most significant were the two lodgements of £50,000.00 each, made on 7th April, 1986 and 2nd October, 1986, respectively. Due to the passage of time, Allied Irish Banks had no documentation available that might have assisted the Tribunal in its inquiries into the sources of these lodgements.

7-56 As a result of separate inquiries made by the Tribunal of Irish Life & Permanent Plc, it came to the attention of the Tribunal that Irish Permanent Building Society (as it was known prior to its conversion to a Plc) issued two cheques in 1986, each for £50,000.00, and each payable to Fianna Fáil. The cheques were respectively dated 19th March, 1986, and 17th October, 1986. The original paid cheques were made available to the

Tribunal by Irish Life & Permanent. It is clear from those cheques that they were both endorsed by Mr. Haughey, and that the first cheque was presented for payment at Allied Irish Banks, Baggot Street on 7th April, 1986, and that the second was presented for payment at the same bank on 23rd October, 1986: the same dates as the two lodgements for £50,000.00 each to the Leader's Allowance Account.

7-57 Each of the cheques was signed by Dr. Edmund Farrell and by Mr. J. G. Tracey, both of whom were Directors of the Society. Dr. Farrell, who was Chief Executive Officer from 1975 to 1992, gave evidence to the Tribunal, and indicated that for many years it had been the practice of the Society to make donations to political parties on request, in the course of which he stated “*we were trying to be democratic*”. During Dr. Farrell's tenure as Chief Executive Officer the making of donations by the Society was a matter within his exclusive competence, and was not referred by Dr. Farrell to his fellow executive directors or to the Board. The making of such donations was fully documented within the books of the Society. On receipt of a request, it was Dr. Farrell's practice to draft a letter by hand in response, which he passed to his Secretary. His Secretary then typed his response and prepared a cheque, which was drawn on the Society's account with Bank of Ireland No. 56180581, and which was then signed by Dr. Farrell and co signed by his fellow director. The contents of Dr. Farrell's draft letter provided his Secretary with sufficient information to complete the cheque stub, and to enter details of the cheque in the Cheques Ledger maintained for the account. The stubs in relation to both of these cheques recorded payments in respect of “*Fianna Fáil Sub*”. According to Dr. Farrell, a file relating to all political donations was kept, which included the original of all requests made to the Society for contributions, and copies of all letters under cover of which contributions were transmitted. Those files could not be traced by Irish Life & Permanent, although it was Dr. Farrell's belief that the files were in existence on his departure in 1993.

7-58 Dr. Farrell had no recollection of these payments, although he did have a recollection of individual donations made in subsequent years to the Fianna Fáil Party, and to other political parties. It is surprising that he had no such recollection as there were a number of features of the two payments that were unique in terms of the pattern of donations made by the Society in subsequent years. What was unique about these donations was that there were two separate donations of £50,000.00 each, one made in April and one in October. At £100,000.00, they appear to have been the largest single donation by far ever made by the Society to a political party in any one year. The payments were also made in a year when there were no elections, parliamentary, local or presidential and in which no donations were made by the Society to any other political party.

7-59 The Tribunal also had the assistance of the evidence of Mr. Sean Fleming in relation to this matter. Mr. Fleming is a Chartered Accountant by

profession and is now a member of the Oireachtas, having been elected to the Dáil in 1997. From 1982 to 1997, Mr. Fleming served as financial controller of the Fianna Fáil Party, and was based at the Party Headquarters in Mount Street. Mr. Fleming had overall responsibility for the organisation of the funding of the Party, and for keeping the accounts of donations received. He confirmed that there were no elections in 1986, and that no appeal for contributions was made by the Fianna Fáil Party in that year. He explained that, somewhat unusually, the Party had no particular need for funding at that time, as it had cleared its debt from the previous election. Furthermore, as an election was anticipated in the following year, a decision had been taken by the Party that it should refrain from fundraising in that year, so as not to undermine a national appeal in advance of the expected General Election in the following year.

7-60 On his appointment, Mr. Fleming introduced a system of recording all donations received by the Fianna Fáil Party, and all of those records were available to the Tribunal. It is clear from the records for the year 1986 that no donations were recorded by Mr. Fleming as having been received by the Fianna Fáil Party from the Society.

7-61 The Tribunal also had the benefit of the evidence of Mr. Alan Kelly, Manager of Allied Irish Banks, Lower Baggot Street, in relation to the two Irish Permanent cheques. From the markings on the cheque dated 18th March, 1986, Mr. Kelly believed that it was probable that the proceeds of the cheque were lodged to the Leader's Allowance Account, and were collected by special presentation to the Central Bank, rather than through the standard collection system. As regards the cheque dated 17th October, 1986, Mr. Kelly noted that the bank's tracer numbers printed on the paid cheque, and on the lodgement to the Leader's Allowance Account on the same date, were in direct proximity to each other, which suggested to him that the proceeds of the latter cheque were also lodged to the Leader's Allowance Account. Having regard to all of the available evidence, the Tribunal is satisfied that the sources of the two £50,000.00 lodgements to the Leader's Allowance Account, which were credited to the account on 7th April, 1986 and 2nd October, 1986 were the proceeds of the Irish Permanent Building Society cheques dated 9th March, 1986 and 17th October, 1986, respectively. The Tribunal is also satisfied that the cheques were lodged to the account by Ms. Foy on Mr. Haughey's instructions.

Lodgements to the account in 1989

7-62 1989 was a unique year in terms of lodgements to the Leader's Allowance Account. The total sum lodged to the account was £313,409.28 and the Leader's Allowance in that year was £93,107.00. The differential between the Leader's Allowance paid in that year, and the lodgements to the Leader's Allowance Account, was £220,302.28. The bulk of these additional funds was lodged to the account between 25th May, 1989, and

22nd September, 1989, when a total of £232,057.65 was credited to the account, the details of which are set forth in the Table below:—

DATE	AMOUNT (£)
25 th May, 1989	25,042.00
1 st June, 1989	6,652.76
1 st June, 1989	40,000.00
8 th June, 1989	9,288.63
14 th June, 1989	57,600.00
20 th June, 1989	7,288.63
20 th June, 1989	36,000.00
29 th June, 1989	7,000.00
4 th September, 1989	18,185.63
22 nd September, 1989	25,000.00
TOTAL	232,057.65

7-63 These lodgements of course included four instalments of the Leader's Allowance. The total allowance paid for the year was £93,107.00 so that the figure of £232,057.65 includes approximately £30,000.00 in respect of instalments of the Leader's Allowance, leaving the net amount lodged, excluding any payments from the Exchequer at £202,057.65.

7-64 There were no records available to the Tribunal regarding the sources of these lodgements or the application of the funds drawn from the account in that year. The Tribunal was however aware from the evidence of Ms. Foy that lodgements were made to the account which represented the proceeds of a collection made, at Mr. Haughey's instigation, to defray the medical expenses of the late Mr. Brian Lenihan in connection with his treatment at the Mayo Clinic. No records were available to the Tribunal regarding the funds which were collected for that purpose, or the application of those funds. A limited number of persons who were directly involved had no detailed recollection of the donations made or the source of those donations, and the Tribunal was obliged to pursue inquiries largely based on archival bank documentation. The Tribunal's task was further complicated by the proximity of the collection to the General Election, which was held on 15th June of that year. In the course of the Tribunal's inquiries, it became apparent that funds which were donated for the benefit of Mr. Lenihan were intermixed with funds intended for the Fianna Fáil election campaign. This obliged the Tribunal to scrutinise certain donations intended for the Fianna Fáil Party, and the manner in which those funds, and the funds donated for the benefit of Mr. Lenihan, were transmitted and applied.

Establishment of Campaign to collect Funds for Mr. Lenihan

7-65 Mr. Lenihan suffered an illness dating from 1987, which became critical in the early months of 1989, and necessitated surgical treatment at

the Mayo Clinic in the United States. Mr. Haughey and Mr. Lenihan had been close political colleagues and friends for many years. In May, 1989, it came to Mr. Haughey's attention that the Voluntary Health Insurance Board would not meet the entire of the costs of Mr. Lenihan's treatment, and Mr. Haughey determined that he would ensure that the costs and expenses of such treatment would be met. Mr. Haughey contacted Mr. Paul Kavanagh, who was then and had for a number of years been an active fundraiser on behalf of the Fianna Fáil Party. Neither Mr. Haughey nor Mr. Kavanagh could put a precise date on their initial contact, but Mr. Kavanagh's belief was that it was in late May, 1989. By then, an election had been called for the following 15th June, 1989, and Mr. Kavanagh was already actively collecting funds for the General Election campaign. Mr. Kavanagh in his evidence recalled that he met Mr. Haughey at Mr. Haughey's office in Government Buildings, and Mr. Haughey asked him to collect funds to meet Mr. Lenihan's medical expenses. Mr. Kavanagh recalled that Mr. Haughey proposed that a collection should be made discreetly, and that the collection should focus on a small number of donors. Mr. Haughey suggested that Mr. Kavanagh should ask the late Mr. Peter Hanley, a Fianna Fáil supporter and a close personal friend of Mr. Lenihan, to assist in the fundraising effort. Mr. Kavanagh believed that Mr. Haughey informed him that a figure in the region of £150,000.00 to £200,000.00 would be required. This figure accords with the evidence of Ms. Catherine Butler that she had spoken directly with medical personnel in the Mayo Clinic, who had informed her that Mr. Lenihan's course of treatment would involve an outlay in the region of \$200,000.00 to \$300,000.00. According to Ms. Butler, she transmitted this information to Mr. Haughey.

7-66 When Mr. Kavanagh initially gave evidence to the Tribunal in October, 1999, he did not have the benefit of a list of potential donors which he had prepared following his first meeting with Mr. Haughey. Mr. Kavanagh located the list within a personal file which he had retained, which related to an entirely separate matter, and he furnished it to the Tribunal. He subsequently attended to give further evidence in June, 2000. According to Mr. Kavanagh, he compiled the list based on his knowledge of substantial contributors to Fianna Fáil who he judged would be amenable to making a donation to the Lenihan fund. The document contained a typed list on which a series of handwritten notations had been made, together with a further handwritten list on the right hand side of the document which included some of the names comprised in the typed list. Mr. Kavanagh believed that when he brought the document to a second meeting with Mr. Haughey, all that it contained was the typed list of names.

7-67 The second name on the typed list was that of Mr. Ben Dunne: a line in manuscript had been drawn through Mr. Dunne's name. Mr. Kavanagh's evidence was that the line signified that Mr. Dunne should not be asked to contribute to the fund, and that that decision had been made by Mr. Haughey. Moreover, Mr. Kavanagh thought that it may have been that Mr.

Haughey himself has drawn the line through Mr. Dunne's name; Mr. Kavanagh neither sought nor was he provided with an explanation as to why Mr. Haughey decided that an approach should not be made to Mr. Dunne.

7-68 Mr. Kavanagh believed that he set about the task of collecting funds promptly after his second meeting with Mr. Haughey, and that, as he collected cheques, he delivered them to Ms. Eileen Foy. He understood that Ms. Foy had forwarded letters of acknowledgment directly to the contributors. Mr. Kavanagh did not know where the cheques which he collected were lodged, or how the proceeds were applied. Whilst Mr. Kavanagh knew how much he had raised personally, he was never informed of the total figure collected, although it had been his impression that he had not quite met his target figure. He confirmed that at no time did Mr. Haughey inform him that sufficient funds had been raised, and he believed that he continued in his endeavours up to the end of the election campaign, which would have coincided with the Election on 15th June, 1989.

Funds identified as raised to defray Mr. Lenihan's medical expenses

7-69 As a result of independent inquiries made by the Tribunal, and as a result of inquiries specifically made of the persons named on Mr. Kavanagh's list, the Tribunal has been able to identify the following contributions made to meet Mr. Lenihan's medical expenses.

SOURCE	AMOUNT (£)
Mr. John Magnier	20,000.00
Mr. Nicholas Fitzpatrick	10,000.00
Mr. Seamus Tully	20,000.00
Irish Press Newspapers	10,000.00
Mr. Oliver Murphy	5,000.00
Mr. Laurence Goodman	25,000.00
Irish Permanent Building Society	20,000.00
Custom House Docks Development Company Limited	25,000.00

7-70 Whilst the Tribunal has been able to identify the above donations, it does not follow that the Tribunal has identified all of the donations that were made. There were only two persons who could have had knowledge of the entire of the funds collected for Mr. Lenihan's benefit: Mr. Haughey and Ms. Foy. Neither was in a position to furnish the Tribunal with a comprehensive list of the persons from whom donations were received, or a figure for the total fund collected. Whilst Ms. Foy confirmed that she kept a record of the sums which she received, or which were given to her by Mr. Haughey, those records were not available. It may nonetheless be significant that, when Ms. Foy initially gave evidence to the Tribunal in July, 1999, it was her view that the additional funds lodged to the Leader's Allowance Account in

1989, that is, approximately £220,000.00, represented funds collected for Mr. Lenihan. When she returned to give evidence subsequently, she was less certain about this matter. In the meantime, she had met with Mr. Kavanagh, who had indicated to her that he believed that the sum collected fell far short of the figure of £220,000.00, and it is possible that her views were influenced by Mr. Kavanagh's recollections.

7-71 The Tribunal heard evidence from each of the persons identified as having made contributions to the Lenihan fund, and endeavoured as far as possible to identify the instruments by which donations were made, and how the proceeds of those instruments were applied. That information is set out below.

Contribution made by Mr. John Magnier

7-72 Having noted that Mr. Magnier's name appeared on both Mr. Kavanagh's typed list and handwritten list, with the handwritten figure "20" beside each entry, the Tribunal made inquiries of Mr. Magnier and in evidence to the Tribunal, Mr. Magnier confirmed that he had made a donation of £20,000.00 to the Lenihan fund. Mr. Magnier was approached with a view to making a contribution by Mr. Paul Kavanagh. Mr. Magnier was uncertain as to whether he had met Mr. Kavanagh prior to that occasion, although he would have known of him by repute as a national fundraiser for the Fianna Fáil Party. Mr. Magnier's recollection was that Mr. Kavanagh attended for lunch at Mr. Magnier's home in Fethard, Co. Tipperary, and explained that he was raising funds to defray Mr. Lenihan's expenses for medical treatment in the United States.

7-73 Mr. Magnier furnished the Tribunal with the original paid bank drafts by which he contributed to the fund. The drafts were each dated 8th June, 1989, and were drawn on Allied Irish Banks, St. Patrick's Bridge Branch, Bridge Street, Cork, and were each in the sum of £10,000.00. One of them was payable to a Mr. Jim Murphy, and the other was payable to a Mr. Jim Casey. Mr. Magnier explained that both of the payees of the drafts were fictitious persons, and that he adopted this measure to conceal the purpose of the payments, as it was his wish that his donation should remain anonymous. Whilst Mr. Magnier had no recollection of how or to whom his drafts were transmitted, he accepted that he must have notified the recipient in advance that the drafts were payable to fictitious persons.

7-74 Each of the drafts was endorsed on the reverse side with the names "*Jim Murphy*" and "*J Casey*", and from the markings on the reverse side of each draft, it is clear that the drafts were negotiated at Allied Irish Banks, 1 Lower Baggot Street, Dublin 2, the branch in which the Leader's Allowance Account was kept. There was also a series of numbers printed on the reverse side of the drafts which are known as tracer numbers, and which enabled Allied Irish Banks to trace cheques or instruments passing through the collection system. The Tribunal is satisfied that the proceeds of

the two drafts, which emanated from Mr. Magnier, in all probability formed part of the lodgement of £57,600.00 to the Leader's Allowance Account on 14th June, 1989.

Contribution made by Mr. Nicholas Fitzpatrick

7-75 In 1989, Mr. Nicholas Fitzpatrick was Managing Director of a company by the name of Atron Electronics Limited. Neither Mr. Fitzpatrick's name nor that of his company appeared on Mr. Kavanagh's typed list, but the name Atron, with the figure "10", appeared on Mr. Kavanagh's handwritten list. Following inquiries made by the Tribunal, Mr. Fitzpatrick attended to give evidence, and confirmed that he had made a donation of £10,000.00 to the Lenihan fund. His recollection was that he was initially approached in advance of the 1989 Election by Mr. Gerard Danaher, a Fianna Fáil fundraiser, seeking a contribution to Fianna Fáil's election campaign. He agreed to make a contribution of £5,000.00 to the campaign, and whilst an arrangement had been made for Mr. Fitzpatrick to meet with Mr. Kavanagh at the Westbury Hotel, where the Fianna Fáil Party maintained an office in the weeks running up to the 1989 Election, for the purposes of transmitting his donation personally to Mr. Kavanagh, that initial meeting was cancelled. Some time shortly afterwards, the late Mr. Peter Hanley telephoned Mr. Fitzpatrick, and explained that Mr. Lenihan was gravely ill and was receiving treatment in the United States, and inquired as to whether Mr. Fitzpatrick, having already made a commitment to the Fianna Fáil Party, would consider making a similar donation to the Lenihan fund. In the course of the conversation, Mr. Hanley informed Mr. Fitzpatrick that he was hoping to raise a figure in the region of £50,000.00. Mr. Fitzpatrick agreed to consider the matter, and having done so, and having consulted his fellow directors, he agreed to provide a further £5,000.00 as a donation towards Mr. Lenihan's medical expenses.

7-76 When Mr. Fitzpatrick telephoned Mr. Hanley to inform him of his decision, Mr. Hanley inquired whether Mr. Fitzpatrick would consider designating the entire of his donation, that is, the £5,000.00 that he had agreed to contribute to Fianna Fáil's election campaign, and the £5,000.00 that he had agreed to contribute to the Lenihan fund, as a donation to the latter fund, and Mr. Fitzpatrick responded that he would consider the matter. He later met Mr. Kavanagh personally at the Fianna Fáil suite in the Westbury Hotel, and hand delivered his cheque for £10,000.00 to Mr. Kavanagh, and informed Mr. Kavanagh that it was his intention that the entire of the funds should be applied for the benefit of the Lenihan fund. Mr. Fitzpatrick received no written acknowledgement or receipt in respect of his donation, nor was he approached at any time by Mr. Lenihan regarding the matter. He was however thanked by both Mr. Danaher and Mr. Hanley.

7-77 Mr. Fitzpatrick's bank was unable to retrieve a copy of the cheque which Mr. Fitzpatrick furnished to Mr. Kavanagh. Mr. Fitzpatrick provided

the Tribunal with the original cheque stub which he had completed, which recorded the date as 8th June, 1989, the sum as £10,000.00, and the purpose as “NC”, which denoted national collection. The cheque was drawn on an account of Atron Electronics Limited, Account No. 00026-006, at Allied Irish Banks, UCD Branch, Clonskeagh Road, Dublin 14, and it was debited to that account on 16th June, 1989. There was a lodgement to the Leader’s Allowance Account in the sum of £57,600.00 on 14th June, 1989, two days prior to the date on which the cheque was debited to the Atron account. In the ordinary course, it takes approximately two days for a cheque to pass through the collection system, so that the date of the lodgement, which was 14th June, 1989, and the date of the debit to the Atron account, which was 16th June, 1989, suggest that the Atron cheque may have also formed part of the lodgement of £57,600.00 made on 14th June, 1989. However, as a copy of the paid cheque was not available, the Tribunal cannot determine with certainty that its proceeds were applied in that manner.

Contribution made by Mr. Seamus Tully

7-78 Mr. Seamus Tully’s name appeared on both Mr. Kavanagh’s typed and handwritten lists, with the figure “20” beside the handwritten entry. The Tribunal also made contact with Mr. Tully, who confirmed that he had contributed £20,000.00 to the Lenihan fund. Mr. Tully was a supporter of the Fianna Fáil Party, and had made various contributions to the Party over the years. He was involved in the fishing industry, and was based in Killybegs, Co. Donegal. Mr. Tully recalled that he was contacted by Mr. Paul Kavanagh, who told him that Mr. Haughey had established a fund to meet Mr. Lenihan’s expenses for treatment in the United States. Mr. Kavanagh informed Mr. Tully that his intention was to approach approximately seven to ten people, who would each be asked to provide approximately £20,000.00.

7-79 Mr. Tully was well established in the fishing industry, and had great admiration for Mr. Lenihan, who had been supportive of the industry during his time as Minister for Fisheries. He happily agreed to make a contribution of £20,000.00, and he was asked by Mr. Kavanagh to make his donation to the Leader’s Allowance Account. Mr. Tully purchased a bank draft from Ulster Bank in Killybegs with his own personal funds, and posted it to Mr. Kavanagh. He was subsequently contacted by Mr. Kavanagh to confirm that he had received the draft, and had forwarded it for lodgement to the appropriate account. Some time later, Mr. Tully was in Dublin with a delegation from Killybegs. He was in the Dáil bar when he was called aside by Mr. Lenihan, who thanked him personally for his donation. Mr. Tully received no formal written acknowledgement or receipt, nor did he attend any function held for persons who had made donations to the Lenihan fund.

7-80 Ulster Bank, from whom Mr. Tully had purchased the draft which he had forwarded to Mr. Kavanagh, were unable to produce a copy of the

draft, or any records in connection with the purchase or subsequent negotiation of the draft. Accordingly, the Tribunal has no information from which it can ascertain how the proceeds of Mr. Tully's draft were applied.

Contribution made by Mr. Oliver Murphy

7-81 Mr. Oliver Murphy's name appeared on Mr. Kavanagh's typed list, but not on his handwritten list. A line was drawn through Mr. Murphy's name on the typed list, and Mr. Peter Hanley's name was written in manuscript beside it. In 1989, Mr. Murphy was Managing Director of Hibernia Meats Limited, and of its subsidiary company, Hibernia Meats International Limited. Whilst he was well acquainted with Mr. Peter Hanley, they both having served at the same time on the Livestock and Meat Board, it was his recollection that he was not approached by Mr. Hanley, but by Mr. Kavanagh, regarding a contribution to the Lenihan fund. His recollection was that he received a telephone call from Mr. Kavanagh, who was known to him as a Fianna Fáil fundraiser, and who inquired whether he would consider making a donation. Mr. Murphy did not recall Mr. Kavanagh indicating any particular level of contribution that he had in mind.

7-82 Mr. Murphy confirmed that a contribution of £5,000.00 was made to the Lenihan fund, and that it was in all probability made by cheque drawn on a bank account of Hibernia Meats International Limited and payable to Fianna Fáil. His recollection was that he delivered the cheque personally to Mr. Kavanagh, who he met at the Fianna Fáil suite in the Westbury Hotel. It was Mr. Murphy's wish that his contribution should remain anonymous. He did not recall having received an approach personally from Mr. Lenihan regarding his donation. As it was not possible for the Tribunal to obtain a copy of the cheque provided by Mr. Murphy, the Tribunal has no means of ascertaining how Mr. Murphy's cheque was subsequently negotiated, or whether it was lodged to the Leader's Allowance Account.

Contribution made by Mr. Laurence Goodman

7-83 The Tribunal made contact with Mr. Goodman, and heard evidence from him, in advance of being furnished with Mr. Kavanagh's list. Mr. Goodman's name appeared on Mr. Kavanagh's typed list, but not on his handwritten list. Mr. Goodman confirmed to the Tribunal that he made a donation to the Lenihan fund in the sum of £25,000.00. His recollection was that he was contacted by Mr. Hanley, who informed him that a collection was being made to meet Mr. Lenihan's medical expenses, and that the collection was being co-ordinated either by Fianna Fáil Head Office or by the Taoiseach's Office. Mr. Hanley inquired whether Mr. Goodman would be receptive to making a donation and, on being asked by Mr. Goodman, he indicated that a donation in the region of £10,000.00 to £20,000.00 would be helpful. It was Mr. Goodman's recollection that following that approach, he received a telephone call from the Taoiseach's Office, and was requested to make his donation payable to "*Fianna Fáil (Party Leadership Fund)*". Mr. Goodman could not recall by whom he was

contacted, nor could he recall when he was first contacted by Mr. Hanley. Mr. Goodman furnished the Tribunal with a microfiche copy of the paid cheque which had been provided. The cheque was dated 13th June, 1989, it was in the sum of £25,000.00 and it was payable to “*Fianna Fáil (Party Leadership Fund)*”. The cheque was debited to the account on which it was drawn on 22nd June, 1989. Mr. Goodman did not receive any subsequent contact from Mr. Lenihan, nor did he recall having received a formal acknowledgement or receipt for his donation.

7-84 From the markings on the face of the cheque, it appears that the cheque was negotiated at Allied Irish Banks, Baggot Street on 20th June, 1989. There was a tracer number printed on the face of the cheque, which as has already been indicated is a number applied by the bank in the course of the collection process, and enables the bank to identify the transaction to which it relates. The tracer number on the cheque provided by Mr. Goodman was “00816”. The presence of this number indicates that the cheque passed through the normal clearing house system. There was a lodgement to the Leader’s Allowance Account on the same day, 20th June, 1989, in the sum of £36,000.00, and the tracer number on the account statement relating to that lodgement was “00812”. Having regard to the proximity of the two tracer numbers, Mr. Alan Kelly of Allied Irish Banks, from whom the Tribunal heard evidence, indicated that in his view Mr. Goodman’s cheque formed part of the lodgement of £36,000.00 to the Leader’s Allowance Account on that date. The Tribunal is satisfied that the lodgement on that date comprised the proceeds of the cheque for £25,000.00 provided by Mr. Goodman.

Contributions made by Irish Press Plc

7-85 Following media coverage of the Tribunal’s public sittings at which evidence was led regarding the funds raised to defray Mr. Lenihan’s medical expenses, Dr. Eamon de Valera, former Chairman of the Irish Press Group made contact with the Tribunal and informed the Tribunal that the Irish Press Group had made a donation of £10,000.00 to the fund. Dr. de Valera subsequently gave evidence at public sittings of the Tribunal. Dr. de Valera recalled that in the Spring of 1989 he received a telephone call from Mr. Daniel McGing who explained to Dr. de Valera that a fund had been established to defray Mr. Lenihan’s medical expenses and asked whether the Irish Press would be agreeable to donating £10,000.00 to the fund. Mr. McGing was then Chairman of the Agricultural Credit Corporation, having been appointed in December, 1987, and had formerly been an audit partner with Coopers & Lybrand, Chartered Accountants, and had been the partner responsible for the Irish Press Group account. On his appointment as Chairman of the Agricultural Credit Corporation, Mr. McGing took leave of absence from Coopers & Lybrand, but he continued to advise some of his former audit clients in relation to their business affairs, including the Irish Press Group.

7-86 Having discussed Mr. McGing's approach with Mr. Vincent Jennings, then Managing Director of Irish Press Plc, Dr. de Valera, agreed that the Irish Press Group would make a donation of £10,000.00 to the fund. Mr. McGing recalled the approach which he made to Dr. de Valera, but could not recall by whom he had been asked to raise the matter with the Irish Press Group. Mr. McGing was acquainted with Mr. Kavanagh, Mr. Hanley and Mr. Haughey, and while he thought it was possible that any one of them may have made an approach to him, he considered it more likely that the approach was made by Mr. Hanley.

7-87 According to Dr. de Valera, and as was confirmed by Mr. Jennings, it had been the practice of Irish Press Plc for a number of years to make donations to the Fianna Fáil Party through the Coopers & Lybrand client account. Irish Press would issue a cheque for the amount of the donation payable to Coopers & Lybrand, which would be lodged to the Coopers & Lybrand client account, and a cheque for the same amount would then be issued from that account payable to the Fianna Fáil Party. Dr. de Valera believed that he followed the same practice in this instance, and drew a cheque in favour of Coopers & Lybrand which he assumed would have been lodged to their client account and in turn transmitted to the appropriate fund. It was his belief that he would have posted the cheque to Mr. McGing. Whilst Mr. McGing considered that it was likely that the payment was made in that way, he had no recollection of the payment. The Tribunal took this matter up with PricewaterhouseCoopers, (Coopers & Lybrand having since merged with Price Waterhouse), and heard evidence from Mr. William Cunningham, who was Managing Partner of Coopers & Lybrand prior to the merger. He informed the Tribunal that PricewaterhouseCoopers had been unable to locate records of transactions across the Coopers & Lybrand client account dating from 1989. It was probable that those records no longer existed as Price Waterhouse Coopers operated a six year retention policy. They had made inquiries from their bankers and had obtained copies of the account statements of both their client account and their office account for the months from March, 1989, to the end of June, 1989 being the probable period over which the donation was made. All of the transactions across those accounts were scrutinised, but Mr. Cunningham informed the Tribunal that there was no individual credit or debit to the account of £10,000.00, although there were lodgements in excess of £10,000.00 that may have included the Irish Press cheque. While it is understandable that the Irish Press cheque may have been lodged to the account with other cheques or instruments, it is surprising that there was no individual debit to the account of £10,000.00 over that period.

7-88 Dr. de Valera in his evidence also referred to subsequent dealings with Mr. McGing regarding the matter of the Irish Press donation to the Lenihan fund. In either late 1989 or early 1990, Dr. de Valera received an invitation from or through Mr. McGing to a luncheon which he understood was by way of a gesture of appreciation for the donation which had been

made to the Lenihan fund. Mr. Jennings also recalled Dr. de Valera mentioning that he had been asked to the function, and it was certainly Mr. Jennings's understanding that the function related to the Lenihan contribution. Dr. de Valera could not recall in detail who attended the function, but he did recollect that both Mr. Lenihan and Mr. Lenihan's son, Mr. Brian Lenihan, were present and that the function was held in a private room at a hotel in Ballsbridge. Mr. McGing had no recollection of the function; he attended a number of functions hosted by Fianna Fáil or by persons connected with Fianna Fáil during the period in question. The matter of this function will be dealt with in some greater detail in a later section of this Chapter.

Contribution made by Dr. Edmund Farrell

7-89 Dr. Edmund Farrell's name appeared on both Mr. Kavanagh typed list of potential donors and his manuscript list, and the figure of "40" was written beside the entry for Dr. Farrell's name in manuscript. Prior to the discovery of that list by Mr. Kavanagh, the Tribunal had been furnished with details of a series of payments made by Irish Permanent to the Fianna Fáil Party, to Mr. Haughey and to other political parties. Three cheques were issued by the Society each dated 7th June, 1989, the details of which were as follows:—

- (i) Cheque for £65,000.00 payable to Fianna Fáil and signed by Dr. Farrell and Mr. George Tracey.
- (ii) Cheque for £20,000.00 payable to Charles Haughey and signed by Dr. Farrell and Mr. Tracey.
- (iii) Cheque for £10,000.00 payable to Charles Haughey and signed by Dr. Farrell and Mr. Tracey.

7-90 Dr. Farrell confirmed that the cheque for £20,000.00 payable to Mr. Haughey was furnished as a donation on behalf of the Society to the fund established to defray Mr. Lenihan's medical expenses. Dr. Farrell recalled that he had received a telephone call from Mr. Haughey, who asked him to call to his office to meet with him. Mr. Haughey informed Dr. Farrell that a fund to defray Mr. Lenihan's medical costs had been established, and indicated that a small number of people had been approached for the purpose of making contributions. Dr. Farrell immediately signified that the Society would be happy to contribute and on inquiry, Mr. Haughey informed Dr. Farrell that he should make the Society's cheque payable to Mr. Haughey personally. Dr. Farrell returned to his office and dealt with the matter speedily. He had some recollection that he requisitioned a cheque on the same date that he had met Mr. Haughey, and if Dr. Farrell is correct, he must have met Mr. Haughey on 7th June, 1989. Dr. Farrell believed that the cheque for £20,000.00 was delivered by his driver to Mr. Haughey's office in Government Buildings. The cheque was co-signed by Mr. George Tracey, who recalled that Dr. Farrell informed him that he had decided to make a contribution to the fund to defray Mr. Lenihan's medical expenses.

Mr. Tracey did not specifically recall the cheque itself or the other two cheques referred to above, which he would have co-signed at the request of Dr. Farrell's secretary.

7-91 The two other cheques, one payable to Fianna Fáil in respect of its election campaign and one for £10,000.00 payable to Mr. Haughey, were requisitioned on the same day. Dr. Farrell informed the Tribunal that the latter cheque, that is the cheque for £10,000.00, was a donation by the Society to Mr. Haughey's personal election campaign, and it arose in circumstances which Dr. Farrell vividly recalled. Dr. Farrell had attended an event in the Berkley Court Hotel, at the invitation of the Government to mark the launch of the Irish Financial Services Centre. At the conclusion of the function, Mr. Haughey circulated amongst those present and spoke to Dr. Farrell. Mr. Haughey and Dr. Farrell accompanied each other from the function room and as they were walking along a corridor leading to the exit from the Hotel, Mr. Haughey raised the topic of his personal campaign fund. Dr. Farrell indicated to Mr. Haughey that he had received a written appeal from the Fianna Fáil Party with which he was in the process of dealing, but Mr. Haughey made it clear that what he was discussing was his own personal election campaign expenses, and he intimated that funds were low. This matter made an impression on Dr. Farrell who found it surprising in two respects, firstly, that Mr. Haughey had any need for subscriptions to his personal campaign funds in view of his previous electoral success, and secondly, that the topic was raised in such a public setting.

7-92 As already referred to, it was Dr. Farrell's belief that the donation to the Lenihan fund had been hand delivered to Mr. Haughey by his driver. He thought it probable that he would have sent the donation to Mr. Haughey's personal election fund campaign to Abbeville and that he would have sent the Society's donation to the Fianna Fáil Party to Fianna Fáil Head Office in Mount Street. The paperwork in relation to all these three contributions, namely the letters of requests in terms of the Fianna Fáil Party appeal and copies of the letters under cover of which the donations were forwarded, would have been retained within the political donations file kept by Dr. Farrell's secretary, which could not be traced by Irish Life & Permanent.

7-93 Dr. Farrell was clear in his recollection that he had had no dealings whatsoever with Mr. Kavanagh in relation to any of these donations, including the donation to the Lenihan fund, and that his dealings were exclusively with Mr. Haughey. From further evidence which the Tribunal subsequently heard from Mr. Kavanagh, it appears that it was Mr. Haughey who dealt exclusively with Dr. Farrell regarding all Fianna Fáil fundraising activities.

7-94 As the Tribunal was furnished with the originals of the three paid cheques by Irish Life & Permanent, the Tribunal was able to pursue inquiries regarding the subsequent negotiation and application of the

cheques. The application of the cheque for £65,000.00 in respect of the Fianna Fáil Election Campaign was straightforward. It was received by the Party; it was recorded in the records kept by Mr. Sean Fleming; and it was lodged to the bank account maintained by the Fianna Fáil Party for that purpose.

7-95 The negotiation and ultimate application of the two cheques, for £20,000.00 in respect of the Lenihan fund and £10,000.00 for Mr. Haughey's personal campaign, was more circuitous. It is clear from the paid cheques that each of them was personally endorsed by Mr. Haughey, a matter which Mr. Haughey himself accepted; that each of them was presented for payment at Bank of Ireland, Dublin Airport Branch; and that each of them was lodged on 13th June, 1989 to Account No. 66559536, which was an account of Celtic Helicopters Limited, the Company of which Mr. Haughey's son, Mr. Ciaran Haughey was a Director and Shareholder. On the same day, 13th June, 1989, a cheque for £30,000.00 payable to cash was drawn on the same account of Celtic Helicopters Limited and was signed by Mr. Ciaran Haughey and by Mr. John Barnicle, who was also a Director and Shareholder. Both the lodgement of the Irish Permanent cheques and the debiting of the cash cheque were recorded as entries on the bank statements of Celtic Helicopters for 13th June, 1989, and 21st June, 1989, respectively.

7-96 After the Tribunal had heard initial evidence in relation to this matter in June, 1989, Bank of Ireland, Dublin Airport Branch retrieved from its microfiche records a copy of the paid cheque dated 13th June, 1989 drawn on the account of Celtic Helicopters. The reverse side of the cheque bore a stamp signifying that it was presented for payment at Allied Irish Banks, Baggot Street on 20th June, 1989, that is, the branch at which the Leader's Allowance Account was maintained. The copy cheque bore no tracer number on its face or on its reverse side, and therefore did not pass through the collection system for crediting to a bank account at that branch or at any other branch. Whilst there was a lodgement to the Leader's Allowance Account on 20th June, 1989 of £36,000.00 that might have comprised the proceeds of this cheque, it is clear from evidence heard by the Tribunal, to which reference has already been made, that that lodgement comprised the proceeds of the cheque for £25,000.00 donated by Mr. Laurence Goodman, so that it could not have included the proceeds of the Celtic Helicopters cheque. Furthermore, as the cheque for £30,000.00 was debited to the Celtic Helicopters account on the following day, 21st June, this confirms that it could not have passed through the clearing system which, in the ordinary course, takes at least two days. Having regard to the fact that there were no tracer numbers on the Celtic Helicopters cheque; that there was no lodgement to the Party Leader's account which could have represented the proceeds of the cheque; and that the cheque was debited to the Celtic Helicopters' account on which it was drawn on the following day, the Tribunal is satisfied that the cheque was not lodged to the

Leader's Allowance Account, or to any account, but instead was cashed at Allied Irish Banks, Baggot Street, on 20th June, 1989.

7-97 Ms. Eileen Foy, who was responsible for administering the account and the Lenihan fund, had no specific recollection of any cash drawings apart from her practice of cashing Mr. Haughey's monthly salary cheque. She had no recollection of cashing a Celtic Helicopters cheque for £30,000.00 on 20th June, 1989 although she accepted that, if the cheque was cashed at Allied Irish Banks, Baggot Street, it was probably she who had cashed it. If she did so, this would have been on Mr. Haughey's instructions, and any cash which she obtained from the Bank would have been transmitted by her to Mr. Haughey.

7-98 The Tribunal heard evidence from both Mr. John Barnicle and Mr. Ciaran Haughey regarding the transaction. Mr. Barnicle gave evidence on two occasions, firstly in July, 1999 (prior to the Tribunal obtaining a microfiche copy of the Celtic Helicopters cheque) and subsequently in October, 1999. Mr. Barnicle testified that he had no recollection of either the lodgement of the Irish Permanent cheques to the Celtic Helicopter's account or the drawing of the cash cheque from that same account. As the Irish Permanent cheques had been endorsed by Mr. Haughey, Mr. Barnicle accepted that Celtic Helicopters must have received the cheques from Mr. Haughey. His assumption was that the Irish Permanent cheques were provided by way of a payment for what he termed a block booking. The Tribunal understands that this is a relatively common practice in the aviation business, whereby customers make prepayments in advance for flying hours. Mr. Barnicle's further assumption was that Mr. Haughey cancelled the block booking, and that the payment for £30,000.00 represented a refund of that advanced payment made. Mr. Barnicle informed the Tribunal that he had discussed the matter with Mr. Ciaran Haughey who shared his views.

7-99 Shortly after Mr. Barnicle gave evidence, a microfiche copy of the Celtic Helicopters cheque was retrieved by Bank of Ireland; was provided by Bank of Ireland to Celtic Helicopters; and was in turn produced by Celtic Helicopters to the Tribunal. It was only on the provision of the microfiche copy that it became apparent that the cheque drawn on the Celtic Helicopter's account was dated 13th June, 1989, the same date on which the lodgement was made; that the cheque was payable to cash; and that the cheque had been collected for payment by Allied Irish Banks, Baggot Street Branch.

7-100 On 29th July, 1999, Mr. Haughey made a statement to the Press, the contents of which were confirmed to the Tribunal by his Solicitors. Mr. Haughey's statement was as follows:—

“Widespread media reports that the former Taoiseach, Charles Haughey, diverted for his own use monies subscribed to a fund raised to meet the medical expenses of the late Mr. Brian Lenihan are untrue.

These reports relate to two cheques dated the 7th June, 1989, payable to Charles Haughey issued by Irish permanent Building Society, one for £20,000.00 intended as a subscription to the Brian Lenihan fund and the other for £10,000.00 intended as a political donation. A General Election was held on the 15th June, 1989.

These two cheques were inadvertently lodged to the account of Celtic Helicopters on the 13th June, 1989. On the same day a cheque for £30,000.00 was drawn on the Celtic Helicopters account in Bank of Ireland, Dublin Airport. An examination of the available bank records indicate that this cheque for £30,000.00 was in fact lodged to the Party Leader's Account on the 20th June of 1989 in Allied Irish Bank, Baggot Street. This was the same account to which the contributions to the Brian Lenihan fund were lodged. All of the above records are available to the Moriarty Tribunal."

7-101 Mr. Barnicle returned to give evidence in October, 1989 and Mr. Ciaran Haughey also attended on that occasion. Neither Mr. Barnicle nor Mr. Ciaran Haughey had any recollection of the transaction. Neither Mr. Barnicle nor Mr. Ciaran Haughey could point to any record which established that the proceeds of the cash cheque dated 13th June, 1989 and drawn on the account of Celtic Helicopters had been lodged to the Leader's Allowance Account in Allied Irish Banks, Baggot Street. Notwithstanding the statement issued by Mr. Haughey, Mr. Barnicle's assumption had not changed and he was still of the view that the only logical explanation for the transaction was the cancellation of an advance payment. Mr. Barnicle informed the Tribunal that he knew of no mistake of the type described in Mr. Haughey's statement having occurred in the banking arrangements of Celtic Helicopters over the history of the company, and he accepted that it was unusual for a limited company to make any cheque payable to cash other than a cheque for petty cash.

7-102 Mr. Haughey's statement to the media on 29th July, 1999 was incorrect. There were no records available which established that the Celtic Helicopter's cheque for £30,000.00 was lodged to the Leader's Allowance Account in Allied Irish Banks, Baggot Street. On the contrary, it is clear from the banking records and the evidence of the relevant banking officials, that the cheque for £30,000.00 was not lodged to the Leader's Allowance account but was cashed at Allied Irish Banks, Baggot Street, on 20th June, 1989. In his evidence to the Tribunal, Mr. Haughey, notwithstanding the evidence which had been heard by the Tribunal, maintained that the proceeds of the Celtic Helicopters cheque had been lodged to the Leader's Allowance Account, and applied for the benefit of the Lenihan fund.

7-103 The Tribunal is satisfied that the Irish Permanent Building Society cheque for £20,000.00 intended as a donation to the Lenihan fund was lodged to the account of Celtic Helicopters at Dublin Airport Branch on 13th June, 1989 together with the cheque for £10,000.00 also payable to Mr. Haughey in respect of his personal election expenses, and that both these cheques were first endorsed by Mr. Haughey. The Tribunal is also satisfied that the cheque for £30,000.00 drawn on the account of Celtic Helicopters on the same day and payable to cash was exchanged for cash at Allied Irish Bank, Baggot Street on 20th June, 1989. The Tribunal does not accept

that these transactions represented the cancellation of an advance payment nor that they arose from administrative inadvertence. Mr. Haughey was extended every opportunity to explain these transactions to the Tribunal both in advance of and in the course of his evidence, but did not do so, and insisted that the statement which he had issued to the media on 29th July, 1999 was correct. The Tribunal considers that the only logical reason for the lodgement and withdrawal of these cheques from the Celtic Helicopters account was to substitute a Celtic Helicopters cheque for the Irish Permanent cheques, in order to obscure the source of this money which was cashed on the instructions of Mr. Haughey, and in all probability applied for his own purposes.

Contribution made by Custom House Docks Development Company Limited

7-104 Mr. Mark Kavanagh was Managing Director of Hardwick Enterprises Limited which, together with British Land and the McNerney Group, were involved in a joint venture company, Custom House Docks Development Limited, which had been awarded the contract to construct the International Financial Services Centre. Mr. Mark Kavanagh's name did not appear on Mr. Paul Kavanagh's typed list, that is the list that Mr. Kavanagh drew up himself following his initial meeting with Mr. Haughey of potential targets of his campaign to raise funds for Mr. Lenihan's medical expenses. Mr. Mark Kavanagh's name did however appear on Mr. Paul Kavanagh's handwritten list, together with the figure "25". Mr. Mark Kavanagh's name was also written separately on the document in manuscript at the foot of the typed list with the figure "20". Following receipt of this list, the Tribunal instituted inquiries with Mr. Mark Kavanagh, who confirmed that a donation of £25,000.00 was made by Custom House Docks Development Company Limited to the fund accumulated to meet Mr. Lenihan's medical expenses.

7-105 Mr. Mark Kavanagh's recollection was that in May, 1989, he was contacted by Mr. Paul Kavanagh, who he knew to be a national fundraiser for Fianna Fáil. He arranged to meet with Mr. Paul Kavanagh at the offices of Hardwick Enterprises Limited on Wellington Road. Mr. Paul Kavanagh informed him that the Fianna Fáil Party had a substantial debt, and that it was seeking to raise significant contributions in the order of £100,000.00 from a number of individuals and companies. Mr. Paul Kavanagh also requested a contribution towards the Lenihan fund and intimated that a contribution in the order of £20,000.00 to £25,000.00 was being sought. Mr. Mark Kavanagh indicated that, as the contributions requested were substantial, he would need to consider them and to discuss them with his joint venture partners. Mr. Paul Kavanagh's recollection of this meeting confirms Mr. Mark Kavanagh's evidence.

7-106 Mr. Mark Kavanagh proceeded to discuss the requests with his partners, British Land and McNerney Group, and it was agreed that a

donation of £75,000.00 should be made to the Fianna Fáil Party, and that a donation of £25,000.00 should be made to the Lenihan fund. Mr. Pádraig Burke, a Director of Custom House Docks Development Company Limited and a representative of McInerney Properties gave evidence to the Tribunal in relation to a meeting on 13th June, 1989 at the Marketing Centre, Custom House Docks Development Company Limited, at which he was present, when a payment voucher to cover the drawdown of the two payments of £25,000.00 and £75,000.00 was authored and signed by each of the three partners. The voucher detailed the manner in which the payments were to be made, and the payments were recorded in the books of the company as payments to Fianna Fáil. Two cheques, one for £25,000.00 and one for £75,000.00 were produced at the meeting and Mr. Burke and Mr. Mark Kavanagh signed them at the same time. A copy of the cheque for £25,000.00 was available to the Tribunal, and it is clear that the cheque was dated 13th June, 1989, and was signed by both Mr. Mark Kavanagh and Mr. Burke.

7-107 According to Mr. Mark Kavanagh, these donations were furnished by him personally to Mr. Haughey, at Mr. Haughey's home at Abbeville, Kinsealy, on the morning of the General Election, which was held on 15th June, 1989. Mr. Kavanagh had no recollection of when or with whom this arrangement was made. In his evidence to the Tribunal, Mr. Haughey denied that he met Mr. Kavanagh at his home on the morning of the Election. According to Mr. Haughey, he followed the same routine on Election mornings, and after voting at his local voting station, he proceeded to tour voting stations in the locality. His programme would not have permitted private meetings at his home. Mr. Paul Kavanagh, who made the initial contact with Mr. Mark Kavanagh, did not recall any further dealings with Mr. Mark Kavanagh although he accepted, that as he had written Mr. Mark Kavanagh's name on his list, he must have known that Mr. Mark Kavanagh had made or had agreed to make a donation.

7-108 The manner in which these donations were made was unusual and unorthodox. If Custom House Docks intended to make donations to the Lenihan fund, and to the Fianna Fáil Party of £25,000.00 and £75,000.00 respectively, it would be expected that two cheques for those amounts would have been drawn, one for £25,000.00 payable to the Leader's Allowance Account and the one for £75,000.00 payable to Fianna Fáil. This is not what occurred. Two cheques were drawn on the account of Custom House Docks Development Company Limited with Allied Irish Banks, 5 College Street, Dublin 2 on 13th June, 1989 and the details of the cheques were as follows:—

- (i) A cheque for £25,000.00 payable to Fianna Fáil and;
- (ii) A cheque for £75,000.00 payable to Allied Irish Banks.

7-109 According to Mr. Kavanagh, who was supported in his evidence by Mr. Burke, the cheque for £25,000.00 was intended as the contribution to

the Lenihan fund and the cheque for £75,000.00 payable to Allied Irish Banks was intended as a donation to Fianna Fáil central funds. That cheque for £75,000.00 was used to purchase three separate bank drafts from Allied Irish Banks, each for the sum of £25,000.00, and each payable to cash. Mr. Mark Kavanagh was clear that this was the manner in which he had been requested to make the donations, although he did not recall by whom he had been given these instructions. If Mr. Mark Kavanagh is correct, and he was instructed that the donation to the Lenihan fund should be made payable to Fianna Fáil, this represented a divergence at the outset from the directions given to other donors, who had been asked to make cheques payable to Mr. Haughey or to the Leader's Allowance Account. It is bizarre that any donation to a political party should have been requested or made in a fragmented form by way of bank drafts payable to cash.

7-110 Mr. Mark Kavanagh informed the Tribunal that he and his partners were anxious that the substantial contribution which they had been asked for by the Fianna Fáil Party should be made directly to Mr. Haughey, as they wished to ensure that their donation was recognised at the highest political level within the Party. Mr. Mark Kavanagh's recollection was that when he met Mr. Haughey at Abbeville, he handed Mr. Haughey an envelope containing the three drafts and the cheque. Mr. Haughey opened the envelope and thanked Mr. Kavanagh for the contributions, indicating that they would be of great assistance to the Fianna Fáil Party and that they were very much appreciated. Mr. Haughey asked Mr. Kavanagh whether he wished to know how Mr. Haughey intended to use the different amounts, to which Mr. Kavanagh responded in the affirmative. Mr. Haughey informed Mr. Kavanagh that the cheque for £25,000.00 would be lodged to the Lenihan fund which he indicated was a Fianna Fáil Party responsibility, and that two of the three drafts for £25,000.00 each, that is a total of £50,000.00, would go directly to the Party's central funds. He then inquired whether Mr. Kavanagh would have any objection to the final draft for £25,000.00 being used by Mr. Haughey, at his discretion, to assist with the election expenses of individual Fianna Fáil candidates and Mr. Kavanagh signified that he had no objection to that proposal.

7-111 The Tribunal was unable to obtain a microfiche copy of the paid cheque from Allied Irish Banks. The Tribunal heard evidence from Allied Irish Banks, and scrutinised the Leader's Allowance Account to ascertain whether the cheque for £25,000.00 dated 13th June, 1989, was lodged to the account as Mr. Kavanagh had been informed by Mr. Haughey. From the evidence available to the Tribunal, it appears that the cheque for £25,000.00 could not have been paid into the Leader's Allowance Account. The cheque was transmitted to Mr. Haughey on 15th June, 1989 and accordingly could not have been credited to the account prior to that date. The cheque was debited to the Custom House Docks Development Company Limited account with Allied Irish Banks on 19th June, 1989 which means that it must have been negotiated either by being cashed or by the proceeds being lodged to a bank account between 15th and 19th June,

1989. As there were no lodgements to the Leader's Allowance Account between those dates, the cheque cannot not have been lodged to that account.

7-112 The Tribunal also instituted inquiries with the Fianna Fáil Party to ascertain whether a donation of £75,000.00 or £50,000.00 from Custom House Docks Development Company Limited had been received by the Fianna Fáil Party. The record books maintained by Mr. Fleming, to which reference has already been made, did not record the receipt of any donation from Custom House Docks Development Limited, from Hardwick Limited or from Mr. Kavanagh. However, Mr. Fleming also kept a subsidiary list, in which he recorded all donations to the Fianna Fáil Party in respect of which receipts were not sent directly to the donors, but were transmitted to Mr. Haughey or to Mr. Haughey's office. Some of the donors on this list were identified anonymously, and some of the donors were identified by name. Mr. Mark Kavanagh's name appeared on this list with a reference number 4632. This reference number corresponded to an entry in the record books maintained by Mr. Fleming: entry number 4632 recorded an anonymous contribution of £25,000.00 on 15th June, 1989.

7-113 Mr. Fleming pointed out in his evidence, and the Tribunal accepts, that this subsidiary list was not a separate list. Every donation received by the Fianna Fáil Party was recorded in the record books kept by Mr. Fleming, and this list merely contained additional information regarding the set of entries in the record book for which receipts were transmitted to Mr. Haughey.

7-114 Mr. Fleming also retained other records in relation to the donation of £25,000.00, which included a copy of the cheque by which the contribution was made, which was a copy of the cheque for £25,000.00 payable to Fianna Fáil, drawn on the account of Custom House Docks Development Company Limited, and which was intended for the fund established to defray Mr. Lenihan's medical expenses. A photocopy of the cheque which was made by Mr. Fleming recorded in writing on the bottom right hand side that the contribution to which the cheque related was made by Mr. Mark Kavanagh and that the reference number of the contribution was 4632.

7-115 Mr. Fleming informed the Tribunal that all of the instructions that he received regarding this donation would have been received from Mr. Haughey or from Mr. Haughey's office. Having recorded the donation, Mr. Fleming would have prepared a receipt for £25,000.00 and forwarded it to Mr. Haughey. According to Mr. Mark Kavanagh, he received no acknowledgement or receipt in respect of any of the donations made in 1989, nor was the donation to the Lenihan fund ever acknowledged by Mr. Lenihan.

7-116 There was of course the £75,000.00 intended as a donation to the Fianna Fáil Party which was furnished in three drafts for £25,000.00 each. The ultimate application of these drafts is addressed in a separate section of this Chapter of the Report, and suffice it to say at this juncture that there was no evidence that the proceeds of any of these three drafts were lodged to the Leader's Allowance Account, or otherwise applied for the benefit of Mr. Lenihan.

7-117 In the course of his evidence, all of these matters were outlined to Mr. Haughey, and he was given an opportunity to comment on them. In response, he indicated that he had no recollection of the matter, he did not meet Mr. Mark Kavanagh at Abbeville, Kinsealy on the morning of the election and that he doubted that he had any role in the transmission of any of the instruments furnished by Mr. Kavanagh. The Tribunal cannot accept that this was the position. According to Mr. Kavanagh, he delivered the cheques to Mr. Haughey. According to Mr. Fleming, he would have received the cheque and instructions on the anonymous donation from Mr. Haughey or from Mr. Haughey's office. Ms. Eileen Foy, who had no recollection of the matter, was clear that all of her dealings in relation to the provision of cheques and transactions involving the Leader's Allowance Account were on the instructions of Mr. Haughey. It appears to the Tribunal that there is ample evidence that Mr. Haughey both received the cheque for £25,000 from Mr. Mark Kavanagh and transmitted it to Fianna Fáil Head Office. The Tribunal does not accept that it could have been a mere coincidence that this cheque intended by the donor for the Lenihan fund was, on instruction, made payable to Fianna Fáil (rather than to the Leader's Allowance Account) which was precisely where the cheque was ultimately deposited. It is clear that the proceeds of the cheque were not applied for the benefit of the Lenihan fund and on the contrary were applied for a purpose not intended by the donor.

Overall Position

7-118 It is noteworthy that apart from Dr. Eamon de Valera, and apart from Mr. Laurence Goodman, (who was contacted by the Tribunal at an earlier stage of its inquiries), not one of the donors who the Tribunal identified as having made contributions to the Lenihan fund came forward to the Tribunal with that information, notwithstanding that there was considerable media coverage surrounding the Tribunal's endeavours to ascertain the extent of the funds collected. Of the £140,000.00 identified by the Tribunal as having been donated in 1989, the Tribunal was able to establish that £45,000.00 was lodged to the Leader's Allowance Account, being the contributions made by Mr. Magnier and Mr. Goodman. The Tribunal is satisfied that £45,000.00 of the funds, representing the contributions of Custom House Docks Development Company Limited and Irish Permanent Building Society were not lodged to the Leader's Allowance Account. The £25,000.00 contributed by Custom House Docks Development Company Limited was transmitted to Fianna Fáil Head Office, and the £20,000.00

contributed by Irish Permanent Building Society was channelled through the account of Celtic Helicopters, and was ultimately cashed at Allied Irish Banks, Baggot Street. The destination of the balance of the funds identified by the Tribunal is unknown, although it appears that the sum of £10,000.00 contributed by Mr. Nicholas Fitzpatrick may have been lodged to the Leader's Allowance Account.

7-119 Mr. Paul Kavanagh believed that the object of the campaign was to accumulate funds in the region of £150,000.00 to £200,000.00. Ms. Foy, in her initial evidence to the Tribunal in July, 1999, thought that the entire of the surplus funds lodged to the Leader's Allowance Account in 1989, amounting to £220,000.00, were accounted for by contributions to the Lenihan fund. Having met Mr. Kavanagh privately in the interim, Ms. Foy sought to resile from her earlier estimate when she returned to give evidence in October, 1999. Mr. Haughey in his evidence indicated that he could not be of assistance to the Tribunal; that he had little involvement with the matter other than to arrange for the funds to be raised, and to arrange for all of the expenses to be discharged.

7-120 The Tribunal cannot be categorical as to the precise sums donated to the Lenihan fund or lodged to the Leader's Allowance Account. It is clear that a sum well in excess of the £145,000.00 identified by the Tribunal was raised, and Mr. Paul Kavanagh in his evidence accepted that it was unlikely that the funds raised were less than £180,000.00. Bearing in mind that at least £45,000.00 of the funds contributed, representing the donations of Custom House Docks Development Company Limited and Irish Permanent Building Society, were not lodged to the Leader's Allowance Account, and bearing in mind that the excess lodgements to the account over instalments of the Leader's Allowance in that year was £220,000.00, the total sum raised in 1989 could have been as much as £265,000.00. In the absence of any credible explanation regarding the additional lodgements to the account, the Tribunal is of the view that it is probable that the bulk of the excess lodgements constituted funds intended to benefit Mr. Lenihan.

Payments made in respect of Mr. Lenihan's medical and other expenses

7-121 Mr. Lenihan was Minister for Foreign Affairs in 1989, when he received treatment at the Mayo Clinic. An arrangement was put in place between Mr. Haughey and the Department of Foreign Affairs for the transmission and payment of invoices from the Mayo Clinic, through the Irish Embassy in Washington. Invoices were issued by the Mayo Clinic, addressed to Mr. McKiernan, who was then Irish Ambassador to Washington, and were forwarded by Mr. McKiernan to the Department of Foreign Affairs and onwards to the Taoiseach's Office. US Dollar drafts were provided by the Taoiseach's Office to the Department of Foreign Affairs, and were transmitted through the Embassy in Washington to the Mayo Clinic. The function of the Department of Foreign Affairs was that of facilitator in the reception and transmission of invoices and payments.

7-122 The records of the Department of Foreign Affairs in relation to these payments were available to the Tribunal, and the Tribunal also had the benefit of the evidence of Mr. McKiernan in that regard. In total, a sum of US\$82,376.70 was paid through the Department to the Mayo Clinic in respect of the late Mr. Lenihan's treatment, and these payments were made between June, 1989 and June, 1990. The payments were made by US Dollar international cheques drawn on Allied Irish Banks, Baggot Street, Dublin 2. It was Ms. Foy who made arrangements for the purchase of these drafts, which she recalled in her evidence, and which were funded by drawings from the Leader's Allowance Account.

7-123 Two further US Dollar payments were made through the Department of Foreign Affairs, in respect of travelling and accommodation costs incurred when Mr. Lenihan returned to the Mayo Clinic for review in early January, 1990 and those payments were \$1,885.60 on 7th March, 1990 and \$235.75 also on 7th March, 1990. There were no debits to the Leader's Allowance Account matching the dates and amounts of funds which would have been applied in the purchase of these US Dollar drafts.

7-124 Three Irish Pound payments were also made to the Department of Foreign Affairs by the Taoiseach's Office between July, 1989 and December, 1989 to defray hotel and other sundry expenses incurred in connection with Mr. Lenihan's treatment. The details of those payments were as follows:—

DATE	AMOUNT (£)
25 th July, 1989	2,489.90
27 th September, 1989	4,933.59
18 th December, 1989	5,073.53

The Department of Foreign Affairs was able to provide the Tribunal with Central Bank microfiche copies of the cheques by which the payments were made in September and December, 1989 and it is clear that the payments were made by cheques drawn on the Leader's Allowance Account. The Department has not however been able to locate a copy of the cheque by which the payment in July, 1989 of £2,489.90 was made, and there was no debit to the Leader's Allowance Account corresponding to the date or amount of that payment.

7-125 The total debits to the Leader's Allowance Account in 1989 and 1990 in respect of payments for Mr. Lenihan's treatment at the Mayo Clinic and for associated expenses, amounted to £70,283.06. A further payment was made in 1991, to which reference will be made later in this Chapter, but for the Tribunal's current purposes, that sum is not material as it was

funded by a separate donation raised in 1991. The figure of £70,283.06 was made up as follows:—

- (i) £59,606.65 to fund the US Dollar international cheques payable to the Mayo Clinic.
- (ii) £4,933.59 paid to the Department of Foreign Affairs on 27th September, 1989.
- (iii) £5,073.53 paid to the Department of Foreign Affairs on 18th December, 1989.

Although not directly material to the Tribunal's analysis, it should nonetheless be recognised at this juncture that the travel arrangements for Mr. Lenihan and his party to and from the Mayo Clinic in 1989, were made by Dr. Michael Smurfit and Dr. Tony Ryan, who provided private air transportation at their own cost. The Tribunal understands that these arrangements were made at Mr. Haughey's personal request.

Ex-Gratia payment made by The Voluntary Health Insurance Board

7-126 In addition to the invoices which were paid from funds debited to the Leader's Allowance Account through the Department of Foreign Affairs, there was one further invoice raised by the Mayo Clinic on 6th July, 1989 in the sum of \$81,602.74. This invoice was discharged by the Voluntary Health Insurance Board on foot of a special claims appeal on behalf of Mr. Lenihan. From the banking records made available to the Tribunal by the Board, it is clear that the funds to meet this payment, which were £57,247.49, were debited to the Board's account on 1st August, 1989.

7-127 The Board was unable to locate the file relating to Mr. Lenihan's special claims appeal and while microfiche copies of the claim files for Mr. Lenihan for the years 1989 and 1990 were retrieved, these did not include documents relating to the special grant paid by the Board in respect of Mr. Lenihan's treatment at the Mayo Clinic.

7-128 Mr. Lenihan had been a subscriber to the Voluntary Health Insurance Board for many years. As his proposed treatment was to be provided outside the State, the cost of his treatment fell outside the scope of his policy and the Board was under no legal obligation to meet any aspect of the costs incurred. The Board nonetheless operated what is known as a special claims procedure whereby the Board was empowered to make ex-gratia payments to subscribers for treatment not strictly within the terms of their policies. These claims could not be met otherwise than with the express sanction of the Board. In the ordinary course, when a special claims application was made, it was initially considered by the claims department and unless it was evidently unmeritorious, it was referred to the Board with a recommendation from the claims department. The Board considered the applications and determined whether and, if so, at what level an ex-gratia payment should be made. The further processing of

applications was then handled by the claims department. The only exceptional instance which involved a further input from the Board was where an ex gratia payment exceeded £25,000.00, in which case the cheque drawn by the Board was required to be co-signed by a Director.

7-129 The decision of the Board to approve Mr. Lenihan's special claim was recorded in the minutes of the meeting of the Board for 18th May, 1989 in the following terms:—

“The following special claims appeals were agreed: Mr. B Lenihan (membership number), taking into account the circumstances of the case and previous grants to other subscribers in similar circumstances, it was agreed in principle that a significant contribution should be made”.

What is striking about the terms of the minute is that it did not record that the Board had approved a payment of £50,000.00 even though the minutes relating to other special claims sanctioned at the same meeting recorded in each case the actual payment authorised. The meeting on 18th May was attended by Mr. Desmond Cashell, Chairman of the Board, Dr. Brian Alton, Mr. Brian Dennis, Mr. Noel Fox and Mr. Brendan Hayes. Mr. Tom Ryan, the General Manager of the Board was also present as was Mr. Anthony Mitchell, Secretary to the Board. The Tribunal heard evidence from all of these persons except for Dr. Alton and Mr. Hayes who are deceased.

7-130 In his evidence, Mr. Ryan informed the Tribunal that shortly before the Board meeting of 18th May, 1989, he received a telephone call from the Taoiseach's office, and was asked to attend a meeting with Mr. Haughey. His recollection was that the meeting arose at short notice, and that he had no advance knowledge of the matters that Mr. Haughey wished to discuss with him. At the meeting, Mr. Haughey raised Mr. Lenihan's illness and proposed treatment in the United States. Mr. Haughey referred to a number of documents which he had in his possession, which Mr. Ryan understood to be invoices or estimates of costs for Mr. Lenihan's treatment, and Mr. Haughey asked Mr. Ryan if the Board would be amenable to paying a portion of the costs, and indicated that it would be helpful if the Board would meet part of the hospital bill which would be in the region of £50,000.00. Mr. Ryan understood that this figure represented approximately one third or one half of the estimated hospital bills.

7-131 Prior to Mr. Ryan's meeting with Mr. Haughey, no special claims application had come to Mr. Ryan's attention. He believed that had such an application been received by the Board, it would have been submitted to him. It was accordingly the position that it was as a result of Mr. Haughey's request that Mr. Ryan brought the matter to the Board on 18th May, 1989. Mr. Haughey in his evidence to the Tribunal agreed that he had met with Mr. Ryan, and had raised the matter of the cost of Mr. Lenihan's treatment with him, with a view to the Board considering the making of an ex-gratia payment.

7-132 It was Mr. Ryan's practice to meet the Chairman of the Board, Mr. Desmond Cashel, in advance of Board meetings to discuss the topics on the agenda. Mr. Ryan recalled that he briefed Mr. Cashel in advance of the meeting of 18th May, 1989, and this was confirmed by Mr. Cashel. This briefing covered Mr. Haughey's initiation of the application, and the approximate payment which was sought. The Tribunal also heard evidence from Mr. Noel Fox and Mr. Brian Dennis and each of them, together with Mr. Ryan and Mr. Carroll, were clear in their recollection that the figure of £50,000.00 was discussed at the meeting and was approved by the Board.

7-133 Mr. Ryan had no recollection of conveying the decision of the Board to Mr. Haughey or of any further involvement in relation to the claim. The payment of \$81,602.74 made on 1st August, 1989 was the equivalent of £57,247.49 and as this figure exceeded £25,000.00, the provisions governing the mandate on the Board's bank account would have required that the cheque be co-signed by a Director of the Board. Furthermore, Mr. Ryan was of the view that as the ultimate payment exceeded the amount sanctioned by £7,000.00 it would have been necessary to obtain approval for the additional payment, although he felt that such approval would have been forthcoming informally through an individual Board member. It is perhaps surprising that Mr. Ryan had no involvement in the further processing of the matter and that none of the other Officers and Directors from whom the Tribunal heard evidence could be of assistance.

7-134 The Tribunal also heard evidence from Mr. Anthony Mitchell, who was Assistant General Manager and Secretary to the Board. It was Mr. Mitchell who kept the minutes of the meeting of 18th May, 1989. It will be recalled that the minutes did not record that a figure of £50,000.00 had been approved by the Board as an ex-gratia payment. Mr. Mitchell had no detailed recollection of the preparation of the minutes in question. He did however recall the Board meeting itself, and the discussion of the ex-gratia claim. He had no recollection of any discussion of Mr. Haughey's involvement in the claim, and he was unaware that the claim had been initiated by Mr. Haughey until he heard evidence to that effect led by the Tribunal. Mr. Mitchell could not recall why he would have omitted the quantum of the ex-gratia payment sanctioned in the case of Mr. Lenihan. He doubted that it would have been for reasons of confidentiality, as the minutes of Board meetings were of themselves confidential. He did however observe that it was not uncommon for the Board to make a decision as to how a matter discussed at a meeting should be minuted and he would follow that decision.

7-135 The Tribunal also heard some background evidence of assistance from Ms. Catherine Butler, regarding a conversation which she had had with Dr. Alton at the time, who was a close family friend of Ms. Butler. It was her recollection that in mid-April, 1989, she received a telephone call from Dr. Alton in the course of which he indicated to her that the Board would be prepared to make an ex-gratia payment towards Mr. Lenihan's treatment

in the region of £10,000.00. Ms. Butler informed the Tribunal that she conveyed this information to Mr. Haughey, who acknowledged that fact. Ms. Butler did not know until evidence was heard by the Tribunal that the Board had in fact made a payment of £57,000.00 towards Mr. Lenihan's medical expenses. Mr. Paul Kavanagh, who it will be recalled had been asked by Mr. Haughey to raise funds for the purposes of defraying Mr. Lenihan's medical expenses and who understood that the figure that was required was in the region of £150,000.00 to £200,000.00, was also apparently kept in the dark regarding the Board's contribution. He however had some recollection that, at a time after the completion of his fundraising, he may have heard that a payment had been made by the Board.

7-136 The Tribunal is left with the impression that the dealings of the Board in relation to this claim and the making of the ex-gratia payment were shrouded in secrecy and that there was considerable sensitivity regarding the matter. The normal procedure for the making of special claims was not followed in this case. The application, such as it was, was instituted by Mr. Haughey and all of the Board members were aware of Mr. Haughey's pivotal involvement. The Tribunal is of the view that had Mr. Haughey's interest been raised at the meeting of the Board on 18th May, 1989, this would have been recalled by Mr. Mitchell. There is however no doubt that the Board members were aware of Mr. Haughey's role and the Tribunal is inclined to the view that they were in all probability informed privately.

7-137 It is also significant that the file in relation to this special claim cannot be retrieved from microfiche even though Mr. Lenihan's ordinary claims file was available. It appears to the Tribunal that there can be but two explanations: either there was no file kept, or the file that was kept was destroyed without following the Board's procedure, namely, without the file being microfiched in advance of destruction.

7-138 As has already been averted to, the minute of the decision of the Board taken on 18th May, 1989 was deficient in that it omitted the quantum of the ex-gratia payment approved. This is in contrast to the minuting of all other special claims that were approved on that day, all of which were fully recorded in the minutes. The Tribunal is inclined to the view that Mr. Mitchell was correct in his supposition that he was directed by the Board to minute the Board's decision in that manner.

7-139 All of these matters and considerations point to a degree of secrecy on the part of a Semi-State body answerable to its subscribers and to the taxpayer which was undesirable and inappropriate. While the Tribunal has no means of knowing whether a special claims application made by Mr. Lenihan in the ordinary course would have been approved, and while the Tribunal intends no criticism of Mr. Lenihan, who can have known nothing of what occurred, given that he was hospitalised at the time in the United States, it appears to the Tribunal, that the Board in the manner of approving this payment of £57,000.00 may have acted inappropriately and certainly

acted at the behest of Mr. Haughey who was head of the Government from which they held office.

Other expenditures for the benefit of Mr. Lenihan

7-140 On the basis of the evidence available from the Department of Foreign Affairs through which the invoices and payments in respect of Mr. Lenihan's treatment were channelled, it appears that the total sum which was debited to the Leader's Allowance Account to meet expenses relating to Mr. Lenihan's treatment was £70,283.06 (apart from a payment of £12,914.50 made in February, 1991 and which was funded independently). Mr. Haughey, in his evidence to the Tribunal, insisted that all of the funds collected were one way or the other applied for the benefit of Mr. Lenihan, but did not instance any item of expenditure made in addition to the payments identified by the Tribunal.

7-141 Ms. Foy, who dealt with these payments, indicated in her evidence that it was her impression that payments to meet Mr. Lenihan's medical expenses were far more substantial than those identified by the Tribunal, and that all of the funds which she had recorded as having been raised for that purpose had been exhausted by the time a further bill for £12,914.50 was submitted. She recalled informing Mr. Haughey of that fact, and as the balance on the Leader's Allowance Account remained at a high level until March, 1990, she assumed that her conversation with Mr. Haughey to that effect must have dated from then, or from some time later.

7-142 Ms. Foy gave evidence in July, 1999 and again in October, 1999. When she returned to give evidence on the second occasion, having in the meantime discussed matters with Mr. Paul Kavanagh, she indicated that she had some idea (as she put it) that cash advances had been made to Mr. Lenihan or to his wife, Mrs. Ann Lenihan. She qualified her comments by indicating that she had never directly furnished any cash payments to Mr. Lenihan or to his wife, and that it had been Mr. Paul Kavanagh who had told her about this in the interim.

7-143 The Tribunal heard evidence from Mrs. Lenihan, who testified that, apart from the sum of £200.00, which Mr. Haughey's driver delivered to her at her home in Castleknock on the morning that she travelled with her husband to the United States for his treatment, she received no cash payments whatsoever from Mr. Haughey. She was with her husband continuously during the period of his treatment, both before and after, and she confirmed that at no time did her husband receive any such payments. She and her husband were jointly involved in the management of their personal finances, and had her husband received any additional payments, she would have known of them.

7-144 The Tribunal has no hesitation in accepting Mrs. Lenihan's testimony. Apart from conjecture on the part of Ms. Foy, apparently at the

instance of Mr. Kavanagh, no other witness made any similar suggestion. There was no evidence whatsoever that any additional expenditures had been made for the benefit of Mr. Lenihan, other than those channelled through the Department of Foreign Affairs. Mr. Haughey had every opportunity to inform the Tribunal of any other items of expenditure which did not relate directly to Mr. Lenihan's hospitalisation or associated costs, but did not do so.

Mr. Lenihan's knowledge of the donations made for his benefit

7-145 When Mr. Lenihan returned from the United States he spent an extended period in hospital in this country, and following his discharge in September, 1989, he was anxious to know the identity of the persons who had contributed to his expenses, so that he could extend his thanks personally. The Lenihan family were aware that Mr. Haughey and Mr. Hanley had been involved in raising funds for that purpose, and were exceedingly grateful for their efforts. Mr. Brian Lenihan, Mr. Lenihan's son, informed the Tribunal that the evening before the General Election in 1989, which was contested by his father during the period of his hospitalisation in the United States, Mr. Hanley visited the Lenihan family home in Castleknock. Mr. Brian Lenihan asked Mr. Hanley how his father's treatment was being funded, and was informed by Mr. Hanley that a number of persons had been generous and had contributed funds, but he did not disclose their identities to Mr. Brian Lenihan. Although Mr. Brian Lenihan never discussed this matter with his father, it was his impression that his father was not fully apprised as to the identity of his benefactors.

7-146 Ms. Foy related to the Tribunal that, after his discharge from hospital, Mr. Lenihan came to the Taoiseach's office and asked her about the matter. She suggested that he should discuss it with Mr. Haughey and escorted Mr. Lenihan into Mr. Haughey's office. According to Mr. Haughey, he learnt of Mr. Lenihan's query from a member of his staff, he spoke to Mr. Paul Kavanagh about the matter and he was under the impression that Mr. Kavanagh had in turn furnished a list of donors to Mr. Lenihan, which had been prepared by Ms. Foy. Mr. Haughey maintained that he was not privy to any of these matters and his impression was that Mr. Lenihan had expressed complete satisfaction, and had made it his business to go to all, or most of the persons, who had contributed to extend his thanks personally.

7-147 It was Ms. Foy's recollection that Mr. Haughey had suggested to Mr. Lenihan that he should contact Mr. Kavanagh directly. She had no memory of ever preparing any list of donors, and she believed that she could not have prepared such a list, as some of the donations had been made anonymously. Mr. Kavanagh recalled that he received an A4-sized document from Ms. Foy which identified the source and amount of each contribution, except that certain of the contributions were attributed to anonymous sources. He met Mr. Lenihan at a restaurant in St Stephen's

Green, and discussed the contents of the list with him. Ms. Catherine Butler also recalled seeing Ms. Foy giving a document to Mr. Kavanagh, which she understood was the list of donors to the Lenihan fund.

7-148 Neither Mrs. Lenihan nor Mr. Brian Lenihan, Mr. Lenihan's son, knew anything about a list of donors having been provided to Mr. Lenihan. Moreover, they were not even aware of Mr. Paul Kavanagh's involvement in raising funds for Mr. Lenihan's benefit prior to the evidence which was led by the Tribunal. Mr. Lenihan certainly knew that Mr. Tully and Dr. de Valera were contributors as he thanked them personally. However, not one of the other donors identified by the Tribunal that is, Mr. Magnier, Mr. Fitzpatrick, Mr. Murphy, Mr. Goodman, Dr. Farrell or Mr. Mark Kavanagh recalled having received an acknowledgment or an expression of appreciation from Mr. Lenihan. If it was Mr. Lenihan's intention in seeking this information to extend his thanks personally to his benefactors, and the Tribunal has no reason to believe otherwise, and if Mr. Lenihan was provided with a comprehensive list, it is surprising that he overlooked so many substantial contributors. The Tribunal considers that the only reasonable explanation is that Mr. Lenihan did not know that contributions had been made by Mr. Magnier, Mr. Fitzpatrick, Mr. Murphy, Mr. Goodman, Dr. Farrell or Mr. Mark Kavanagh. Both Ms. Foy and Mr. Paul Kavanagh acknowledged that a number of donations had been recorded anonymously but it would be surprising if the donations from these persons, amounting in total to £115,000.00, had all been recorded anonymously in what was intended to be a comprehensive list to enable Mr. Lenihan extend his personal thanks. The Tribunal is compelled to conclude that if information was provided to Mr. Lenihan about the sources of donations made for his benefit, such information was far from complete.

Lodgements to the account in 1990 and 1991

7-149 1990 was the year after the General Election of 1989 and the collection of funds to meet Mr. Lenihan's medical expenses. Following the injection of funds in 1989, the balance on the Leader's Allowance Account remained in credit until March, 1990. At some time following March, 1990, Ms. Foy informed Mr. Haughey that all of the funds which she had recorded as having been raised for the benefit of Mr. Lenihan were exhausted. This exchange arose in the context of a final bill for £12,419.50 for travel by Mr. Lenihan and his party to and from the Mayo Clinic, when Mr. Lenihan returned for a medical review in early January, 1990. These matters will be referred to in more detail later in this Chapter.

7-150 There were no significant lodgements to the Leader's Allowance Account in 1990 over and above instalments of the Leader's Allowance itself. In the following year, 1991, the excess lodgements were £100,423.84. One of the excess lodgements on 7th March, 1991, related to a transfer of funds in relation to a Party matter from Fianna Fáil Head Office to the Leader's Allowance Account, to reimburse the account for an expenditure

made on behalf of the Fianna Fáil Party. Excluding that lodgement, the total of the excess lodgements to the account for that year was £85,423.84. The Tribunal was able to identify the source of £65,000.00 of these additional lodgements which represented the proceeds of cheques provided by Irish Permanent Building Society and by the late Mr. Philip Monaghan.

Irish Permanent Building Society

7-151 There were in fact three cheques issued by the Irish Permanent Building Society in the years 1990 and 1991 of which the Tribunal heard evidence. These cheques were as follows:—

- (i) Cheque for £25,000.00 dated 15th October, 1990 and payable to Fianna Fáil — Mr. Fleming confirmed that this cheque was received by Fianna Fáil and recorded as a contribution from Irish Permanent Building Society. It is clear from the paid cheque, which was available to the Tribunal, that the cheque was lodged to the Fianna Fáil Head Office bank account on 26th October, 1990. The cheque was signed by Dr. Farrell and Mr. Hogan, and while Dr. Farrell had no recollection of it, his supposition was that the cheque represented a donation by Irish Permanent Building Society to the Fianna Fáil Party in connection with the Party's presidential election campaign. Mr. Fleming confirmed that an appeal for funds had been made by Fianna Fáil in connection with that campaign, and as the proceeds of the cheque were received by Fianna Fáil and were lodged to its account, the Tribunal believes that Dr. Farrell was correct in his supposition that the cheque represented a donation to the Fianna Fáil Party.

- (ii) Cheque for £10,000.00 dated 19th October, 1990 payable to Mr. Charles J Haughey — This cheque payable to Mr. Haughey was dated four days after the cheque for £25,000.00 payable to Fianna Fáil. The Tribunal is satisfied from the evidence available and from the markings on the paid cheque, that it was endorsed by Mr. Haughey and lodged to the account of Celtic Helicopters at Bank of Ireland, Dublin Airport Branch Account No. 66559536 on 22nd October, 1990. This was the same account to which the Irish Permanent Building Society cheques were lodged on 13th June, 1989. On 7th November, 1990, a cheque for precisely the same sum of £10,000.00 was drawn on the Celtic Helicopters account, payable to cash. Microfiche copies of the front and reverse sides of the Celtic Helicopters cheque were available to the Tribunal, and it is apparent that the cheque was endorsed by Mrs. Maureen Haughey and was lodged to an account in the name of Mrs. Haughey with the EBS Building Society on 9th November, 1990.

The cheque was signed by Dr. Edmund Farrell and Mr. Enda Hogan although neither Dr. Farrell nor Mr. Hogan had any recollection of it. Dr. Farrell indicated in his evidence that the

cheque would not have been drawn unless there had been a separate approach, whether in writing or personally but he had no recollection of any such approach. Similarly, Mr. Haughey could not assist the Tribunal regarding the purpose for which this payment was made, or how the cheque was transmitted to Celtic Helicopters. Whilst Mr. Haughey accepted that the cheque was endorsed by him, and that he must therefore have had possession of it at some time, he thought it unlikely that he would have transmitted the cheque personally to Celtic Helicopters. He speculated that it might have been a payment which was made in error and that the cheque issued by Celtic Helicopters on 7th November, 1990 was a refund. Similarly, Mr. Barnicle had no recollection of the matter and thought it probable that the lodgement represented another block payment for flying hours made by Mr. Haughey and subsequently cancelled.

This cheque for £10,000.00 was made payable to Mr. Haughey as distinct from the cheque issued four days earlier which was made payable to Fianna Fáil. Both cheque stubs respectively record that the cheques were payable to “*Fianna Fáil Election Fund*” and “*CJ Haughey FF Party Funds*”. The latter payment cannot have been intended as a contribution to Mr. Haughey’s constituency expenses as Mr. Haughey was not personally involved in any campaign in 1990. The payment must therefore have been for a purpose unconnected with the presidential election and unconnected with any constituency expense.

- (iii) Cheque dated 16th August, 1991 for £40,000.00 payable to Fianna Fáil — This third cheque was signed by Dr. Farrell and by Mr. Roy Douglas, who was a Director of the Society, having been appointed in June, 1991. Mr. Douglas recalled that at one of their frequent meetings, Dr. Farrell informed him that the Society had received requests for political donations in the context of Local Elections and that it was the policy of the Society to make political donations at election times to the main parties upon request. Mr. Douglas recalled that Dr. Farrell told him that the amounts that he was proposing were roughly in line with the Dáil representation of the parties. While Dr. Farrell could not recall to whom he forwarded this cheque, he believed that he would have received an application for funds. The records of the Society confirm that payments were made to other political parties in August, 1991 and in a Report prepared in advance of the Society’s conversion to a public limited company, this expenditure of £40,000.00 was described as a contribution to Local Election funds. Mr. Haughey had no recollection regarding this cheque; he could not recall whether he had solicited the cheque from Dr. Farrell or whether he had received it from him. Mr. Haughey did accept that it appeared to be self-evident that the cheque had been endorsed by him and

had been lodged to the Leader's Allowance Account as part of a lodgement of £52,263.25 on 2nd September, 1991.

7-152 Mr. Haughey in his evidence to the Tribunal recalled that Mr. Paul Kavanagh had at some stage mentioned to him that Dr. Farrell was anxious to assist him "*personally and politically*" as Mr. Haughey termed it. Mr. Haughey's understanding, as explained by him to the Tribunal, was that Dr. Farrell was happy to assist him as a political person by donating funds to be used by him as he saw fit. As far as Mr. Haughey was concerned, Dr. Farrell in making donations made no distinction between a donation to the Fianna Fáil Party, a donation to Mr. Haughey in his personal political capacity, and a donation to Mr. Haughey personally. Mr. Haughey doubted that Dr. Farrell, as a non political person, would have distinguished between supporting Mr. Haughey as a politician, Fianna Fáil as a Party or Mr. Haughey personally.

7-153 Mr. Paul Kavanagh returned to give evidence subsequent to Mr. Haughey's deposition being read into the record of the Tribunal. Mr. Kavanagh related to the Tribunal that at some time prior to the 1987 General Election, which was on 17th February, 1987, he had a social meeting at the Shelbourne Hotel with Dr. Farrell and Mr. Patrick Kevans, a Solicitor and then a Board Member of Irish Permanent Building Society. In the course of conversation, as Mr. Kavanagh recalled it, Dr. Farrell expressed the view that it was vital to ensure that Mr. Haughey was elected Taoiseach, and observed that, with Mr. Haughey's lifestyle, it was necessary that he be supported personally. According to Mr. Kavanagh, Dr. Farrell wondered how Mr. Haughey could be assisted with his personal expenses. Mr. Kavanagh's impression, from that exchange, was that Dr. Farrell was a firm supporter of Mr. Haughey and wished to deal with him directly in relation to fundraising matters. Mr. Kavanagh had also learned from one of the members of the Fianna Fáil Fundraising Committee, who had sought funding from Dr. Farrell, that Dr. Farrell's preference was to deal personally with Mr. Haughey. Following that meeting, Mr. Kavanagh informed Mr. Haughey of his discussion with Dr. Farrell, and it was Mr. Kavanagh's view that thereafter all fundraising from Dr. Farrell was handled exclusively by Mr. Haughey.

7-154 Neither Dr. Farrell nor Mr. Kevans had any recollection of the meeting at the Shelbourne Hotel, or having had any conversation along the lines reported by Mr. Kavanagh. Dr. Farrell disputed that he ever intended to support Mr. Haughey personally, and he asserted that at all times his intention was to support the Fianna Fáil Party, and indeed to support the political system, by making donations to other parties.

7-155 The Tribunal considers it probable that Mr. Kavanagh did have a conversation with Dr. Farrell of the type that he reported to the Tribunal, and did relay these matters to Mr. Haughey, and suggest that Mr. Haughey should deal exclusively with Dr. Farrell regarding funding matters. It is of

course possible that Mr. Kavanagh misunderstood Dr. Farrell, and that Mr. Haughey in turn misunderstood Mr. Kavanagh. What is clear is that £140,000.00 of funds provided by Irish Permanent Building Society by cheques signed by Dr. Farrell were lodged to the Leader's Allowance Account, £100,000.00 in 1986 and £40,000.00 in 1991. It is also the case that the three other cheques provided by Dr. Farrell, being the cheque for the Lenihan fund, the cheque for £10,000.00 intended for Mr. Haughey's constituency expenses and the further cheque for £10,000.00 provided in October, 1990, amounting to £40,000.00 were not applied in the manner which, according to Dr. Farrell's evidence, he intended. All three cheques were endorsed by Mr. Haughey, and all three cheques were channelled through the account of Celtic Helicopters, and none of them appears to have been applied in connection with any political, quasi political or parliamentary activity.

Payment of £25,000.00 by Mr. Philip Monaghan

7-156 The Tribunal heard much of the evidence in relation to the Leader's Allowance Account, including the funds collected to defray Mr. Lenihan's medical expenses, in July and October, 1999. Following those sittings, the Tribunal continued examining the Leader's Allowance Account in the course of its private investigative work, and in that connection Allied Irish Banks, with the consent of the Fianna Fáil Party, provided the Tribunal with such further records as could be retrieved. In the latter part of the year 2000, additional documents concerning the operation of the account came to light, and in particular the Bank brought to the attention of the Tribunal a cheque which was lodged to the account on 13th February, 1991.

7-157 The cheque was dated 6th February, 1991, it was in the sum of £25,000.00 and it was payable to Charles J Haughey, Leader's Allowance Account. The cheque was drawn on the account of the late Mr. Philip Monaghan and Mrs. Mary Monaghan with Allied Irish Banks, 73 Clanbrassil Street, Dundalk, County Louth; it was signed by Mr. Monaghan; and the reverse side of the cheque was endorsed by Mr. Haughey. On the same date that the proceeds of this cheque were lodged to the Leader's Allowance Account, a cheque for £12,419.50 was drawn from the account and this represented a payment to the Department of Defence. The Tribunal heard evidence from Mr. Brian Spain, Mr. Lenihan's then private secretary, in connection with this matter. As has already been mentioned, Mr. Lenihan returned to the Mayo Clinic for medical review in late December, 1989. Mr. Spain made the arrangements for that return trip, and it was clear to him from dealings which he had with Ms. Foy and Ms. Butler that all costs incurred in connection with the return visit would be met from funds under Mr. Haughey's control. This payment of £12,419.50 was the final outstanding bill, and it related to the cost of return air flights for Mr. Lenihan and his party from Dublin to the Mayo Clinic.

7-158 The purchase of the airline tickets was made by the Department of Defence, subject to the understanding that the cost would be reimbursed

to the Department. Mr. Spain recalled that, as a result of a query which arose, the cost of the airline tickets was not discharged by the Department until August, 1990. He believed that shortly after that, Mr. Haughey asked to see him and informed him that there would be a short delay in payment to the Department and queried whether this would create a difficulty in terms of the Department's end of year accounts. Mr. Spain made inquiries of the Department's Finance Division and met Mr. Haughey on a second occasion to inform him that the anticipated delay in payment would not give rise to a difficulty in terms of the Department's accounts, and that the expenditure would in the meantime be allocated to a suspense account.

7-159 Mr. Paul Kavanagh, who was involved in the initial effort to raise funds in 1989, was also involved in soliciting this payment. Mr. Roy Donovan, who was a Fianna Fáil fundraiser, recalled that he met Mr. Kavanagh in the Shelbourne Hotel in late 1990 or early 1991. Mr. Donovan related that Mr. Kavanagh was in a highly emotional state; that Mr. Kavanagh referred to Mr. Haughey's generosity regarding Mr. Lenihan's expenses; and that Mr. Kavanagh informed Mr. Donovan that Mr. Haughey needed to raise a further £50,000.00 to meet costs connected with Mr. Lenihan's treatment. Mr. Kavanagh inquired of Mr. Donovan whether he could suggest anyone who Mr. Kavanagh might approach for a donation as he, Mr. Kavanagh, had exhausted all of his usual sources. Mr. Donovan took this to mean that, having collected funds for the then recent presidential election campaign, Mr. Kavanagh felt that he could not approach contributors so soon again. It was Mr. Donovan's impression, from what Mr. Kavanagh conveyed to him, that Mr. Haughey was under pressure to meet expenses which had arisen, and that there was an urgent need to raise funds.

7-160 Mr. Kavanagh had no memory of Mr. Haughey asking him to raise funds on a second occasion to meet Mr. Lenihan's expenses, although he did recall his approach to Mr. Donovan. Mr. Kavanagh had forgotten that he had raised additional funds in 1991, and he had also forgotten that he had been seeking to collect a sum of £50,000.00. He accepted that, if he mentioned the figure of £50,000.00 to Mr. Donovan, then that must have been his target figure.

7-161 Mr. Donovan was a close associate of Mr. Monaghan, who he knew to be a generous man of comfortable means and a contributor to the Fianna Fáil Party. Mr. Monaghan also lived in Mr. Lenihan's constituency, and Mr. Donovan suggested his name to Mr. Kavanagh. As Mr. Kavanagh was not acquainted with Mr. Monaghan, Mr. Donovan telephoned Mr. Monaghan in the first instance to ask him if he would meet Mr. Kavanagh. Mr. Donovan thought it was unlikely that he mentioned the purpose of that meeting, or that it related to funding for Mr. Lenihan, when he telephoned Mr. Monaghan and he thought that he would have simply said that Mr. Haughey was anxious that Mr. Monaghan should meet Mr. Kavanagh.

7-162 Mr. Monaghan recollected that he had contributed £25,000.00 in 1991. He understood from what Mr. Donovan had informed him that significant contributors to the Fianna Fáil Party had fallen away, and it was in those circumstances that funding was being sought. Mr. Monaghan was definite in his view that he was not told by Mr. Donovan or by Mr. Kavanagh that the funds which were being sought from him were for the purpose of meeting expenses of Mr. Lenihan. As far as Mr. Monaghan was concerned, the funds were being sought for the general benefit of the Fianna Fáil Party. He recalled Mr. Kavanagh calling to his home in Castleknock to collect the cheque from him, but he did not recall any details of that meeting, or indeed of an earlier meeting in his offices in Harcourt Street, until he reviewed the contents of his diary. That review recorded an earlier meeting on 15th January, 1991. The entry in respect of that meeting was “*Paul Kav Re. CJH*” with the figure “25” written beneath.

7-163 Mr. Kavanagh also recalled collecting the cheque from Mr. Monaghan at his home in Castleknock. Mr. Kavanagh had not been there previously, and found it difficult to locate, and his arrival was delayed. His clear recollection was that he informed Mr. Monaghan that the funds were being collected for the Lenihan Fund and that the cheque should be made payable to Charles J Haughey Leader’s Allowance Account. Mr. Monaghan asked Mr. Kavanagh to write the name of the payee on the cheque and, according to Mr. Kavanagh, he did so in Mr. Monaghan’s presence.

7-164 Mr. Kavanagh assumed that he delivered the cheque to Ms. Foy, and that he must have reported to Mr. Haughey that he had managed to raise £25,000.00. He was unsure as to whether he had sought to raise any further funds. Mr. Kavanagh recalled that, in his earlier evidence to the Tribunal, he had indicated that he felt that the funds he collected for the Lenihan Fund had fallen short of his target figure. In that regard, he thought that he had perhaps been confused between the first tranche of payments and the second tranche of payments, and that the shortfall may have arisen in the case of the second tranche.

7-165 Mr. Haughey did not remember seeking to raise £50,000.00 to meet additional expenses in connection with costs associated with Mr. Lenihan’s treatment. He recalled generally that funds were required to meet Mr. Lenihan’s review at the Mayo Clinic, and Ms. Foy had reminded him that she had informed him that the funds raised for that purpose had been exhausted. Mr. Haughey could advance no reason as to why he might have sought to raise a figure in excess of £12,500.00, or thereabouts, being the payment due to the Department of Defence.

7-166 It is puzzling to the Tribunal that Mr. Monaghan appeared to have no recollection that his contribution had been sought in connection with the Lenihan Fund. Mr. Monaghan indicated in his evidence that had he been asked to contribute to such fund, he would probably have done so, and the Tribunal has no reason to believe that his recollection was flawed. Mr.

Kavanagh was clear that his purpose in collecting funds was to meet expenses which had arisen in connection with Mr. Lenihan, and this is what he conveyed to Mr. Donovan. What is equally clear is that there was no necessity to raise £50,000.00 or £25,000.00 for any expenses associated with Mr. Lenihan's treatment, as the only outstanding bill that had to be met was one for £12,419.50.

7-167 This would not have been known to Mr. Kavanagh who would have relied entirely on what Mr. Haughey told him. In all of the circumstances, there can be no other conclusion than that Mr. Haughey deliberately sought to raise additional funds which were in all probability applied for his own personal benefit.

Mr. Mark Kavanagh and Dr. Michael Smurfit donations to Fianna Fáil

7-168 In addition to the payment of £25,000.00 made by cheque payable to Fianna Fáil in respect of the Lenihan Fund, Mr. Mark Kavanagh, on behalf of Customs House Docks Development Company Ltd also furnished Mr. Haughey on the morning of the Election with three bank drafts for £25,000.00 each payable to cash. Mr. Haughey informed Mr. Kavanagh that £50,000.00 of this donation, that is, two of the drafts, would be remitted to Fianna Fáil central funds, and that one of the drafts, subject to Mr. Mark Kavanagh's agreement, would be used by Mr. Haughey at his discretion to assist individual candidates in their constituencies.

7-169 Having discovered that the cheque for £25,000.00 intended for the Lenihan Fund had been transmitted and recorded as an anonymous donation to Fianna Fáil, the Tribunal reviewed the entire of the Fianna Fáil election receipts for 1989, to ascertain whether any other donation had been made for £50,000.00. In Mr. Fleming's master book, there was a donation of £50,000.00 recorded anonymously. In Mr. Fleming's subsidiary list which recorded donations for which receipts were transmitted to Mr. Haughey rather than directly to the donors, this anonymous donation was listed as having been received from Dr. Michael Smurfit. Mr. Fleming had retained a copy of the instrument by which that donation was made, and the instrument was a bank draft for £50,000.00, dated 20th June, and issued by Guinness & Mahon Bank. The entry in Mr. Fleming's subsidiary list was "*anon per An T, M Smurfit*".

7-170 The Tribunal heard evidence from Ms. Sandra Kells regarding the purchase of this draft from Guinness & Mahon. The draft was issued by Guinness & Mahon on 20th June, 1989, and the funds to purchase the draft were two of the three bank drafts which had been provided by Mr. Mark Kavanagh. The third bank draft provided by Mr. Mark Kavanagh was also traced to Guinness & Mahon. That third draft was lodged to one of the Amiens accounts controlled by Mr. Traynor, Account 1218001. From that account, it was transferred to another Amiens Account No. 10407006, and the sum of £25,000.00 was withdrawn from that account in cash in two

tranches of £5,000.00 on 29th June, 1989 and £20,000.00 on 5th July, 1989. It follows therefore that the three bank drafts furnished by Mr. Kavanagh to Mr. Haughey were presented for payment to Guinness & Mahon on 20th June, which was the same day as the Leader's Allowance Account cheque for £25,000.00 was lodged to the Amiens account in Guinness & Mahon.

7-171 Dr. Smurfit confirmed that he had made a contribution to Fianna Fáil in the sum of £60,000.00 in the context of the 1989 Election. The payment was made by a transfer of Stg.£52,215.00 (the sterling equivalent of £60,000.00) from an account of the Jefferson Smurfit Foundation Trustees Limited with Allied Irish Banks (Channel Islands) Limited, account number 31708/01, to account Ansbacher Cayman with Henry Ansbacher & Company, 1 Mitre Square, London, EC3A 5AN, Account Number 190017/202. This was an account through which substantial sums of money were channelled for the benefit of Mr. Haughey, including payments made by Mr. Ben Dunne and Mr. Dermot Desmond. The funds were not received by the Fianna Fáil Party, and do not appear to have been remitted to an account of Ansbacher Cayman in this jurisdiction.

7-172 The circumstances surrounding the making of this payment, which according to Dr. Smurfit's evidence was intended for Fianna Fáil, were highly unusual, and were shrouded in secrecy. Dr. Smurfit believed that the donation was requested by Mr. Haughey, and that the request was made as a result of either a telephone call or a personal approach by Mr. Haughey. Dr. Smurfit's recollection was that Mr. Haughey requested him to deal with Mr. Traynor in relation to payment matters, and Dr. Smurfit presumed that he in turn must have requested the late Mr. David Austin, who was then a Director of the Smurfit Organisation and a signatory on the Allied Irish Banks Account in the Channel Islands, to deal with Mr. Traynor in relation to the making of the payment. While Dr. Smurfit had no recollection of these matters, it is clear that on 14th June, 1989, Mr. Austin instructed Mr. Bruce Ferguson of Allied Irish Banks, (Channel Islands) Limited, to arrange payment in sterling from the Jefferson Smurfit Foundation Account to Henry Ansbacher & Company Limited in London for crediting to the Ansbacher Cayman Sterling Account Number 190017/202. No written instructions were received from Mr. Traynor in relation to the manner in which the payment was to be made, and no written receipt of the payment was received by the Smurfit Foundation.

7-173 The application of these two donations, one for £100,000.00 by Mr. Mark Kavanagh and one for £60,000.00 by Dr. Michael Smurfit was as follows:—

- (i) **£25,000.00** intended by Mr. Mark Kavanagh for the Lenihan Fund was received by Fianna Fáil from Mr. Haughey and was attributed to Mr. Mark Kavanagh. Fianna Fáil was instructed by Mr. Haughey or his office to record the donation as an anonymous donation, and to forward a receipt to Mr. Haughey's office.

- (ii) **£50,000.00** of Mr. Mark Kavanagh's donation, intended for Fianna Fáil was converted into a bank draft in Guinness & Mahon and was received by Fianna Fáil from Mr. Haughey as a donation from Dr. Smurfit. Fianna Fáil was also instructed by Mr. Haughey to record this donation as an anonymous donation and to forward a receipt to Mr. Haughey's office.
- (iii) **£25,000.00** intended by Mr. Mark Kavanagh as a donation to Fianna Fáil was lodged to an Amiens Account at Guinness & Mahon and was withdrawn in cash.
- (iv) **£60,000.00** intended by Dr. Smurfit for Fianna Fáil was transferred to an account of Ansbacher Cayman with Henry Ansbacher & Company in London and it was not received by Fianna Fáil.

7-174 In effect therefore, £25,000.00 of the funds provided by Mr. Mark Kavanagh were cashed, the entire of the £60,000.00 provided by Dr. Smurfit was never received by Fianna Fáil, and none of the funds intended by Mr. Kavanagh for the Lenihan Fund were applied for Mr. Lenihan's benefit. Mr. Traynor was directly involved in the furnishing of instructions for the transmission of Dr. Smurfit's donation, and must also have been involved in the transmission of Mr. Mark Kavanagh's bank drafts to Guinness & Mahon. It is accordingly the Tribunal's view that these two sums, amounting in total to £85,000.00, were ultimately applied for the personal benefit of Mr. Haughey.

7-175 Mr. Haughey could not recollect having any contact with Dr. Smurfit in 1989, and was very doubtful that he would have made an approach to him. Mr. Haughey was very firmly of the view that Mr. Traynor never would or did collect money for Fianna Fáil, and would not have been involved in the raising of funds at Election time for Fianna Fáil. Mr. Haughey could not say and did not know whether the £60,000.00 provided by Dr. Smurfit was a personal donation to him.

7-176 Dr. Smurfit was closely acquainted with Mr. Traynor, they both having served together on the Board of New Ireland Assurance Company. Dr. Smurfit accepted in evidence that he knew of Mr. Traynor's close association with Mr. Haughey's personal finances. All previous and subsequent political donations made by the Smurfit Organisation were made in an entirely orthodox fashion by cheque or instrument payable to the intended donee. This was the only donation made by the Smurfit Organisation by a transfer of funds to an off-shore account. While the Tribunal appreciates that Dr. Smurfit may not himself have been involved in making arrangements for the payment, the Tribunal believes that the fact that Mr. Haughey asked Dr. Smurfit to deal with Mr. Traynor in connection with the payment must of itself have raised Dr. Smurfit's suspicions as to the ultimate application of the funds. It is the Tribunal's view that Dr. Smurfit was, at the very least, indifferent as to how these funds would be applied,

and must have known or ought to have apprehended that there was every possibility that the funds would be used for Mr. Haughey's personal benefit.

7-177 Dr. Smurfit recalled that on a separate occasion he had been asked by Mr. Traynor to assist with Mr. Haughey's personal finances, but declined to do so. He could not recall the date on which this request was made, but did recollect that it arose in the course of a telephone conversation when Dr. Smurfit had contacted Mr. Traynor to canvass his interest in joining the K Club in County Kildare. Dr. Smurfit believed that he was seeking to promote corporate membership of the K Club in the period from 1989 to 1991 and accordingly this conversation must have occurred during that time. Dr. Smurfit could not recall whether he declined Mr. Traynor's request immediately, or whether he considered it and perhaps discussed it with Mr. Austin, and subsequently contacted Mr. Traynor. In either event, he stated that the reason he declined Mr. Traynor's request was that he did not consider it appropriate for him to assist with Mr. Haughey's personal finances.

7-178 Dr. Smurfit also informed the Tribunal that in 1990, the Smurfit Group made a personal gift to Mr. Haughey of a painting by Jack B Yeats entitled "*The Forge*", in recognition of Mr. Haughey's assuming office at the Council of Ministers on Ireland's assumption of the Presidency of the European Union. At that time, the Smurfit Group made a presentation to Mr. Haughey of a painting by Sir John Lavery of the raising of the flag at Aras an Uachtarán. This latter presentation was a gift to the Irish Nation by the Smurfit Group and the Tribunal understands that it is currently hanging in the State Collection.

7-179 Dr. Smurfit recalled that on the day that he had an appointment with Mr. Haughey at Government Buildings to present the Lavery painting to him, on behalf of the State, he decided on the spur of the moment to make a personal gift in the form of the Yeats painting. The presentation was made during business hours in Government Buildings, and only Dr. Smurfit and Mr. Haughey were present. Dr. Smurfit recalled that he had made the presentation to Mr. Haughey personally, subject to the caveat that he did not expect "*the painting to be sold the following day*".

7-180 In the case of both of the donations attributed to Mr. Mark Kavanagh and Dr. Smurfit, Fianna Fáil Head Office was instructed that receipts should be furnished anonymously to Mr. Haughey's office. No receipt or written acknowledgement was received by either Dr. Smurfit or Mr. Mark Kavanagh. Some years later, in 1996, the matter of Mr. Mark Kavanagh's donations arose when the late Mr. Eoin Ryan, who had rejoined the Fianna Fáil Fundraising Committee on Mr. Albert Reynolds' appointment as Taoiseach in 1992, approached Mr. Mark Kavanagh to make a contribution to the Fianna Fáil Party. Mr. Mark Kavanagh indicated that he was disposed to consider making a donation but that he was annoyed that he had received no acknowledgment or receipt for the previous donation

which he had made in 1989. It was Mr. Ryan's recollection that Mr. Mark Kavanagh did not quantify the actual donation which had been made, although it was his understanding from what Mr. Kavanagh said that the donation was substantial. Mr. Ryan was under the impression that any further donation by Mr. Kavanagh was conditional on some explanation being forthcoming from the Fianna Fáil Party. Mr. Ryan indicated to Mr. Kavanagh that he would refer the matter to Mr. Ahern, who was then Leader of the Opposition.

7-181 After his discussion with Mr. Mark Kavanagh, Mr. Ryan duly spoke to Mr. Ahern and explained what had occurred, and Mr. Ahern informed Mr. Ryan that he would make the necessary inquiries. Mr. Ryan then reverted to Mr. Kavanagh to advise him as to the action which he had taken, but believed that Mr. Kavanagh may not have been available and that he may have left a message for him. Mr. Kavanagh recalled that he had received such a communication from Mr. Ryan but he was also doubtful as to whether they had actually spoken to each other further.

7-182 Having been informed of the matter, Mr. Ahern made contact with Mr. Sean Fleming, the then Financial Controller of the Fianna Fáil Party, and explained what had occurred, and asked whether a donation from Mr. Mark Kavanagh was recorded in Fianna Fáil Head Office records. Mr. Ahern did not recall precisely what Mr. Fleming reported to him, but accepted Mr. Fleming's evidence that he had informed Mr. Ahern that a donation of £25,000.00 was recorded, and that a receipt had been forwarded to Mr. Haughey.

7-183 Some short time later, Mr. Ahern attended a function held at Mr. Kavanagh's office in Wellington Road, in Dublin. There were a number of persons present from the construction industry, and Mr. Ahern addressed the gathering about Fianna Fáil Party policy. After he completed his address, Mr. Ahern called Mr. Mark Kavanagh aside, and apologised to Mr. Kavanagh and expressed his regret for what had occurred, and assured Mr. Kavanagh that his donation had been received and was appreciated by the Fianna Fáil Party. Mr. Mark Kavanagh was clearly mollified by Mr. Ahern's words, as he made a subsequent donation by cheque payable to Fianna Fáil.

7-184 What is extraordinary about these events is that it appears from the evidence of Mr. Ryan, Mr. Mark Kavanagh and Mr. Ahern that in the course of all of the dealings between them, the discrepancy between the donation made and the donation recorded never arose. It appears that Mr. Kavanagh never informed Mr. Ryan or Mr. Ahern that he had donated £75,000.00, or that he had made his donation personally to Mr. Haughey. It appears that Mr. Ryan never sought to ascertain from Mr. Kavanagh what level of donation he had made and that Mr. Ahern never mentioned to Mr. Kavanagh that the donation recorded in Fianna Fáil Headquarters was £25,000.00, or that a receipt had been sent to Mr. Haughey on Mr.

Haughey's instructions. The only reasonable explanations for all of these omissions are that; either those concerned were deeply embarrassed by what had occurred and chose to adopt a diplomatic approach to the issue or that, there was a tacit understanding between them that the matter had arisen in a former era and that its details were best left undisturbed.

CONCLUSIONS

7-185 The Leader's Allowance Account was intended as a designated account for the receipt and application of the Leader's Allowance to meet expenses incurred in connection with the parliamentary activities of the Fianna Fáil Party. During Mr. Haughey's time as Party Leader, there were no adequate controls, statutory or otherwise, governing the operation of the account, or the application of the Allowance. The account was used by Mr. Haughey for other purposes including the reception of funds from a number of different sources and the making of payments unconnected with the parliamentary activities of the Fianna Fáil Party, including payments for Mr. Haughey's personal benefit. For all practical purposes, the account was treated by Mr. Haughey as being at his disposal, and Mr. Haughey accepted that it was used for payments not intended to be made from the Leader's Allowance, including payments to meet his personal expenditures.

7-186 The Tribunal is satisfied that detailed records of payments made from the account were kept by Ms. Eileen Foy, but these records, which were ultimately the responsibility of Mr. Haughey, were not accessible to the Tribunal. This contrasts sharply with the availability to the Tribunal of detailed records in relation to funds received by the Fianna Fáil Party.

7-187 There can be no doubt that the Leader's Allowance Account was operated in an irregular and unorthodox fashion by Mr. Haughey. While it must be recognised that expenses arising from the parliamentary activities of the Fianna Fáil Party were met from funds held in the account, the Tribunal is nonetheless left with the clear impression that Mr. Haughey treated the account, and the funds held to the credit of the account, as being available to him. Mr. Haughey accepted that funds were applied from the account for his personal use. In the absence of either the records maintained by Ms. Foy or reliable bank records pre-dating December, 1990, the Tribunal cannot quantify the full extent of personal drawings made from the account by Mr. Haughey. What is however beyond doubt, is that funds from the account amounting to £35,000.00 were applied to Mr. Haughey's bill-paying service in 1986, and that £25,000.00 was drawn by cheque from the account on 20th June, 1989, and was transmitted for Mr. Haughey's benefit to Guinness & Mahon. There were also what were self-evidently considerable personal drawings from the account from December, 1990 to February, 1992 including payments to Charvet of Paris, Le Coq Hardi Restaurant, and cash drawings. In that year, those drawings amounted to £64,367.23 although it must be said that some of them may have been made to meet legitimate expenses of the Fianna Fáil Party. It is

the view of the Tribunal that similar drawings were made from the account in the previous years.

7-188 Mr. Haughey, while accepting that these personal drawings were made by him, nonetheless testified that an informal account was kept by Ms. Foy, and that these personal drawings were offset against expenditures incurred by Mr. Haughey primarily in connection with the use of his home at Abbeville for party activities, and that from time to time Ms. Foy struck a balance in favour of Mr. Haughey or in favour of the account. It was Mr. Haughey's recollection that it was Ms. Foy and Ms. Butler who insisted that he should be recompensed for the use of Abbeville. Neither Ms. Foy nor Ms. Butler supported that aspect of Mr. Haughey's evidence, and Ms. Foy had no recollection of keeping any running account, as suggested by Mr. Haughey. Apart from Mr. Haughey's recollection, there was no evidence of the operation of any such running account in connection with personal expenditures made by Mr. Haughey from the Leader's Allowance Account, nor was there any evidence of any payments from Mr. Haughey's bill-paying service to the account, or to Ms. Foy in the years for which records kept by Mr. Jack Stakelum were available to the Tribunal. In all of the circumstances, the Tribunal cannot accept that any running account was operated as suggested by Mr. Haughey, and the Tribunal is forced to the conclusion that Mr. Haughey did not reimburse the account for personal expenditures made on his behalf.

7-189 As already indicated, there were funds lodged to the account in addition to instalments of the Leader's Allowance. These included payments by Dr. Edmund Farrell of £100,000.00 in 1986 and £40,000.00 in 1991. There was also £220,000.00 lodged to the account in 1989, much of which, in the Tribunal's view, represented the proceeds of funds collected to defray the medical expenses of the late Mr. Brian Lenihan. There may also have been some other funds lodged to the account in the years 1989 and 1991 from sources which, in the absence of records, the Tribunal has been unable to identify. As all of these third party funds were intermingled with instalments of the Leader's Allowance, it is possible that they may have met some of the personal expenditures made from the account. However, without the records kept by Ms. Foy and which were the ultimate responsibility of Mr. Haughey, the Tribunal cannot ascertain the extent to which these third party funds, as distinct from instalments of the Leader's Allowance, were utilised for that purpose. What is clearly evident is that the use of the Leader's Allowance Account by Mr. Haughey was irregular, as regards both the intermingling of funds in the Account, and the manner in which funds from the account were applied.

7-190 There were no statutory or other controls governing the operation of the account at the time, and while the Tribunal is satisfied that Mr. Ahern had no reason to believe that the account was operated otherwise than for a proper purpose, the practise of pre-signing cheques by Mr. Ahern undoubtedly facilitated the misuse of the account by Mr. Haughey. This

was a practise which has to be viewed as both inappropriate and imprudent, having regard to the nature of the account (being one used to administer funds provided from the public purse), the skills and experience then possessed by Mr. Ahern, and the absence of any internal or external audit of the account. This was a matter which was largely accepted by Mr. Ahern in his evidence to the Tribunal, and it is noteworthy that, at the instance of Mr. Ahern, certain amendments to the law governing the allowance have since been made, which have introduced significant statutory controls in terms of both the application of the allowance and in terms of accountability to the Public Office Commission.

7-191 In the course of hearing evidence regarding the operation of the Leader's Allowance Account, the scope of the Tribunal's inquiries extended to a scrutiny of funds collected in 1989 for the benefit of the late Mr. Brian Lenihan, and to funds collected for the Fianna Fáil Party in the context of the General Election which was held in June, 1989. Mr. Haughey determined that funds would be provided to ensure that the cost of Mr. Lenihan's treatment in the Mayo Clinic would be met. It gives the Tribunal no satisfaction to find that Mr. Haughey deliberately sought to raise funds in addition to what he knew or must have known was required to meet the cost of Mr. Lenihan's treatment, and that he ultimately applied part of those funds for his own use. No other conclusion can be reached by the Tribunal in the light of the evidence heard. Mr. Haughey initiated a campaign to raise funds for that purpose in late May, 1989, when he knew that the Voluntary Health Insurance Board would make an ex gratia payment of £50,000.00 towards the cost of Mr. Lenihan's treatment, when he had an estimate of the likely cost of such treatment, when he knew that the additional expenses to be met were in the region of £100,000.00, and when he nonetheless fixed £150,000.00 to £200,000.00 as the target figure to be raised. It is evident that Mr. Haughey personally misappropriated the donation of £20,000.00 made by Dr. Edmund Farrell for Mr. Lenihan's benefit, and that he took a series of steps to conceal his actions, including the channelling of the proceeds of the cheque through the bank account of Celtic Helicopters Limited. Mr. Haughey also personally misappropriated £25,000.00 contributed to the Lenihan Fund by Mr. Mark Kavanagh, on behalf of Custom House Docks Development Company Limited, when he remitted that cheque to the Fianna Fáil Party as a donation to Party funds, while retaining a further £75,000.00 provided for that purpose by Mr. Kavanagh.

7-192 There was no proper or effective system put in place to record funds collected for the benefit of Mr. Lenihan. Funds were collected by Mr. Haughey personally, by Mr. Paul Kavanagh, by the late Mr. Peter Hanley and possibly by other persons. Some, but not all, of those funds were transmitted to Ms. Foy and of the funds which she received, some were recorded anonymously. This haphazard system of collection and recording facilitated the misappropriation of funds by Mr. Haughey, as did the determination that such funds should be lodged to the Leader's Allowance

Account under the direct control of Mr. Haughey; a decision which must have been made by Mr. Haughey.

7-193 The Tribunal is satisfied that only one person knew what was collected and by whom it was contributed, and that that person was Mr. Haughey himself. The Tribunal has established that as much as £265,000.00 may have been collected for the benefit of the late Mr. Lenihan and that of those funds no more than £70,283.06 was applied in meeting the costs and expenses attendant on his medical treatment in the United States. That apart, no other funds were provided directly or indirectly to Mr. Lenihan, with the exception of a sum of £200.00 which Mr. Haughey arranged to be transmitted to Mrs. Lenihan on the morning of her departure to the United States with her husband. The Tribunal is satisfied that a sizeable proportion of the excess funds collected were misappropriated by Mr. Haughey for his personal use.

7-194 Fundraising for the General Election in 1989 proceeded in conjunction with the campaign to raise funds for Mr. Lenihan, and was also utilised by Mr. Haughey to bolster his personal finances. The focus of the Tribunal's inquiries in that regard was on a payment of £75,000.00 made by Mr. Mark Kavanagh of Custom House Docks Development Company Limited, and a payment of £60,000.00 made by Dr. Michael Smurfit of the Jefferson Smurfit Group. Mr. Haughey deliberately and skilfully arranged the manner in which these payments were made to enable him to retain £85,000.00 of the £160,000.00 provided, while ensuring that donations for lesser amounts were recorded as having been received by Fianna Fáil headquarters. By arranging that the cheque intended by Mr. Kavanagh for the Lenihan Fund was paid to Fianna Fáil, that the donation made by Mr. Kavanagh to the Fianna Fáil Party of £75,000.00 was made by three bank drafts for £25,000.00 each payable to cash, and that the payment of £60,000.00 by Dr. Smurfit was made by a transfer from an off-shore account to the account of Ansbacher Cayman with Henry Ansbacher, Mr. Haughey secured for himself an unfettered capacity to apply the funds at his own discretion.

7-195 By remitting the cheque for £25,000.00 intended as a contribution to the Lenihan Fund to Fianna Fáil headquarters as a donation from Mr. Kavanagh to the Fianna Fáil Party, and by using two of the £25,000.00 drafts provided by Mr. Kavanagh to purchase a draft for £50,000.00 from Guinness & Mahon, and remitting that draft to Fianna Fáil as a contribution by Dr. Smurfit, Mr. Haughey protected both himself, Mr. Kavanagh and Dr. Smurfit in the event that any query might be raised about the application of those donations. Mr. Haughey took the further step of directing Mr. Fleming to record both of the donations as anonymous donations and, to forward receipts to Mr. Haughey, and he thereby obviated the risk of Mr. Fleming forwarding receipts to Mr. Kavanagh or Dr. Smurfit for lesser amounts than the payments actually made. In this way, Mr. Haughey manipulated the

recording system that had been implemented by the Fianna Fáil Party to his own ends.

7-196 In his actions over the period leading up to and after the General Election of June, 1989, Mr. Haughey demonstrated a clear and deliberate intention to use the opportunities provided by the raising of funds for the late Mr. Lenihan, and for the Election campaign to advance his personal finances. The evidence heard by the Tribunal established beyond doubt Mr. Haughey's involvement in the misappropriation of the £20,000.00 provided by Dr. Farrell for the Lenihan campaign, the £25,000.00 provided by Mr. Mark Kavanagh for the Lenihan campaign and £85,000.00 of the donations provided by Mr. Kavanagh and Dr. Smurfit for the Fianna Fáil Party although it is the Tribunal's view that Dr. Smurfit was, at least, indifferent as to the application of the funds contributed.

7-197 Mr. Haughey's evidence to the Tribunal in relation to all of the material gathered by the Tribunal regarding the Leader's Allowance Account, the funds raised for the benefit of the late Mr. Lenihan, the contributions of Mr. Kavanagh and Dr. Smurfit and the use of all of these funds for his personal benefit was less than candid. The Tribunal is satisfied that Mr. Haughey, despite his protestations of ignorance and lack of recollection, was fully aware of his pivotal role in all of these matters and the Tribunal considers that Mr. Haughey's efforts to attribute responsibility to Ms. Foy and to Mr. Paul Kavanagh, amongst others, was regrettable and reprehensible.

MR HAUGHEY'S FINANCES JANUARY, 1987 – JANUARY, 1991

8-01 In January, 1987 Mr. Haughey was leader of the opposition. There was a General Election on 17th February, 1987 and the Fianna Fáil Party won the Election and formed the new Government. Mr. Haughey was elected Taoiseach on 10th March, 1987 and he continued in office until 11th February, 1992 when he resigned as both Taoiseach and leader of the Fianna Fáil Party. Mr. Haughey continued as a back bench TD until November, 1992.

8-02 The last remaining bank account in Mr. Haughey's name in Guinness & Mahon in January, 1987, was his Resident No. 1 Current Account. There was a sizeable debit balance on the account which was ultimately cleared in May, 1987 by a payment of £282,500.00. From May, 1987 until Mr. Haughey ceased to hold office there were no bank accounts in his name, apart from the Leader's Allowance Account and apart from the Stocking Loan from the Agricultural Credit Corporation which was cleared in December, 1987.

8-03 The Tribunal's task in seeking to ascertain the funds available to Mr. Haughey and to identify the ultimate source of those funds for the purposes of its inquiries pursuant to paragraph (a) and (b) of its Terms of Reference was all the more difficult for these years, as there were no records of such funds available and there were no bank accounts in Mr. Haughey's name. The Tribunal set about this task in the first place by seeking to identify expenditures made on Mr. Haughey's behalf; by then endeavouring to identify the immediate source of the funds from which those expenditures were made; and by seeking in turn to trace those funds from their immediate source to their ultimate source. In the course of its work, both in private and at public sittings, additional information came to the attention of the Tribunal which facilitated aspects of the Tribunal's work.

EXPENDITURES

8-04 The analysis conducted by Deloitte & Touche of the Haughey Boland No. 3 account described by Mr. Paul Carty in his evidence produced estimated figures for expenditures from that account in connection with the bill-paying service provided for Mr. Haughey in the years 1987 to 31st January, 1991. The estimated expenditures for those years were as follows:—

- 1st January, 1987 – 31st December, 1987 — £204,000.00
- 1st January, 1988 – 31st December, 1988 — £232,000.00
- 1st January, 1989 – 31st December, 1989 — £325,000.00
- 1st January, 1990 – 31st December, 1990 — £264,000.00
- 1st January, 1991 – 31st January, 1991 — £16,000.00

8-05 The Tribunal considers that this exercise was in all probability reasonably accurate. Overall, the figures produced are certainly in line with, and in fact are significantly lower, than the actual figures for expenditures for which records exist for later years, whilst Mr. Haughey did not accept that expenditures in these amounts had been made on his behalf during those years, the Tribunal considers that it is of some significance that, when Mr. Haughey concluded a settlement with the Revenue Commissioners of his tax liabilities arising from evidence heard by this Tribunal, that for the purposes of the negotiation and ultimate settlement these estimated figures formed the basis of negotiations and were accepted by Mr. Haughey's representatives. The Tribunal is satisfied that, in all probability, expenditures in the region of £1,041,000.00 were made from the Haughey Boland No. 3 Account for the benefit of Mr. Haughey over the four year period from January, 1987 to January, 1991.

THE IMMEDIATE SOURCE OF FUNDS TO THE BILL-PAYING SERVICE

8-06 The Tribunal carried out a similar exercise for the years 1987 to January, 1991 to that already described in respect of lodgements to the Haughey Boland No. 3 account for 1985 and 1986. Lodgements to the accounts were compared with debits to accounts in Guinness & Mahon controlled by Mr. Traynor to ascertain whether debit and credit transactions across those accounts matched in terms of both quantum and timing of transactions. From the evidence of Ms. Kells and Mr. Carty, who commented on the documentary evidence available to the Tribunal in the form of bank statements in the case of the Haughey Boland No. 3 account and in the form of both bank statements and internal bank documents in the case of Guinness & Mahon accounts, the Tribunal is satisfied that the immediate source of funding to the bill-paying service for the years 1987, 1989, 1990, and for the first month of 1991 was accounts controlled by Mr. Traynor in Guinness & Mahon being accounts in the name of Amiens Investments Limited, Amiens Securities Limited and Kentford Securities Limited. Tables for each of the years 1987, 1989, 1990 and 1991 showing each corresponding credit and debit are comprised in Appendix G to the Report.

The year 1987

8-07 For the year 1987, there were fourteen direct matches between credits to the Haughey Boland No. 3 account and debits to the Amiens accounts in Guinness & Mahon amounting in all to £190,000.00. For the earlier months from January to May, 1987, the Amiens Account from which funds were debited was Account No. 10407014 with the exception of a single debit of £10,000.00 in February, which was made to Amiens No. 2 Account No. 10407006. It was to the Amiens Account No. 10407014 that the Dunnes bearer cheques for £15,400.00 and £16,800.00 were respectively lodged on 2nd and 4th February, 1987, and it was through this same account that the proceeds of the Tripleplan payment were channelled in advance

of being lodged on 29th May, 1987 to Mr. Haughey's overdrawn Resident Current Account No. 1 to clear the debit balance on the account.

8-08 In the latter months, the Amiens account from which drawings were made was Account No. 11035005. The estimated expenditure for 1987 through the bill-paying service was £204,000.00 and bearing in mind that this was an estimated figure and that funds to meet these expenditures may not all have been provided strictly within the calendar year 1987, the Tribunal is satisfied that the immediate source of the funds to the bill-paying service for 1987 were the Amiens accounts to which reference has been made.

The year 1989

8-09 For 1989, the Tribunal was able to track seven credits to the Haughey Boland No. 3 account to accounts controlled by Mr. Traynor in Guinness & Mahon. The quantum of the individual transactions grew significantly in 1989 so that the total funding covered by these transactions was £201,000.00. The Amiens account from which drawings were made in the early months of 1989 was Account No. 1218001 with the exception of a single drawing from Amiens Account No. 10407006. The two final drawings in that year were made from an account of Kentford Securities Limited No. 1 Account No. 1246001. This Kentford account, to which reference has already been made, appears to have superseded the Amiens accounts and performed much the same functions.

The years 1990 and January 1991

8-10 In 1990, there were six lodgements to the Haughey Boland No. 3 account which the Tribunal traced and matched to debits from the Kentford Securities No. 1 Account No. 1246001: these transactions matched both in terms of date and amount. The quantum of the debits to the Guinness & Mahon accounts had steadily grown so that the total funds represented by these six transactions was £230,000.00. In January, 1991, before the bill-paying service passed from Haughey Boland to Mr. Jack Stakelum, there was a single lodgement to the Haughey Boland No. 3 account of £20,000.00, and that appears to correspond both in date and amount to a drawing of £20,000.00 from the Kentford No. 1 Account No. 1246001 on 15th January, 1991.

The year 1988

8-11 The Tribunal was unable to identify any correspondence between credits to the Haughey Boland No. 3 account and debits to accounts controlled by Mr. Traynor, for which statements were available to the Tribunal, for the year 1988. All of the witnesses connected with the bill-paying service from whom the Tribunal heard evidence, including Mr. Haughey, confirmed that it was Mr. Traynor who was at all times the source of monies to fund the service during 1988. The Tribunal had access to all

bank accounts of Mr. Traynor, both in Guinness & Mahon and in a number of other banks and financial institutions but none of these accounts appeared to have been the source of funding in 1988. Whilst it is possible that there may have been some other source, the Tribunal considers it more probable than not that the Amiens accounts, or other accounts controlled by Mr. Traynor in Guinness & Mahon, continued to fuel the bill-paying service. Ms. Kells in her evidence to the Tribunal explained that Guinness & Mahon had not been able to retrieve from its microfiche records a full set of statements for all of the Amiens accounts even though the documentation retention policy then operated by Guinness & Mahon should have enabled the retrieving of all statements of accounts held with the bank at that time.

8-12 Although the Tribunal has not been able to trace in this fashion every lodgement to the Haughey Boland No. 3 account from January, 1987 to January, 1991 which appears to represent funds to meet expenditures on behalf of Mr. Haughey, a very large proportion of these lodgements has been identified to Amiens accounts in Guinness & Mahon. Whilst it is possible that other sources of funds were used, the Tribunal on balance believes that it is more probable than not that Mr. Traynor adopted a systematic approach to the provision of finance for the benefit of Mr. Haughey, and in the case of the funds which cannot be identified, this is in all probability due to shortcomings in the retrieval of accounts from Guinness & Mahon microfiche records.

8-13 Mr. Haughey in his evidence to the Tribunal was not in a position to assist the Tribunal regarding individual transactions involving credits to the Haughey Boland No. 3 account. While he professed to have no knowledge of specific transactions, he confirmed that he had known that a bill-paying service was provided by Haughey Boland on his behalf and that it was Mr. Traynor who was, as Mr. Haughey described it, “*the funding entity*”.

SOURCES OF FUNDS TO AMIENS AND OTHER ACCOUNTS IN GUINNESS & MAHON

8-14 As the immediate source of monies to fund Mr. Haughey’s bill-paying service were drawings from Amiens and Kentford accounts in Guinness & Mahon, the Tribunal in the course of its private investigative work set about an exercise of endeavouring to trace all lodgements to and withdrawals from the accounts. The Tribunal initially focused on transactions of a monetary value in excess of £5,000.00 but in the course of its inquiries, certain transactions of lesser amounts came to the Tribunal’s attention, and in some instances the Tribunal was obliged to widen its inquiries to encompass what appeared to be material transactions of less than £5,000.00.

8-15 The Tribunal examined well in excess of one thousand such transactions. While the starting point of the Tribunal’s inquiries was always documentation from within Guinness & Mahon, in many cases the money

trail led the Tribunal to making inquiries of other banks. In many instances, due to the destruction policies of those banks, the Tribunal's inquiries could not be advanced further. In conducting this aspect of its inquiries, the Tribunal had to exercise particular caution in determining whether it was or was not appropriate to lead evidence at public sittings regarding the sources of lodgements to the Guinness & Mahon accounts. This was because of the Tribunal's knowledge of the manner in which the accounts were operated by Mr. Traynor in conjunction with the Ansbacher accounts. The Tribunal was mindful that the accounts were used by Mr. Traynor to facilitate the making of Irish pound lodgements in Dublin by customers of Ansbacher Cayman to their off-shore holdings and were likewise used to facilitate Irish pound withdrawals by customers of Ansbacher Cayman from their off-shore holdings. The Tribunal has already adverted to Mr. Traynor's practice of switching one customer's Irish pound lodgement against another customer's Irish pound withdrawal while making appropriate adjustments in their respective off-shore holdings. The use of this device meant that the Tribunal could not automatically conclude that, where lodgements were made to an Amiens account, and the proceeds were used to make a payment to Mr. Haughey's bill-paying service, that the person who provided those funds was a source of money to Mr. Haughey.

8-16 Between January, 1987 and January, 1991, Mr. Ben Dunne provided in excess of £1.5 million for Mr. Haughey's benefit and there can be no doubt that Mr. Haughey's expenditures were met, certainly in part, by those funds. Monies were also available to Mr. Haughey from the Leader's Allowance Account, from funds provided by Dr. Edmund Farrell, by Dr. Michael Smurfit and by Mr. Mark Kavanagh. The provision of these funds, some of which were lodged to Amiens accounts and to Ansbacher accounts are dealt with in separate Chapters of the Report.

8-17 In many instances, the Tribunal did not proceed to hear evidence about specific lodgements to the Amiens accounts, the sources of which had been identified in the course of private investigative work, where the Tribunal believed that the connection with Mr. Haughey was too tenuous, or where the Tribunal had received adequate explanations to enable the Tribunal to exclude those lodgements from further inquiry. There was however one Amiens account which, by reason of the large volume of transactions which appeared to relate to Mr. Haughey, did in the view of the Tribunal warrant separate inquiry in the course of public sittings, and that was account number 10407014.

Amiens Account No. 10407014

8-18 Ms. Kells' evidence with regard to this account was of vital assistance to the Tribunal as was the internal Guinness & Mahon documentation available. The account was designated Amiens Securities Limited No. 1 Current account and was operated by Mr. Traynor from October, 1986 to October, 1988. The account featured to a significant

extent in aspects of the money trail evidence which the Tribunal heard pursuant to paragraphs (a) and (b) of its Terms of Reference, and it was following on from that evidence that the Tribunal determined that it was appropriate to lead evidence at public sittings in relation to certain other lodgements to the account.

8-19 The transactions across the account which had featured in earlier investigations of the Tribunal and which appeared to relate to Mr. Haughey were as follows:—

- (i) A lodgement of £27,000.00 on 26th January, 1987 which represented the proceeds of five bank drafts of which Mr. David Doyle was the beneficiary.
- (ii) A debit of £13,000.00 on 26th January, 1987 in respect of a transfer to the late Mr. PV Doyle's No. 2 loan account to discharge accrued interest.
- (iii) A lodgement of £15,400.00 on 2nd February, 1987 which represented the proceeds of three of the Dunnes Stores Bearer Cheques.
- (iv) A lodgement of £16,800.00 on 4th February, 1987 which represented the proceeds of three further Dunnes Stores Bearer Cheques.
- (v) A lodgement of £9,966.74 on 14th May, 1987 which represented the proceeds of a cheque in that amount drawn by Mr. Doyle on his account with Bank of Ireland, Pembroke Branch.
- (vi) A lodgement of £24,725.27 on 28th May, 1987 which represented part of the proceeds of a cheque for Stg.£282,500.00 dated 20th May, 1987 payable to Tripleplan and drawn on an account of Dunnes Stores, Bangor Limited with Ulster Bank, Newry.
- (vii) A lodgement of £285,000.00 on 28th May, 1987 which represented the balance of the proceeds of the Tripleplan cheque.
- (viii) A withdrawal of £285,000.00 on 29th May, 1987 which represented funds transferred to Mr. Haughey's Resident Current Account No. 1 and which cleared the overdrawn balance on that account.
- (ix) A lodgement of £2,119.27 on 9th July, 1987 which was a transfer of funds from Mr. Haughey's Resident Current Account No. 1 and which represented the small credit balance on that account following the clearing of the debit balance on 29th May, 1987.
- (x) A withdrawal of £9,966.74 on 9th June, 1987 in respect of a transfer of funds to Mr. Doyle's No. 1 loan account number 6346006 and which discharged the interest that had accrued on that account.

- (xi) A lodgement of £32,700.00 on 22nd July, 1987 which represented the proceeds of instruments of which Mr. David Doyle was the beneficiary.
- (xii) A withdrawal of £126,312.14 on 26th February, 1988 in respect of a transfer of funds to Mr. Doyle's No. 1 loan account and which cleared the debit balance on the account.
- (xiii) A further debit of £48,182.27 also on 26th February, 1988 in respect of a transfer of fund to Mr. Doyle's No. 2 loan account and which also cleared the debit balance on that account.
- (xiv) A lodgement of £150,230.00 on 28th March, 1988 which represented the proceeds of the cheque provided by Mr. Doyle's estate.

8-20 There were also a number of other debits to the account which the Tribunal is satisfied represented payments to Haughey Boland & Company to fund Mr. Haughey's bill-paying service. Those debits were as follows:—

DATE	AMOUNT (£)
26 th January, 1987	7,000.00
26 th January, 1987	3,000.00
14 th April, 1987	10,000.00
29 th July, 1987	20,000.00
29 th July, 1987	20,000.00

8-21 During the duration of its operation, the total sum lodged to the account was £1,927,749.50. Some of these lodgements represented transfers of funds from another Amiens account designated Amiens Securities Limited No. 2 current account number 10407006. That No. 2 account was also the source of funds paid to the bill-paying service and there were further transfers from the No. 1 account number 10407014 to the No. 2 account number 10407006. As these accounts were operated by Mr. Traynor, as his evidence was not available to the Tribunal, and as there were no records accessible to the Tribunal regarding the operation of the accounts, the Tribunal has no means of determining why Mr. Traynor operated two accounts or why funds were transferred between them.

8-22 In the course of public inquiries, the Tribunal focused on four separate lodgements or sets of lodgements to Account No. 10407014 which were as follows:—

Cash Lodgements

8-23 The bulk of the lodgements to the account were in the form of cheques or instruments or, as already indicated, represented funds transferred from the Amiens No. 2 account. There was however an

exception to this pattern of lodgements for the period from 13th February, 1987 to 26th March, 1987, when there were in all eleven separate cash lodgements to the account which totalled £106,800.00. The details of the lodgements are set out below in tabular form.

DATE	AMOUNT (£)
13 th February, 1987	7,800.00
27 th February, 1987	20,000.00
2 nd March, 1987	2,000.00
16 th March, 1987	5,000.00
18 th March, 1987	7,000.00
19 th March, 1987	1,000.00
19 th March, 1987	10,000.00
20 th March, 1987	22,500.00
23 rd March, 1987	6,000.00
25 th March, 1987	12,500.00
26 th March, 1987	13,000.00
TOTAL	106,800.00

8-24 The Tribunal has no means of determining the source of these cash lodgements or ascertaining whether they were connected in any way with Mr. Haughey's finances. No details of the cash lodgements appear in the internal records of Guinness & Mahon, and as there were no records kept by Mr. Traynor available to the Tribunal, the Tribunal has no means of ascertaining the identify of the sources of the cash lodgements. Whilst no connection can be made between the cash lodgements and Mr. Haughey's finances, it is perhaps of some significance and warranting of comment that this unprecedented volume of cash lodgements to the account was made over the five week period which coincided with both the General Election on 17th February, 1987 and Mr. Haughey's accession to the office of Taoiseach on 10th March, 1987.

Lodgement of £50,000.00 on 18th February 1987

8-25 On 18th February, 1987, the day following the General Election, the statements of the Amiens account recorded a lodgement of £50,000.00. Guinness & Mahon's internal documents established that the lodgement represented the proceeds of a cheque with a sort code 90-00-68. A copy of the cheque was retrieved from Guinness & Mahon's microfiche records which showed that the cheque was dated 18th February, 1987, the same date as it was lodged, and was drawn on an account of Skelligs Investments with Bank of Ireland, Rotunda Branch, was payable to Guinness & Mahon, and was signed by Mr. John Byrne.

8-26 Mr. Byrne is a successful businessman and was a friend of Mr. Haughey. In common with Mr. Haughey, Mr. Traynor was a close financial

adviser to Mr. Byrne, was a director of a number of companies controlled by Mr. Byrne and was a signatory on the bank accounts of those companies. Mr. Byrne in his evidence to the Tribunal confirmed that the cheque had been completed and signed by him. He explained that Skelligs Investments was an unlimited company which he had acquired in 1985. It was a non-trading company which was used by him in connection with his racing interests and for personal purposes. Mr. Traynor was a signatory on the Skelligs Investments account but as the account was not used for anything other than Mr. Byrne's non-trading affairs, Mr. Traynor did not in practice sign cheques on the account. Mr. Byrne kept the account cheque book at his home, and it was Mr. Byrne who dealt exclusively with the account. As Skelligs Investments was a non-trading company, accounts were not prepared and there was no obligation on the company to file annual returns in the Companies Office. Mr. Byrne had not retained cheque stubs for the account dating from 1987, and was unable to obtain copies of cheques drawn on the account for that period from Bank of Ireland.

8-27 Whilst Mr. Byrne had no recollection of the cheque, he believed that as the cheque had been lodged to the Amiens account controlled by Mr. Traynor, that he must have furnished the cheque to Mr. Traynor. Mr. Byrne could not provide the Tribunal with a credible explanation as to why he would have drawn a cheque for £50,000.00 on the account of a non-trading company which he used for personal purposes payable to Guinness & Mahon. The company had no borrowings from Guinness & Mahon, and had no dealings whatsoever with any of the Amiens companies. Mr. Byrne accepted that the cheque was unusual in terms of cheques typically drawn on the account. He believed that he must have been asked to make the cheque payable to Guinness & Mahon by Mr. Traynor. He suggested that the cheque may have related to professional fees or other expenses paid by him to Mr. Traynor. The Tribunal considers it highly unlikely that Mr. Byrne would have paid professional fees to Mr. Traynor from what was, in substance, an account which he operated for personal expenditures. Mr. Traynor provided no services to Skelligs Investments, and any services which he rendered to Mr. Byrne's trading companies, would have logically been paid from bank accounts of those companies and would have been claimed as a legitimate deductible expense of those companies for tax purposes. The Tribunal cannot accept that Mr. Byrne, an astute and successful businessman, would have remunerated Mr. Traynor for services rendered to his trading companies from what were essentially his own personal funds.

8-28 In the absence of any credible explanation for the lodgement of the cheque to the Amiens account, the Tribunal cannot exclude the real possibility that the cheque, represented a payment intended for the benefit of Mr. Haughey. The Tribunal recognises that a considerable period of time had elapsed between the drawing of the cheque and the inquiries made of Mr. Byrne, who the Tribunal appreciates is a man of advanced years. As against that, a sum of £50,000.00 in 1987 from the personal finances of

any person, even a person of Mr. Byrne's considerable wealth, was a very significant sum of money by the standards of the time. The cheque was lodged to an account used by Mr. Traynor to route funds for the benefit of Mr. Haughey. It was made at the time of the 1987 General Election and very shortly prior to Mr. Haughey's appointment as Taoiseach. Mr. Byrne accepted that, had he been asked by Mr. Traynor to make a contribution to Mr. Haughey's election expenses, he would have done so but he testified that he would most certainly not have contributed to Mr. Haughey's personal funds.

8-29 In the absence of evidence that these funds were applied for Mr. Haughey's benefit, the Tribunal cannot make a finding that they represented a payment made by Mr. Byrne to Mr. Haughey, or that the lodgement was a source of funds for Mr. Haughey's benefit. However, without a credible explanation for such a sizeable payment from, what were essentially Mr. Byrne's own personal funds, which was lodged to an account used by Mr. Traynor to route funds for Mr. Haughey's personal benefit, the Tribunal equally cannot conclude that the lodgement was entirely unrelated to Mr. Haughey's affairs.

Lodgement of £260,000.00 on 23rd July, 1987

8-30 The Amiens account statements recorded a lodgement of £260,000.00 to the account on 23rd July, 1987. Apart from the substantial size of the lodgement, which, with the exception of part of the proceeds of the Tripleplan payment, was by far the largest lodgement to the account, the Tribunal's attention was also drawn to the lodgement by its proximity to drawings from the account on 29th July, 1987 to fund Mr. Haughey's bill-paying service.

8-31 Guinness & Mahon's internal documents and microfiche records revealed that the lodgement represented the proceeds of an instrument, known as a banker's payment, issued by Allied Irish Banks in favour of Guinness & Mahon. The instrument was dated 23rd July, 1987 and was drawn on Allied Irish Banks, Financial Accounting, Bank Centre, Ballsbridge, Dublin 4. The Tribunal pursued its inquiries with Allied Irish Banks and, in the course of the private investigative phase of its work, made an Order against the Bank to enable the provision of documents to the Tribunal regarding the ultimate source of the funds underlying the instrument.

8-32 In her evidence to the Tribunal, Ms. Marion Wilson, Assistant Manager of Financial Accountancy at Allied Irish Banks, Bankcentre, explained that a bankers payment is an instrument used to give immediate value for a cheque drawn by a customer on an account held with Allied Irish Banks where special clearance of such a cheque is sought by the collecting bank. The process would have involved an official of Guinness & Mahon physically bringing the cheque, drawn on a customer's account to the Bank, and there exchanging the cheque for a bankers payment. Due

to the destruction of records which would have enabled Allied Irish Banks to retrieve a copy of the cheque for which the bankers payment was exchanged, the Bank, in an effort to identify the ultimate source of the payment, examined every account held within the State to identify any account which had been debited with £260,000.00 on or in the days immediately following 23rd July, 1987. That exercise identified three accounts from which debits of £260,000.00 had been made. Two were internal working accounts of the Bank and were eliminated, leaving a single relevant account which was the account of Princes Investments Limited, account number 27064189 with Allied Irish Banks, Castle Street, Tralee. Princes Investments Limited confirmed to the Tribunal that it had made a payment of £260,000.00 to Guinness & Mahon at that time, and accepted that the bankers payment which was lodged to the Amiens account represented the proceeds of that payment.

8-33 Princes Investments Limited is a company which operates the Mount Brandon Hotel in Tralee, County Kerry. As of 1987, the company was jointly owned by Mr. John Byrne, Mr. William Clifford and a sister of Mr. William Clifford, who had inherited her shareholding from her deceased brother, Mr. Thomas Clifford. Both Mr. Byrne and Mr. Clifford testified that the purpose of the payment was to discharge an outstanding loan of Princes Investments to Guinness & Mahon. The payment was funded by loans of £100,000.00 each made to Princes Investments by Mr. Byrne, through his company Carlisle Trust Limited, and by Mr. Clifford, through his company C Clifford & Sons Limited. The balance of £60,000.00 was provided from Princes Investments' own resources. The loans of £100,000.00 from Carlisle Trust and from C. Clifford & Sons were recorded in the balance sheet of Princes Investments for subsequent years until they were discharged in the early 1990s.

8-34 In her evidence to the Tribunal, Ms. Kells confirmed that Guinness & Mahon's records recorded that a loan of Stg.£116,000.00 had been made by the Bank to Princes Investments in 1975; that it was secured by personal guarantees of Mr. Byrne, Mr. Clifford and Mr. Clifford's deceased brother, Mr. Thomas Clifford; and that it was apparent from the Bank's internal loan memorandum that the loan was further secured by an Ansbacher Cayman backing deposit. The loan was reflected in Princes Investments balance sheet as part of its long-term indebtedness up to and including the balance sheet as of 31st October, 1986.

8-35 On its face therefore, the payment of £260,000.00 was nothing more or less innocuous than the repayment of a loan by Princes Investments Limited to Guinness & Mahon, albeit that it appeared somewhat strange that the loan repayment intended for Guinness & Mahon should have been lodged to an Amiens account controlled by Mr. Traynor, who by then held no position whatsoever within the Bank. However, what was an extraordinary and inexplicable feature of the transaction, and a feature shared with the repayment of a loan of an associated company, Central Tourist Holdings Limited (which is addressed in Chapter 15 of the Report),

was that as of 23rd July, 1987, Princes Investments was not indebted to Guinness & Mahon on foot of the loan advanced in the mid-1970s, or on foot of any other loan. The records of Guinness & Mahon established, and it was confirmed by Ms. Kells in her evidence, that the loan advanced to Princes Investments in 1975 had been repaid on 4th September, 1985 by a transfer of funds from another account in Guinness & Mahon in the name of Guinness Mahon Cayman Trust/College. The Central Tourist Holdings' loan was also repaid on the same date with funds transferred from the same account.

8-36 There were further common features to the circumstances surrounding both the Princes Investments loan repayment, and the Central Tourist Holdings loan repayment. In both cases, fictitious loan account statements were manually generated by personnel in Guinness & Mahon after the loans had been repaid, and in both cases certificates of interest were issued by Guinness & Mahon over the signature of Mr. Pdraig Collery certifying that interest had been paid. Both Mr. Byrne and Mr. Clifford insisted in evidence that they knew nothing about the repayment of the Princes Investments loan in 1985, nor had they any knowledge of the account or the funds in the account used to repay the loan.

8-37 The position therefore was that the explanation for the payment of £260,000.00 lodged to the Amiens account was that it constituted the repayment of a loan that had been discharged in full some two years earlier. Mr. Traynor was undoubtedly involved in the entire matter in that he was Mr. Byrne's financial adviser, he was an executive of Guinness & Mahon in 1985, and he controlled both the Ansbacher Cayman account from which the loan was repaid and the Amiens account to which the payment of £260,000.00 was lodged. Mr. Collery in his evidence to the Tribunal accepted that it was, in all probability, he who had generated the fictitious loan account statements in 1986 and 1987, and it was he who signed the certificates of interest issued by Guinness & Mahon on foot of those statements. He believed that in taking these actions, he did so on the instructions of Mr. Traynor.

8-38 While the Tribunal is left with considerable doubts as to the true purpose of the payment of £260,000.00, and while the circumstances raise very many questions which were not satisfactorily answered, in the absence of access to the memorandum accounts, and in the absence of assistance from Ansbacher Cayman, the Tribunal's inquiries as to whether the lodgement was connected with the financial affairs of Mr. Haughey must remain inconclusive.

Lodgements of £195,000.00 on 22nd February, 1988 and £49,700.00 on 24th February, 1988.

8-39 The Amiens account statements recorded lodgements of £195,000.00 on 22nd February, 1988 and £49,700.00 on 24th February, 1988. Guinness & Mahon's internal documents established that each of the

lodgements originated in Guinness & Mahon's account with Bank of Ireland and in the ordinary course, the transactions would have represented inter-bank transfers of funds from a customer of Bank of Ireland. The lodgements immediately preceded the debiting of £174,494.41 from the Amiens account to discharge the balances due on the loans in the name of Mr. PV Doyle. It will be recalled that these funds were subsequently substantially recouped by a payment on 28th March, 1988 of £150,230.00 by Mr. Doyle's estate.

8-40 The Tribunal made inquiries of Bank of Ireland, and heard evidence from Mr. Walter Maguire who was the District Operations Manager with the College Green, Dublin 2 branch of the Bank. Mr. Maguire referred to the Bank of Ireland microfiche records of the statement of Guinness & Mahon's account with Bank of Ireland which recorded credits to the account of £195,000.00 and £49,700.00 on 22nd February, 1988 and 24th February, 1988 respectively. Mr. Maguire noted that each of the transactions was designated on the account statement as a "*lodgement*" and this suggested to him that the transactions reflected the physical lodgement of paper effects, that is, cheques or drafts rather than a transfer of funds from an account of a customer of Bank of Ireland. As Bank of Ireland had no further records available which might have assisted the Tribunal in identifying the provenance of the cheques or drafts lodged to the Guinness & Mahon account, the Tribunal was unable to further its inquiries regarding the sources of the two lodgements or their connection, if any, with the financial affairs of Mr. Haughey.

9 MR HAUGHEY'S FINANCES FEBRUARY, 1991 – DECEMBER, 1996

9-01 As has already been detailed in Chapter 2, following the merger of Haughey Boland with a number of other accountancy firms, Mr. Jack Stakelum of BEL Secretarial took over the running of Mr. Haughey's bill-paying service. From that time, Mr. Stakelum provided an equivalent service through his business, BEL Secretarial. He opened a dedicated account for the purpose of administering the service with Allied Irish Banks, 52 Upper Baggot Street, Dublin 4.

EXPENDITURES THROUGH THE BILL-PAYING SERVICE

9-02 As copies of the Allied Irish Banks dedicated account operated by Mr. Stakelum were available to the Tribunal from February 1991 to December, 1996, the Tribunal was able to establish from the lodgements to and the drawings from that account, the precise sums which were available to Mr. Haughey to meet his living expenses in those years. The table below sets out the total lodgements to the dedicated account maintained by Mr. Stakelum in connection with the bill-paying service which he provided.

DATE	AMOUNT (£)
February, 1991 – December, 1991	332,449.73
January, 1992 – December, 1992	340,000.00
January, 1993 – December, 1993	305,000.00
January, 1994 – December, 1994	320,000.00
January, 1995 – December, 1995	434,000.00
January, 1996 – December, 1996	266,630.50

The total of the monies that passed through the account for the six years from February, 1991 to December, 1996 was £1,998,080.23.

THE IMMEDIATE SOURCE OF FUNDS TO THE BILL-PAYING SERVICE

Accounts of Ansbacher Cayman and Hamilton Ross in Irish Intercontinental Bank

9-03 The Tribunal's task of identifying the immediate source of funds to the bill paying service from February, 1991, when the service passed from Haughey Boland to Mr. Stakelum, was rendered significantly more accessible by virtue of the fact that by then, the Ansbacher accounts, which held funds under the control of Mr. Traynor, had largely been transferred from Guinness & Mahon to Irish Intercontinental Bank. The operation of the accounts in Irish Intercontinental Bank was placed on a more formal footing, and thereafter all instructions given by Mr. Traynor in connection with the operation of the accounts were given in writing on Ansbacher Cayman and subsequently Hamilton Ross letterheads bearing the address of

Mr. Traynor's office as Chairman of Cement Roadstone Holdings at 42, Fitzwilliam Square, Dublin 2.

9-04 These letters of instruction, copies of which had been retained by Irish Intercontinental Bank and which were provided to the Tribunal on foot of an Order of the Tribunal, included instructions for the provision of cheques or bank drafts payable to BEL Secretarial Services. At that time, Irish Intercontinental Bank was not a retail bank and did not afford its customers the facility of operating a current account. Accordingly, if a customer wished to access funds held in an account with Irish Intercontinental Bank, or to make a payment with those funds, such transactions were accommodated by the provision of a cheque drawn by Irish Intercontinental Bank on its own account with Bank of Ireland.

9-05 These letters of instruction for the provision of cheques payable to BEL Secretarial Services included directions to Irish Intercontinental Bank regarding the account of Ansbacher Cayman or of Hamilton Ross from which funds to meet those cheques should be debited. The letters of instruction were, in the main, signed by Ms. Joan Williams, Mr. Traynor's private secretary. The Tribunal accepts Ms. Williams' evidence that those instructions were given to her by Mr. Traynor and that the letters were signed by her in a purely administrative capacity. Through the banking records which were available from Irish Intercontinental Bank, and which were confirmed by Mr. Tony Barnes in evidence, the Tribunal, with the exception of three lodgements which are referred to below, was able to trace each and every lodgement to Mr. Stakelum's dedicated account with Allied Irish Banks back to an Ansbacher or Hamilton Ross account held with Irish Intercontinental Bank. The result of that exercise for each of the 93 lodgements to the account from February, 1991 to December, 1996 amounting in total to £1,923,542.40 is set out in the tables comprised in Appendix H to the Report. From that tracing exercise, and from the analysis conducted by the Tribunal, and from the evidence available to the Tribunal from Mr. Barnes, Mr. Collery and Mr. Stakelum, the Tribunal is satisfied that the following were the arrangements made for the funding of Mr. Haughey's bills in the years from February, 1991:—

- (i) From February, 1991 to September, 1992, periodic instructions were received by Irish Intercontinental Bank from Ansbacher Cayman and in particular from Mr. Traynor's office as Chairman of Cement Roadstone Holdings at 42 Fitzwilliam Square, Dublin 2 to provide cheques payable to BEL Secretarial Services, typically in amounts of £25,000.00, and to debit the funds to the principal Ansbacher Cayman Sterling Account held with Irish Intercontinental Bank, Account No. 02/01087/01.
- (ii) From October, 1992, when certain accounts had passed from Ansbacher Cayman to Hamilton Ross, instructions to issue cheques payable to BEL Secretarial Services were furnished by

Hamilton Ross from the same address at 42 Fitzwilliam Square and were primarily signed by Ms. Williams.

- (iii) For October and November, 1992, Irish Intercontinental Bank was instructed to debit the cost of these cheques to a Hamilton Ross Deutschmark Account No. 04/39231/81 reference S8. This account was opened on 5th October, 1992 on the instructions of Mr. Traynor and credited with the sum of DM165,957.02. By 18th November, 1992, all of the funds standing to the credit of that account had been drawn down and the account was closed.
- (iv) From December, 1992 to August, 1993, Irish Intercontinental Bank was instructed to debit funds to meet these cheques to the principal Hamilton Ross Sterling Account No. 02/01354/81.
- (v) From August, 1993 to December, 1994, instructions continued to be received from Hamilton Ross at Mr. Traynor's office at 42 Fitzwilliam Square and during that time, the funds to meet the cheques were debited to another Hamilton Ross Deutschmark Account No. 04/39236/81. The account had also been opened on 5th October, 1992, on foot of instructions furnished by Mr. Traynor, and had a reference S.9.
- (vi) From January, 1995, after Mr. Traynor's death, instructions continued from Hamilton Ross on the signature of Mr. Pdraig Collery from an address at 8 Inns Court, Winetavern Street, Dublin 8, being the offices of Mr. Samuel Field-Corbett. The debiting of the Hamilton Ross Deutschmark S.9 Account to meet the cheques payable to BEL Secretarial Services continued until November, 1995.
- (vii) From December, 1995 to December, 1996, instructions were received from Mr. Collery on behalf of Hamilton Ross from the same address. The drawing of funds to meet the issuing of cheques to BEL Secretarial Services reverted to the Hamilton Ross principal Sterling Account No. 02/01354/81.

9-06 Mr. Haughey did not dispute any of the evidence which the Tribunal led regarding the funding of the bill-paying service from Ansbacher Cayman and from Hamilton Ross accounts in Irish Intercontinental Bank. He professed to have no knowledge of the individual transactions, or of the extent of, or the whereabouts of the funds which were available to meet his outgoings.

Additional Sources of Lodgements

9-07 As already mentioned, there were three exceptional lodgements to the account maintained by Mr. Stakelum at Allied Irish Banks which the Tribunal was unable to track back to Irish Intercontinental Bank or trace into

Ansbacher Cayman or Hamilton Ross bank accounts. These three lodgements were as follows:

DATE	AMOUNT (£)
17/10/1991	25,000.00
07/07/1992	20,000.00
12/11/1996	24,630.50

9-08 The sources of the lodgements in October, 1991 and in November, 1991 were identified by the Tribunal and the results of the Tribunal's inquiries are set out below. This left the lodgement of £20,000.00 in July, 1992 which is the only lodgement to that account operated by Mr. Stakelum, the source of which remains unknown.

- (i) The lodgement of £25,000.00 on 17th October, 1991 represented the proceeds of a cheque dated 17th October, 1991 in the sum of £25,000.00 drawn on an account of Kentford Securities Limited with Bank of Ireland, St. Stephen's Green and which was signed by Ms. Joan Williams. This was an account maintained by Mr. Traynor at Bank of Ireland, and was used in conjunction with the Ansbacher Cayman and Hamilton Ross accounts in much the same way as the Amiens and Kentford accounts had functioned in Guinness & Mahon. This account in Bank of Ireland enabled Mr. Traynor to continue to provide a banking service to his clients notwithstanding that Irish Intercontinental Bank did not operate current accounts on behalf of its customers.
- (ii) The lodgement of £24,630.50 to the Allied Irish Banks account on 12th November, 1996 represented the proceeds of a transfer of Stg.£25,000.00 from Mr. Dermot Desmond in respect of a payment made by Mr. Desmond to the bill paying service for the benefit of Mr. Haughey. The circumstances surrounding this payment are addressed in detail in Chapter 12 of the Report.

THE S8 AND S9 MEMORANDUM ACCOUNTS AND SOURCES OF LODGEMENTS TO THE ACCOUNTS

The Memorandum Accounts and the S series

9-09 Copies of what were known as the Memorandum Accounts were available to the Tribunal for the years from September, 1992 to December, 1996. These were the confidential accounts which recorded individual balances of customers of Ansbacher Cayman in sterling funds which were held in pooled accounts initially in Guinness & Mahon, and subsequently in Irish Intercontinental Bank. Following the establishment of Hamilton Ross & Company Limited by Mr. Furze and Mr. Traynor in September, 1992, and the filtering off of deposits from Ansbacher Cayman to Hamilton Ross, identical Memorandum Accounts were kept for customers of Hamilton

Ross. After Mr. Traynor's death in May, 1994, these Memorandum Accounts were kept by Mr. Pdraig Collery. Statements for these accounts were all generated in Ireland. They were kept in lever arch files which were located in Guinness & Mahon during Mr. Traynor's tenure of office; they were subsequently kept in Mr. Traynor's office in Cement Roadstone Holdings at 42 Fitzwilliam Square; and after Mr. Traynor's death, they were kept at the premises of Mr. Samuel Field-Corbett at 8 Inns Court, Winetavern Street, Dublin 8.

9-10 The McCracken Tribunal Report dealt in some detail with the Cayman Trust Company by the name of Poinciana Fund Limited. The Report at page 40 related the history of accounts in Guinness & Mahon in the name of Ansbacher Cayman but which were specifically designated Poinciana Fund Limited. From the evidence available to the Tribunal, it appears that when Ansbacher Cayman accounts were shifted to Irish Intercontinental Bank, Poinciana Funds were not placed in discrete deposit accounts within the overall umbrella of Ansbacher accounts but were deposited in the general Ansbacher accounts. After the restructuring and establishment of Hamilton Ross, sterling funds were re-deposited in the principal Hamilton Ross sterling account.

9-11 Mr. Collery explained, that from his knowledge of the accounts, dating from the mid 1970s, pooled accounts were maintained only in respect of sterling funds. Currency accounts, that is, accounts held in currencies other than sterling were not kept in pooled accounts, but in separate accounts which represented the funds of a single customer or single beneficiary. As there were relatively few currency accounts, it was Mr. Collery's view that it would have been unnecessarily costly and unduly cumbersome to establish separate bureau systems for each of the currencies in which accounts were held other than sterling.

9-12 Mr. Collery confirmed that the Memorandum Accounts represented by the Code "S" formed part of the holdings of the Poinciana Fund. Whilst he had no direct knowledge of any trust associated with the company, he believed that the shares were held by the Trustees of a Cayman Trust, and that the company was the vehicle through which the Trust held bank accounts and administered funds held within the Trust. It was his impression from his dealings with the S Accounts that the Fund was primarily the vehicle used by Mr. Traynor for his own monies, the monies of Mr. Haughey and for other monies which Mr. Traynor directly controlled. Mr. Collery recalled that the S series of Memorandum Accounts had been in existence for many years prior to September, 1992, and he thought that they dated back to the early days of his association with the accounts in the mid 1970s. There were eleven S accounts in all, designated S, S1, S2, S3, S4, S5, S6, S7, S8, S9 and S10. Each S Memorandum Account represented the share of that account holder or beneficiary in the pooled sterling funds held prior to September 1992, in the Ansbacher Cayman principal sterling account and after September 1992, in the Hamilton Ross

principal sterling account. In the case of some of the individual S accounts, there were also currency accounts and in the case of the S9 account, there were two currency accounts being an S9 US dollar account and an S9 deutschmark account. The funds held on these currency accounts were not represented by balances recorded in the Memorandum Accounts, as those funds were held in separate accounts in the name of Hamilton Ross but designated by the appropriate Memorandum account number.

9-13 Within the S sterling series there were two accounts, the S and the S7 accounts, which Mr. Collery described as control or operational accounts. These were accounts used by Mr. Traynor to track transactions across the S series. The S7 account, which was designated “*portfolio*” related to investments made on behalf of customers or beneficiaries within the S series, and it was used by Mr. Traynor to monitor the acquisition and disposal of investments. The S account was described by Mr. Collery as a form of working or current account and it appears to have been utilised by Mr. Traynor to track administrative matters, such as the application of service charges, fees and so forth. Mr. Collery explained that both of these control accounts permitted Mr. Traynor to track transactions across the S series and to ensure that his instructions had been implemented.

The S8 and S9 accounts

9-14 As of 30th September, 1992, the total sum standing to the credit of the S8 and S9 Accounts was Stg.£1.389 million. The balances were made up as follows:—

- (i) Stg.£83,266.47 standing to the credit of the S8 sterling account.
- (ii) Stg.£1,203,395.23 standing to the credit of the S9 sterling account.
- (iii) Stg.£102,394.52 standing to the credit of the S8A sterling account.

9-15 Over the period for which account statements were available, there were in all seven separate S8 and S9 accounts identified by the Tribunal. These accounts primarily arose from the conversion of sterling funds into deutschmark funds and from the creation of separate accounts over which Irish Intercontinental Bank had liens for securities provided for the benefit of Celtic Helicopters Limited. The following separate S8 and S9 accounts were identified.

S8 Sterling Account

9-16 This was a Memorandum Account kept within the confidential bureau system representing funds held in the Hamilton Ross principal sterling account with Irish Intercontinental Bank. As of 30th September, 1992 there was Stg.£83,266.47 standing to the credit of the account. The first page of the set of account statements available to the Tribunal was numbered 42 which suggests that the account had been in existence for some years, and this was confirmed by Mr. Collery. Over the four year period for which statements were available, there were four lodgements to the account over

and above the crediting of accrued interest. These lodgements are dealt with fully at a later stage in this Chapter of the Report. There were also a series of debits to the account reflecting debits to the Hamilton Ross principal sterling account with Irish Intercontinental Bank made to fund cheques payable to BEL Secretarial Services on the instructions of Mr. Traynor, and after his death on the instructions of Mr. Collery. In total £432,525.00 was debited to the account to meet payments to BEL Secretarial Services. There were no other debits to the account to fund expenditures. As of 31st December, 1996, the balance standing to the credit of the account was Stg.£29,910.75.

S8 Deutschmark Account

9-17 The S8 deutschmark account was a distinct Hamilton Ross account with Irish Intercontinental Bank, Account No. 04/39231/81. The account was opened on 8th October, 1992 on the instructions of Mr. Traynor with a lodgement of DM162,957.02. This represented the proceeds of the conversion of Stg.£65,479.71, debited to the Hamilton Ross principal sterling account and was in turn reflected in a debit to the S8 sterling account. The account operated for just six weeks, and by 18th November the credit balance had been drawn down and the account was closed. There were two debits to the account in October, 1992 to fund payments of £20,000.00 each to BEL Secretarial Services. There was also an earlier debit to fund payments of £15,000.00 to Dr. John O'Connell and £5,000.00 to Mr. Sean Haughey and there was a final debit in November, 1992 to fund a payment of £15,000.00 to Mr. Conor Haughey.

S8 Dollar Account

9-18 The S8 Dollar account was also a distinct Ansbacher Cayman account held with Irish Intercontinental Bank account number 03/00723/81. The Tribunal discovered the account in the course of its private investigative work when it conducted an analysis of all of the Ansbacher Cayman and Hamilton Ross accounts held with Irish Intercontinental Bank. The account was opened on 14th August, 1991 and was closed on 9th July, 1992, when the credit balance of \$132,812.00 was converted to sterling and was credited to the Ansbacher Cayman pooled sterling account.

9-19 There were two lodgements to the account, \$25,000.00 and \$102,687.59, both made on 14th August, 1991. The lodgement of \$25,000.00 represented a transfer of funds from another account of Ansbacher Cayman with Irish Intercontinental Bank, reference A/A39. That account had been credited with an exactly equivalent sum of \$25,000.00 on 7th August, 1991 and that credit represented the proceeds of a cheque dated 15th July, 1991 drawn on an account of Ansbacher Cayman with Bank of New York, payable to Ansbacher Cayman. The second lodgement of \$102,687.59 represented the proceeds of an electronic transfer of funds from Irish Intercontinental Bank's correspondent bank, Kreditbank New York. Irish Intercontinental Bank assisted the Tribunal in making inquiries of

Kreditbank New York, regarding the source of the funds which inquiries established that Ansbacher Cayman had itself provided these funds. In his evidence to the Tribunal, Mr. Collery testified that he knew of no accounts coded with the letter S other than the S series within the Poinciana Fund, and that he knew of no S8 coded account other than those coded accounts which he associated with Mr. Haughey. When the account was closed and the balance transferred to the pooled sterling account, Mr. Collery confirmed that a corresponding credit would have been made to a memorandum account within the bureau system. As the earliest memorandum account statement available to the Tribunal was dated September, 1992, the Tribunal was not able to verify that a corresponding credit was made to the S8 memorandum account but, having regard to the evidence of Mr. Collery and the Tribunal's knowledge of the manner of operation of the Ansbacher accounts gleaned from evidence heard at public sittings, the Tribunal is satisfied that this was in all probability the case.

S8A Sterling Account

9-20 The McCracken Tribunal reported that this Memorandum Account represented sterling funds held on a blocked account in the name of Hamilton Ross over which Irish Intercontinental Bank had a lien by way of security for a guarantee provided by Irish Intercontinental Bank to Bank of Ireland in respect of loan facilities afforded by Bank of Ireland to Celtic Helicopters. The account was maintained at a constant balance of Stg.£100,000.00, and as interest accrued it was debited to the account, credited to the Hamilton Ross principal sterling account, and reflected as a credit on the S8 sterling account. As of 31st December, 1996, the balance on the account remained at Stg.£100,000.00.

S9 Sterling Account

9-21 This was another Memorandum Account within the S series which also represented funds deposited in the pooled sterling account with Irish Intercontinental Bank. As the account was closed on 30th September, 1992, following a series of transactions, there was only a single page account statement available to the Tribunal. That page was numbered 24 which again suggested that the account had been in existence for a number of years: a fact confirmed by Mr. Collery.

9-22 It appears from that single page account statement that on 30th September, 1992, funds held to the credit of a number of separate Memorandum Accounts were transferred to and consolidated on the S9 account and that the resulting aggregate balance of Stg.£1,203,395.23 was converted into deutschmarks. The initial credit balance on that date was Stg.£490,033.25. There were two credits to the account from Mr. Traynor's control accounts, one for Stg.£10,600.68 from the S account and one for Stg.£703,500.00 from the S7 account. Whilst Mr. Collery could not assist the Tribunal regarding the credit from the S account, he believed that the

£703,500.00 from the S7 Portfolio Account probably represented the proceeds of investments that had been made and realised at some earlier date by Mr. Traynor. These transfers, which brought the credit balance of the account up to £1,203,395.23, were no more than paper accounting exercises, as the funds were and remained held at all times in the same bank account with Irish Intercontinental Bank, namely the pooled sterling account.

S9 Deutschmark Account

9-23 The S9 Deutschmark account, in common with the S8 Deutschmark and S8 Dollar account, was not strictly speaking a confidential account within the bureau system, as the funds were held in a discrete account in Irish Intercontinental Bank in the name of Hamilton Ross, Reference S9, Account No. 04/39236/81. The account was opened on 30th September, 1992 with the proceeds of the conversion of Stg.£1,203,395.23 from the S9 sterling memorandum account to DM3,049,981.14. There were regular debits to this account to fund cheque payments made by Irish Intercontinental Bank to BEL Secretarial Services. As of 18th November, 1996, being the date of the last entry on the final account statement, the balance on the account was DM971,818.64. Apart from debits to the account to meet cheques paid to BEL Secretarial Services, there were no other transactions across the account apart from a withdrawal in April, 1993 of DM118,875.00 which was converted into dollars and credited to a dollar account in the name of Hamilton Ross with the Reference S9A.

S9A Dollar Account

9-24 This was another blocked deposit account which was held directly with Irish Intercontinental Bank in the name of Hamilton Ross, bearing Account No. 03/39212/77. The account was opened on 26th April, 1993 with a lodgement of \$75,000 which was funded by a conversion of DM118,875 debited to the Hamilton Ross deutschmark account number 04/39236/81 Reference S9, the account referred to in the preceding sub-section. The McCracken Tribunal found that Irish Intercontinental Bank had a lien over the funds held to the credit of this account in support of a guarantee provided by Irish Intercontinental Bank to facilitate the purchase of a helicopter by Celtic Helicopters. The guarantee of Irish Intercontinental Bank was subsequently released and the guarantee was discharged but the funds held on the account continued to accumulate and \$89,357.88 was held to the credit of the account on 31st December, 1996.

Drawings on the S accounts

9-25 From an inspection of the records available to the Tribunal in relation to the bill-paying service operated by Mr. Stakelum, from a scrutiny of the instructions received by Irish Intercontinental Bank from Mr. Traynor and subsequently from Mr. Collery, and from a further analysis of the Memorandum Account statements, the Tribunal was able to trace the

payments made to BEL Secretarial Services for the purposes of the bill paying services to the Cayman Accounts in Irish Intercontinental Bank and, where drawn from sterling accounts, back to the sterling memorandum accounts. The results of that analysis are set out in tabular form and are comprised in Appendix I to the Report. Mr. Collery in his evidence to the Tribunal confirmed that, from his knowledge of the accounts and from his operation of the accounts, the results of the exercise undertaken by the Tribunal were correct. The S8 sterling memorandum account, which represented the funds held in the pooled sterling accounts in Irish Intercontinental Bank referable to the S8 account, and the S9 deutschmark account, which represented the balance held to the credit of the Hamilton Ross deutschmark account No. 04/39236/81, were the two accounts primarily used to fund the bill paying service. With the exception of a single drawing from the deutschmark account to establish the blocked US dollar account as security for the guarantee provided by Irish Intercontinental Bank for the benefit of Celtic Helicopters, there were no drawings from the deutschmark account apart from those applied to the bill paying service.

9-26 While the vast preponderance of debits to the S8 sterling account also represented funds applied to the bill-paying service, there were a small number of additional debits as follows:—

DATE	AMOUNT (STG.£)
30 th September, 1992	20,000.00
10 th December, 1992	26,500.00
10 th December, 1992	10,600.00
31 st December, 1992	11,180.00
1 st January, 1993	2,052.21
12 th October, 1993	959.00
18 th April, 1996	10,275.00

Lodgements to the S8 sterling account

9-27 There were four lodgements recorded on the S8 sterling memorandum account statements between 30th September, 1992 and 31st December, 1996. Three of the lodgements reflected lodgements to the Hamilton Ross sterling account in Irish Intercontinental Bank, and one of them reflected a lodgement to the account of Kentford Securities Limited in Bank of Ireland which was controlled by Mr. Traynor. The details of each of those lodgements are set out below.

- (i) **Stg.£108,017.69** was credited to the S8 sterling account on 30th October, 1992. The funds represented the proceeds of a cheque for £100,000.00 dated 21st September, 1992 payable to Credit Suisse and drawn on Bank of Ireland, Dundrum, Dublin 14, account Mike Murphy Insurance Brokers Limited. This cheque, which was intended by Mr. Murphy as an investment in Celtic

Helicopters, was switched by Mr. Traynor with funds paid by Mr. Ben Dunne for the benefit of Mr. Haughey. This payment is dealt with in detail in Chapter 11 of the Report.

- (ii) **Stg.£84,800.00** was credited to the S8 sterling account on 10th December, 1992. It represented the sterling equivalent of a cheque for £80,000.00 dated 30th November, 1992 payable to cash and drawn on Bank of Ireland, Rotunda Branch, Dublin 2, account Carlisle Trust Limited No. 1. The proceeds of this cheque were lodged to the Kentford Securities Account in Bank of Ireland, Account No. 19446918. The lodgement represented a payment made by Mr. Ben Dunne for the benefit of Mr. Haughey which was channelled through the account of Carlisle Trust Limited. This matter is also addressed in Chapter 11 of the Report.
- (iii) **Stg.£99,993.00** was credited to the S8 sterling account on 31st October, 1994. It represented the proceeds of funds transferred by Mr. Dermot Desmond to the Hamilton Ross sterling account in Irish Intercontinental Bank and intended as a payment for the benefit of Mr. Haughey. This payment is dealt with in Chapter 12 of the Report.
- (iv) **Stg.£168,036.81** was credited to the S8 sterling account on 29th September, 1995 and represented the proceeds of an investment held by the Nominee Holding Company of Ansbacher Cayman with NCB Stockbrokers Limited for the benefit of Mr. Haughey. This investment is dealt with in detail in Chapter 10 of the Report.

Beneficiary of the S8 and S9 accounts

9-28 The McCracken Tribunal found that the S9 deutschmark account had been used exclusively for Mr. Haughey's benefit, and that the S8 sterling memorandum account may have included money for the benefit of Mr. Haughey and for others. From all of the evidence available to it, the Tribunal is satisfied that all of the S8 and S9 Accounts within the S series of the Poinciana Fund holdings were held for the exclusive benefit of Mr. Haughey. All of the lodgements reflected in the S8 sterling memorandum account were intended as payments to Mr. Haughey or alternatively represented the proceeds of investments which the Tribunal is satisfied were held for his benefit. While there were a small number of withdrawals from the S8 sterling account over the period for which account statements were available, that is from September, 1992 to December, 1996, which could not be traced directly to expenditures made on behalf of Mr. Haughey, the Tribunal considers that the probability is that these funds were also applied for Mr. Haughey's benefit.

9-29 The Tribunal is satisfied that the other five S8 and S9 Accounts, that is the S8 deutschmark account, the S8 dollar account, the S9 sterling account and the blocked S8A sterling and S9 dollar accounts, also comprised funds held exclusively for Mr. Haughey's benefit. The S8

deutschmark account was opened with funds drawn from the S8 sterling account, and all expenditures from that account were clearly made for purposes connected with Mr. Haughey. The S9 sterling account was the account for which the Tribunal had only a single page statement for 30th September, 1992. The balance of the funds on that account were converted from sterling to deutschmarks and were placed on the S9 deutsche mark account. The two subsidiary blocked accounts, the S8A sterling account and the S9 dollar account, each constituted security for liabilities of Celtic Helicopters and the latter account was, on the evidence heard by the Tribunal, carved out of funds held on the S9 deutschmark account.

9-30 The Tribunal is also satisfied that the S8 dollar account, in which it will be recalled that US dollar funds were held from 14th August, 1991 to 9th July, 1992, was in all probability beneficially held for Mr. Haughey. While there were no drawings from the account during its currency, and accordingly no drawings connected with expenditures made by or on behalf of Mr. Haughey, in view of the evidence of Mr. Collery relating to his knowledge of the accounts to which the code S8 was attached, the Tribunal considers that the funds held to the credit of that account were funds intended for Mr. Haughey's benefit.

9-31 The Tribunal heard evidence from the Revenue Commissioners and from Irish Intercontinental Bank in connection with the ultimate application of the balances remaining in the Hamilton Ross Accounts with Irish Intercontinental Bank which may have included funds held in some of the S8 and S9 accounts. The balances were substantially applied in making payments to the Revenue Commissioners by way of the settlement of liabilities of Hamilton Ross and of Irish Intercontinental Bank for outstanding tax in connection with the operation of the Hamilton Ross accounts, and the activities of Hamilton Ross in this jurisdiction. The remaining small balance was, the Tribunal understands, remitted to Hamilton Ross in the Cayman Islands. The application of the funds held to the credit of the accounts for those purposes does not, in the view of the Tribunal, detract from the fact that there can be no other conclusion than that the funds held on the S8 and S9 Accounts were held for the exclusive benefit of Mr. Haughey. Had there been no interruption in the operation of the accounts arising from the inquiries and investigations dating from late 1996, the Tribunal has no doubt that the entire of the funds would have been applied for Mr. Haughey's direct benefit.

Mr Haughey's knowledge of the S8 and S9 accounts

9-32 Mr. Haughey testified that he had no knowledge of the S8 or S9 Memorandum Accounts. After Mr. Traynor's death, he believed that there was a fund of money, which Mr. Traynor had controlled, and to which Mr. Stakelum had access for his benefit. Mr. Haughey stated that he did not know at the time that Mr. Collery was providing those funds to Mr. Stakelum.

The Tribunal cannot accept that Mr. Haughey's evidence in that regard was correct.

9-33 Mr. Collery in his evidence informed the Tribunal that after Mr. Traynor's death, he continued the practice of preparing schedules showing the quarterly balances held for the benefit of Mr. Haughey. These were detailed schedules showing the opening and closing balances on each of the S accounts for the quarterly period. The schedules also detailed the accrual of interest to each of the accounts, and the lodgements to and drawings from the accounts. The schedules did not identify the accounts by reference to the S8 and S9 codes, but rather identified the accounts by reference to the currencies in which the funds were held. The S8 sterling account was described as "*No. 1 Sterling Account*"; the S8A blocked sterling account was described as "*No. 2 Sterling Account*"; the S9 dollar blocked account was described as "*US Dollar Deposit*"; and the S9 deutschmark account was described as "*Deutschmark Deposit*". The Tribunal accepts Mr. Collery's evidence that schedules of this type had been prepared prior to Mr. Traynor's death, and that he was merely continuing an established practice. Mr. Collery's evidence in this regard was corroborated by the evidence of Ms. Joan Williams who had recalled, typing documents recording account balances for Mr. Traynor in advance of Mr. Traynor's weekend meetings with Mr. Haughey.

9-34 Mr. Collery furnished these schedules showing the quarterly balances on the accounts to Mr. Stakelum, and Mr. Stakelum arranged to visit Mr. Haughey at his home in Abbeville, Kinsealy. According to Mr. Stakelum, these meetings took place three to four times a year and coincided with the receipt of schedules from Mr. Collery. The purpose of the meetings was clearly for Mr. Stakelum to appraise Mr. Haughey of the state of the accounts in which funds were held for him. There was certainly no other purpose to the meetings advanced by either Mr. Stakelum or by Mr. Haughey. Mr. Stakelum recalled that Mr. Haughey did not seem to be particularly interested in the information which he conveyed, but that he updated Mr. Haughey on the position by reference to the contents of the schedules, and whilst he thought that he probably left copies of the schedules with Mr. Haughey, he was unsure whether Mr. Haughey retained the copies or returned them to him prior to his departure.

9-35 These schedules contained all of the salient information regarding the funds held in the Cayman accounts for Mr. Haughey's benefit. The schedules recorded the opening and closing balances on all of the accounts; they recorded the interest applied; and they recorded the lodgements to and drawings from each account. In other words, these schedules consolidated in one document all of the information recorded on the S8 and S9 account statements for the three month period.

9-36 Mr. Haughey accepted that Mr. Stakelum brought this information to him, and that from time to time, Mr. Traynor would have given him some

indication of the state of his finances. Even if Mr. Haughey failed to pay attention to all of the information which was imparted to him, he can scarcely have failed to comprehend that there were accounts held for him, the currency in which the accounts were held, and the overall balances on the accounts. Mr. Haughey may not have been aware of the coded references given to those accounts in the confidential records kept by Mr. Traynor and by Mr. Collery, but that does not appear to the Tribunal to detract from the fact that he must have had knowledge of the funds available for his benefit, of the currencies in which they were held, of the drawings and accruals, and of the overall balances held for his benefit.

ACCOUNTS HELD IN MR HAUGHEY'S NAME WITH NATIONAL IRISH BANK

9-37 In 1993, after Mr. Haughey had retired from public life, he opened a number of accounts with National Irish Bank Limited at its branch in Malahide, Co. Dublin. These accounts were primarily used in connection with certain relatively modest farming activities conducted by Mr. Haughey from Abbeville. One of the accounts was also used for the receipt of Mr. Haughey's pension cheques.

9-38 The Tribunal heard evidence from Mr. John Trethowen, the Project Director of National Irish Bank Limited, in relation to the five accounts which were opened by Mr. Haughey and the details of which were as follows:—

- (i) Account No. 51072463 which was a Current Account opened on 3rd February, 1993.
- (ii) Account No. 51072471 which was a Wages Account also opened on 3rd February, 1993.
- (iii) Account No. 13068013 which was a Savings Account opened on 9th February, 1993.
- (iv) Account No. 55005329 which was a Loan Account opened on 2nd February, 1995.
- (v) Account No. 81074059 which was a personal account opened on 23rd April, 1993.

All of the accounts, with the exception of the last, were designated Abbeville Farm accounts and all of the accounts were operational as of 31st December, 1996.

9-39 The Tribunal in the course of the private investigative phase of its work, with the assistance of National Irish Bank, sought to identify all lodgements to the accounts in excess of £1,000.00 in order to ascertain whether funds lodged to the accounts were material to the Tribunal's inquiries. With the exception of a lodgement of £20,000.00 on 2nd June, 1993 to Account No. 13068013, which represented the proceeds of a

personal cheque with which Mr. Haughey was furnished by Mr. Ben Dunne, the Tribunal was satisfied that all other lodgements to the accounts were not material to the Tribunal's Terms of Reference.

9-40 The lodgements nonetheless represented funds available to Mr. Haughey in these years and the aggregate of the funds lodged to the accounts was £498,554.26.

NCB INVESTMENT ACCOUNT

BACKGROUND

10-01 It was apparent from an inspection of the S8 sterling memorandum account which was available to the Tribunal for the years from 30th September, 1992 to December, 1996, that there was a lodgement of Stg.£168,036.81 credited to the account on 29th September, 1995 which was described on the face of the statement as “*lodged from NCB*”. The lodgement was also recorded and credited to the No.1 sterling account in the schedule of account balances as of 30th September, 1995 supplied by Mr. Collery to Mr. Stakelum, and in turn by Stakelum to Haughey.

10-02 Mr. Stakelum, in his evidence to the Tribunal, recalled that in the course of the investigations of the McCracken Tribunal, he made inquiries initially of Mr. Collery, and then of Mr. Haughey, regarding the lodgement as shown in the schedule of account balances, a copy of which he had retained. Mr. Collery informed him that the lodgement represented the proceeds of an investment account of Mr. Haughey. Mr. Stakelum then proceeded to make the same inquiry of Mr. Haughey who, in response, inquired whether this was not the proceeds of an investment account.

10-03 This led the Tribunal to an investigation of the source of these monies which Mr. Collery confirmed had been held in an investment account with NCB Stockbrokers, and this led the Tribunal to a full investigation of the investment account in which these funds were held.

AURUM NOMINEES NO. 6 ACCOUNT

10-04 From the evidence of Mr. John Keilthy, a Director of NCB and head of its Private Client Division, based on his own knowledge and on a review of the relevant files and documents held by NCB, it appears that these funds represented the final balance held in an investment account which had been operated by NCB on the instructions of Mr. Traynor. The funds were held in a current account with Ulster Bank Limited, College Green, Dublin 2 in the name of Aurum Nominees Limited No.6 Account OS. Aurum Nominees was a nominee holding company of NCB which was used to hold funds and securities on behalf of its investment clients. Securities purchased on behalf of clients were placed in the name of the nominee company: the authorised signatories of the nominee company could then deal in securities on behalf of NCB’s clients. This facilitated the speedy and efficient acquisition and disposal of securities on behalf of clients. It also, of course, ensured a significant degree of confidentiality on behalf of clients in that securities purchased in publicly quoted shares were not registered in the name of the beneficial owner, but in the nominee holding company.

10-05 Each client of NCB was also assigned a separate bank account in the name of Aurum Nominees in which cash was held on behalf of an investment client. Cash deposits arose in the course of dealings either

where funds were provided for the acquisition of securities, or were generated on the sale of securities or on the payment of dividend income. Each such separate account in the name of Aurum Nominees was individually identified, and all of the accounts were held with Ulster Bank, College Green. Mr. Keilthy confirmed to the Tribunal that securities and cash held by the nominee company or within the nominee accounts were deemed by NCB to be beneficially owned by the account holder, and were clearly segregated and kept separate from the assets of other clients of NCB, and from the assets of NCB itself.

10-06 From the documentary evidence available, it is clear that the Aurum Nominees No.6 bank account was the source of the lodgement of Stg.£168,000.00 to the S8 sterling account on 29th September, 1995. The account was opened in July, 1988 and the identity of the account holder as far as the records of NCB were concerned was Overseas Nominees Limited, which was a nominee holding company of Ansbacher Cayman Limited. The account was opened on the instructions of Mr. Traynor, conveyed to Mr. Dermot Desmond. In his evidence to the Tribunal, Mr. Desmond confirmed that Mr. Traynor initially approached him to discuss the opening of the Aurum Nominees No.6 account, and a number of other accounts. Mr. Desmond understood that Mr. Traynor managed certain investment funds on behalf of a number of persons, and that he wished to transfer the handling of those funds to NCB Stockbrokers. Mr. Desmond, on the basis of his evidence to the Tribunal, did not know that Mr. Traynor was acting in his capacity as a director of Ansbacher Cayman, or that the funds, which he intended to transfer to NCB, were held in off-shore accounts in Guinness & Mahon. Mr. Desmond met twice or three times a year with Mr. Traynor to discuss the investment of the funds held.

10-07 It appears from Mr. Desmond's evidence that the investment decisions were primarily made by Mr. Traynor, and that the transmission of instructions was at all times directly from Mr. Traynor to Mr. Desmond, even though the accounts were administered by the Private Client Division of NCB Stockbrokers. It is clear that Mr. Desmond must have considered these accounts of sufficient importance to warrant his personal involvement.

PROVISION OF FUNDS TO ACCOUNT

10-08 The Aurum Nominees No. 6 account was the first of five accounts opened by NCB Stockbrokers on the instructions of Mr. Traynor for Overseas Nominees Limited. While Mr. Desmond may have understood that Mr. Traynor was acting in this matter personally, it was clearly evident from the files held by NCB, and was confirmed by Mr. Kielthy, that the owner of these five accounts was Overseas Nominees Limited, which was the nominee holding company of Ansbacher Cayman Limited. It follows that these five accounts held with NCB Stockbrokers were Ansbacher accounts within the meaning of the Tribunal's Terms of Reference. As all securities purchased on behalf of the account holders by NCB Stockbrokers were

registered in the name of Aurum Nominees and as the beneficiaries of the accounts in NCB's files were recorded as Overseas Nominees Limited, the identity of the true owners of these investment accounts were protected by not just one but by two layers of anonymity through the use of the device of corporate nominees. The other four accounts, each of which had a separate and distinct Aurum Nominees numbered bank account with Ulster Bank, were opened after the No. 6 account and the quantum of the funds held in those accounts varied. What was common to all five accounts was that the owner was Overseas Nominees Limited; that it was Mr. Traynor who furnished instructions; and that the contact point in NCB was Mr. Desmond.

10-09 The Aurum Nominees No. 6 account was opened on 7th July, 1988, and it follows therefore that Mr. Traynor's initial contact with Mr. Desmond must have been prior to that date. From the records available through NCB regarding the operation of the account, and the reception of funds, it is clear that cash funds were transmitted to NCB to be credited to the No. 6 account in two tranches of Stg.£175,000.00 received on 7th June, 1988 and Stg.£125,000.00 received on 18th August, 1988. These funds were initially credited to NCB's sterling account No. 15224832 with Royal Bank of Scotland, Threadneedle Street, London, and were recorded on the face of the bank account statement as payments from Guinness & Mahon Dublin. NCB's records included a memorandum dated 25th July, 1988 which recorded that the sum of Stg.£175,000.00 had been received on behalf of Overseas Nominees Limited; that it was converted into £202,195.26; and that £96,609.00 was required on 25th July, 1988 for the payment of securities purchased. The balance of that sum of £202,195.26 was credited to the Ulster Bank Limited Aurum Nominees No. 6 Account Number 08390866, and was shown on the account statement as a credit of £105,586.26.

10-10 The second transmission of Stg.£125,000.00 was credited to the Royal Bank of Scotland account on 18th August, 1988. It was converted into Irish pounds yielding, £149,432.16, and was credited to the Ulster Bank No. 6 account on 23rd August, 1988.

10-11 Mr. Graham O'Brien, a Director of NCB Stockbrokers Limited, testified that the account held by NCB with Royal Bank of Scotland was a current account which was used for the payment of sterling expenses incurred by NCB as members of the London Stock Exchange. It was his view that the receipt of funds from Guinness & Mahon into that account was highly unusual, as such sterling funds were normally received by NCB into a sterling account which it held with Bank of Ireland International Division for that purpose.

10-12 Ms. Sandra Kells' evidence confirmed that the sums of Stg.£175,000.00 and Stg.£125,000.00 were each transferred by Guinness & Mahon to Royal Bank of Scotland on 7th June and 18th August, 1988 respectively. Each of these transfers represented funds debited to the

principal sterling call account of Ansbacher Cayman with Guinness & Mahon Account No. 3154602. Each of the transfers followed the same routing, which involved the debiting of the funds to the Ansbacher account with Guinness & Mahon, the crediting of the funds to Guinness & Mahon's account with Guinness Mahon & Company, London, and the debiting of those funds in favour of Royal Bank of Scotland. It is clear therefore that the cash funds transmitted to NCB Stockbrokers of Stg.£300,000.00, which was converted into £351,627.42, and credited to the Aurum Nominees No. 6 Account, represented funds debited to the principal Ansbacher Cayman sterling account with Guinness & Mahon. As already indicated, these funds were routed in a highly unusual way, in that they were transferred from Guinness & Mahon to NCB's current account with Royal Bank of Scotland in London, rather than to NCB's sterling account with Bank of Ireland International Division. As these accounts were opened by Mr. Traynor, and as Mr. Desmond was his point of contact, it follows that these routing instructions must have been given by Mr. Desmond to Mr. Traynor. The significance of this unusual routing of the funds is unclear, although it did ensure that there was no reference to payments from Guinness & Mahon to NCB Stockbrokers on any statement of a bank account which operated within the State.

OPERATION OF AND WITHDRAWALS FROM AURUM NOMINEES NO. 6 ACCOUNT

10-13 The account operated from 7th July, 1988 until 16th September, 1995 when the remaining balance on the account was withdrawn, and the account was closed. During the years of its operation, instructions were given by Mr. Traynor to Mr. Desmond to purchase and sell securities, although Mr. Desmond would have advised Mr. Traynor in that regard. The securities bought and sold on the account were described by Mr. Kielthy as being typical of the range of stocks dealt in by other clients of NCB over those years, and were stocks that were actively traded across the market. From 1991, the account was largely dormant save for credits arising from the receipt of dividends, and the application of bank interest.

10-14 There were three cash withdrawals from the account, the circumstances of which are addressed below.

- (i) £206,613.57 was debited to the account on 8th May, 1990: it was converted into Stg.£200,000.00 and was transmitted by way of a sterling draft payable to Overseas Nominees Limited. The Tribunal has been unable to identify a corresponding lodgement of Stg.£200,000.00 to an Ansbacher account with Guinness & Mahon. Mr. Desmond could not recall this transaction, but believed that it was probable that he was furnished with instructions by Mr. Traynor in connection with the withdrawal, and that he would have transmitted those instructions to the Private Client Division of NCB.

There was no correspondence or records relating to the circumstances of the withdrawal within the files retained by NCB.

- (ii) £95,000.00 was withdrawn from the account on 15th March, 1991, and was applied in the purchase of a sterling draft drawn on Ulster Bank Limited for Stg.£85,640.24 payable to Ansbacher Limited. The draft was forwarded by Mr. Traynor to Irish Intercontinental Bank under cover of a letter dated 19th March, 1991 with instructions that the proceeds should be credited to Ansbacher Sterling Account No. 02/01087/81, which was the principal sterling call account of Ansbacher Cayman with Irish Intercontinental Bank. A microfiche copy of the front and reverse sides of the draft was available to the Tribunal, and Mr. Tony Barnes, of Irish Intercontinental Bank, confirmed from the stamps on the reverse side of the draft that it was lodged to Irish Intercontinental Bank on 25th March, 1991. The proceeds, having been cleared through Irish Intercontinental Bank's correspondent Bank, Royal Bank of Scotland, were credited to the Ansbacher account on 3rd April, 1991.

Mr. Collery had no recollection of the transaction but accepted that, as the draft was lodged to the principal Ansbacher account which held pooled funds on behalf of a number of customers of Ansbacher, it was probable that the funds were credited by him to a memorandum account on Mr. Traynor's instructions. As copies of the memorandum accounts were not available to the Tribunal for the years prior to September, 1992, it was not possible for the Tribunal to track this payment directly to a memorandum account.

What was highly unusual about this withdrawal was that it put the designated Ulster Bank Aurum Nominees No. 6 account into overdraft to the tune of £23,461.94, and it remained overdrawn for a number of months. What was also unusual was that NCB's records included a personal letter from Mr. Traynor, addressed to Mr. Desmond, thanking Mr. Desmond for "*yours*" of 15th March, 1991, and for the draft for Stg.£85,640.24. It follows from the terms of Mr. Traynor's letter that instructions for the withdrawal must have been received by Mr. Desmond from Mr. Traynor. Mr. Desmond believed that he would have had no other involvement, apart from receiving and transmitting those instructions to Mr. Keilthy, and he considered it of some significance that the reference on the letter "*JKL-918*" was not his reference, and was not a reference that he could identify.

Both Mr. Keilthy and Mr. Desmond accepted that such an overdraft on a client account was unusual. Mr. Keilthy believed that it could have occurred as a result of an error on the part of NCB, or as a result of a facility extended by NCB in releasing funds which had

not yet accrued to the account, through the sale of securities. While the Tribunal can readily accept that a firm of stockbrokers might permit a client to draw down funds against the proceeds of stocks which had been sold but for which settlement was pending, it seems improbable that such an arrangement would have been permitted over a protracted period of months. If an error was made by NCB, as suggested by Keilthy, it seems unlikely that the error would not have been noticed and rectified within a short time. The Tribunal considers that it is more probable that some special arrangement was made with Mr. Traynor which permitted the release of the funds.

- (iii) £165,471.99 was withdrawn from the account on 18th September, 1995 and the account was closed. On the instructions of Mr. Collery, the funds were transferred from Ulster Bank to Irish Intercontinental Bank for credit to the Hamilton Ross Sterling Call Account No. 02/01354/81. The funds were converted by Irish Intercontinental Bank to sterling on 18th September, 1995, yielding Stg.£168,036.81 and were credited on the same date to the Hamilton Ross Sterling Call Account. This sum was in turn credited by Mr. Collery to the S8 memorandum account, and according to Mr. Collery, this was all done on the instructions of Mr. Furze.

The closure of the account by this final withdrawal arose from an exchange of correspondence, which commenced by letter of 8th February, 1994 from Mr. Traynor addressed to Ms. Nancy Egan of NCB Stockbrokers. By that time, Mr. Desmond had ceased to have any involvement in the running of NCB, and Mr. Traynor's letter was in response to a letter of 24th January, 1994 from Ms. Egan to Mr. John Furze of Overseas Nominees Limited in the Cayman Islands, which enclosed a valuation of the securities held on the No. 6 Account. Mr. Traynor instructed NCB to dispose of all of the holdings on the account, and to provide him with a reconciliation of movements on the account for the period from March, 1991 to December, 1993. Mr. Keilthy replied by letter of 2nd March, 1994 confirming that all holdings on the account had been sold. Mr. Traynor died in May of 1994, and according to Mr. Collery, it was Mr. Furze who instructed him to direct NCB to transfer the balance on the account to the Hamilton Ross account, which he did by letter of 12th September, 1995. By letter of 15th September, 1995, Mr. Keilthy confirmed that he had given instructions to Ulster Bank to transfer the funds to Irish Intercontinental Bank. Mr. Keilthy was not surprised when he received instructions from Mr. Collery as he had connected Mr. Collery, with Mr. Traynor's business affairs. Mr. Collery recalled that he received a telephone call from Mr. Keilthy around this time, and that he confirmed to Mr. Keilthy that Furze was the source of his instructions.

MR. HAUGHEY'S KNOWLEDGE OF THE AURUM NO. 6 ACCOUNT

10-15 The Aurum No. 6 Account was an Ansbacher account. The final withdrawal from the account of £165,471.99 on 18th September, 1994 was credited to the S8 Memorandum Account, which represented the funds held for the benefit of Mr. Haughey within the Hamilton Ross Sterling Call Account No. 02/01354/81 with Irish Intercontinental Bank. Although the Tribunal cannot trace the earlier withdrawals from the account to the S8 Memorandum Account, due to the unavailability of statements of that account prior to 30th September, 1992, the Tribunal is nonetheless satisfied that, in all probability, the entire of the funds held to the credit of the Aurum Nominees No. 6 Account represented funds held for the benefit of Mr. Haughey. The account was, what Mr. Collery termed, a Currency Account, as it was an account held in a currency other than Sterling. Mr. Collery's consistent evidence, borne out by the documentary records, was that currency accounts operated by Ansbacher Cayman and Hamilton Ross were not amalgamated accounts representing funds held on behalf of a number of customers, but were designated accounts representing funds of individual customers. As the Aurum Nominees No. 6 Account and the four other accounts held for Overseas Nominees Limited were currency accounts, it follows that each of them must have represented funds held for the benefit of individual customers. Moreover, had it been the intention of Mr. Traynor to open a pooled investment account with NCB, amalgamating funds of a number of customers, a single account rather than five separate accounts would have been opened.

10-16 Mr. Stakelum, in his evidence to the Tribunal, recalled that in the course of the investigations of the McCracken Tribunal, he made inquiries of Mr. Haughey regarding the source of the lodgement of Stg.£168,036.81 to the S8 Account, in response to which Mr. Haughey queried whether this was not the proceeds of an investment account. Mr. Haughey, when he gave evidence to the Tribunal, had no recollection of such a conversation with Mr. Stakelum, nor did Mr. Haughey recall Mr. Stakelum showing him the schedule of balances as of 30th September, 1995 which clearly designated the lodgement of Stg.£168,036.81 as a transfer from NCB. Mr. Haughey stated that he knew nothing about any investment account, and that Mr. Traynor had never discussed an investment portfolio held on his behalf.

10-17 The Tribunal cannot accept Mr. Haughey's evidence that he had no knowledge of this account. Mr. Stakelum was quite clear in his recollection of the exchange which had taken place between himself and Mr. Haughey regarding this matter. When Mr. Stakelum gave evidence on 2nd December, 1999, that conversation had occurred in the relatively recent past, and had arisen in the unique circumstances of the conduct of inquiries made by the McCracken Tribunal. The Tribunal is satisfied that Mr. Stakelum's recollection was accurate, particularly bearing in mind that his

recollection of a connected inquiry regarding that lodgement, which he made of Mr. Collery, was confirmed by Mr. Collery.

10-18 It is the Tribunal's view that as Mr. Haughey knew that the lodgement of Stg.£168,036.81 to the S8 Account represented the proceeds of an Investment Account, he must also have known that such an Investment Account was held for his benefit. He may not have known that the account was in the name of Aurum Nominees No. 6, and he may not have known the investments which were made on that account, or the various movements on the account over the years of its operation. What is however clear is that Mr. Haughey had knowledge of the account which he conveyed to Mr. Stakelum, and the only source of that knowledge can have been Mr. Traynor.

10-19 What is also significant about this Investment Account is the time at which it was opened, and the scale of the funds that were made available for investment through the account. Stg.£175,000.00 was transmitted on 7th June, 1988 which was converted to £202,195.26, and a further Stg.£125,000.00 was transmitted on 18th August, 1988 which was converted to £149,432.16. The total funds which were therefore set aside for investment purposes were Stg.£300,000.00, or £351,627.42. By the values of the time, this was a very significant sum of money and exceeded Haughey's gross annual salary by a multiple of 5.75.

10-20 At the time that the first tranche of funds was transmitted on 7th June, 1988, the only funds which had been provided by Mr. Dunne, as far as the evidence given to the McCracken Tribunal was concerned, was the initial payment of Stg.£182,630.00, which had been made in late November, 1987 and which was substantially applied in discharging Mr. Haughey's indebtedness to the Agricultural Credit Corporation. The McCracken Tribunal found that the balance was applied to the bill-paying service, and was otherwise drawn down in cash. The Tribunal heard evidence of the earlier Tripleplan Payment in May, 1987 which was applied to paying off the overdraft on Mr. Haughey's No. 1 Account with Guinness & Mahon. In 1987 and 1988, £436,000.00 was paid out by Haughey Boland in meeting Mr. Haughey's living expenses. Despite the fact that the bulk of the payments from Mr. Dunne prior to June, 1988 were absorbed in the discharge of loans, despite the fact that there was evidence of a shortage of funds in early 1987, and despite the fact that by mid-1988, on the basis of the estimated figures of Haughey Boland, a further £332,000.00 had been applied in meeting Mr. Haughey's expenditures, there was, it appears, Stg.£175,000.00 being the equivalent of £202,195.26 available for investment. This suggests that by early June, 1988, the shortage of funds which existed in early 1987 had been converted into a sufficient surplus to enable Stg.£175,000.00 to be invested in securities, and that surplus cannot be accounted for by known payments from Mr. Dunne.

10-21 By the time the second tranche of funds was transmitted to NCB on 18th August, 1988, a further payment of Stg.£471,000.00 had been made by Mr. Dunne. The McCracken Tribunal found that these funds, which originated in Credit Suisse Zurich and were controlled by a Swiss Trust Company, Equifax Trust Corporation AG, were transferred from that account on 1st August, 1988 through an account of Mr. John Furze, and an account of Guinness & Mahon in London, and were credited to the Ansbacher Cayman Principal Sterling Account with Guinness & Mahon in Dublin on 10th August, 1988. Some eight days later on 18th August, 1988, Stg.£125,000.00 was debited to that same account, and was transmitted to NCB Stockbrokers for crediting to the Aurum Nominees No. 6 Account. It is clear therefore that the probable source of the second tranche of funds represented part of the proceeds of the payment of Stg.£471,000.00 made by Mr. Dunne in early August, 1988.

FURTHER PAYMENTS MADE BY MR BEN DUNNE

11-01 The Report of the McCracken Tribunal identified five payments made by Mr. Ben Dunne for the benefit of Mr. Haughey. All of these payments were brought to the attention of the McCracken Tribunal by Mr. Dunne, and with the exception of one of the payments, had been encompassed within the Replies to a Notice for Particulars delivered in proceedings between Mr. Dunne, the Trustees of the Dunnes Settlement, and his siblings, which were settled in November, 1994. The amounts and timing of those five payments were as follows:—

DATE	AMOUNT (STG.£)
November, 1987	182,630.00
August, 1988	471,000.00
April, 1989	150,000.00
February, 1990	200,000.00
November, 1991	210,000.00

11-02 Based on the evidence and information available to the McCracken Tribunal, the Report found that the first of the above payments had been made following an initial approach from Mr. Traynor through Mr. Fox in November, 1987. At that time Mr. Dunne was requested to contribute a sum of £150,000.00 as part of a consortium of persons which was being assembled by Mr. Traynor to assist with Mr. Haughey's financial problems, and in response Mr. Dunne agreed to assume full responsibility to provide the entire amount which Mr. Traynor was seeking to raise. The Report further found that there was no evidence of any favours sought of Mr. Haughey by Mr. Dunne, the Dunne family or the Dunnes Group, nor was there any evidence of any attempt by Mr. Haughey to exercise his influence for the benefit of Mr. Dunne, the Dunne family or the Dunnes Group. Whilst the McCracken Tribunal concluded that there appeared to have been no political impropriety on the part of Mr. Haughey in relation to the gifts received from Mr. Dunne, that did not detract from the unacceptable nature of them.

11-03 In the course of its private investigative work, the Tribunal identified a further five payments which appeared to originate with Mr. Dunne and terminate with Mr. Haughey. None of these payments was brought to the attention of this Tribunal or of the McCracken Tribunal by Mr. Dunne. The fact of these further five payments, including their timing and the circumstances in which they were made, necessitated a reopening of much of the evidence heard by the McCracken Tribunal, and a reappraisal of that evidence, in conjunction with the further evidence heard by this Tribunal. The manner of, and the circumstances in which these payments were made, insofar as the Tribunal can determine from the available evidence, is dealt with below.

THE BEARER CHEQUES

Mechanics of Payments

11-04 The Bearer cheques comprised six cheques each payable to bearer, dated 28th January, 1987 and drawn on six separate accounts of Dunnes Stores. The making of a cheque payable to bearer, which is a practice that has largely fallen out of use, is the equivalent of the making of a cheque payable to cash. The amounts of the cheques and the accounts on which they were drawn were as follows:—

- (i) Cheque for £4,600.00 drawn on account Cornelscourt Shopping Centre Limited with Ulster Bank Limited;
- (ii) Cheque for £5,400.00 drawn on No. 1 Account with Ulster Bank Limited.
- (iii) Cheque for £5,400.00 drawn on Dunnes Stores (Wexford) Limited No. 2 account with Ulster Bank Limited.
- (iv) Cheque for £5,600.00 drawn on Dunnes Stores (Newbridge) Limited No. 2 Account.
- (v) Cheque for £6,600.00 drawn on account Dunnes Stores (Athlone) Limited with Ulster Bank Limited.
- (vi) Cheque for £4,600.00 drawn on Dunnes Stores (Headford Road) Limited No. 2 Account with Bank of Ireland.

11-05 The written details on the cheques, that is, the payee, which was designated as bearer, and the narrative description of the amount of the cheques were completed by Mr. Noel Fox. The balance of the entries was written by Mr. Dunne and each cheque was signed by Mr. Dunne. The cheques were lodged to an Amiens account in Guinness & Mahon, Account No. 10407014. The lodgements were made in two tranches of three cheques each. On 2nd February, 1987 £15,400.00 was lodged to the account, representing the proceeds of the cheques for £4,600.00, £5,400.00 and £5,400.00 referred to earlier at a, b and c. On 4th February, 1987, a further £16,800.00 was lodged to the same account representing the proceeds of the cheques for £5,600.00, £6,800.00 and £4,600.00 referred to earlier at d, e and f. Substantial payments were made from this same Amiens account to Haughey Boland & Company in respect of the bill-paying service provided to Mr. Haughey, both before and after these lodgements.

Circumstances surrounding payment

11-06 The cheques, with the exception of one of them, were all drawn on the No. 2 Bank Accounts of each of the separate Dunnes Companies. These No. 2 Accounts were accounts operated by Dunnes Stores for each of the Group's constituent companies. Mr. Noel Fox, who was intimately involved in the affairs of the Dunnes Group for many years, explained that the former Chairman of the Dunnes Group, Mr. Bernard Dunne Senior,

deceased, had always had a policy of strict confidentiality regarding the tax affairs of the Dunnes Group, and that this was the principal purpose of the No. 2 Accounts. The accounts were private and confidential, and were not accessible to Senior Executives of the individual companies, and were primarily used for the discharge of tax liabilities to the Collector-General.

11-07 The accounts were also used for the making of bonus payments to Senior Executives and Senior Advisers of the Dunnes Group. There had been a practice for many years, (dating from the time of the former Chairman), that towards the financial year end, cheques for varying amounts, which by 1987 ranged from £4,000.00 to £7,000.00, were drawn on these accounts. The cheque books for the No. 2 Accounts were kept in a briefcase in Mr. Dunne's personal office, as they had been during his father's time, although it appears from Mr. Dunne's evidence that duplicate cheque books may also have been retained by Mr. Frank Bowen, of Deloitte & Touche, (who was also a trustee of the Dunnes Settlement), in his office in Cork. These bonus cheques were made payable to bearer, and were either distributed by Mr. Dunne as bonus payments, or retained by him for his own personal use. The drawings were journalised as expenses incurred by the individual companies, and were paid to the recipients free of tax. In the ordinary course, these cheques were completed by Mr. Frank Bowen, and were signed by Mr. Dunne. According to Mr. Dunne, the quantum of the bearer cheques drawn for each company evolved over the years.

11-08 The six cheques lodged to the Amiens account and detailed above, fell into the category of what Mr. Dunne characterised as "*bearer cheques*". The unusual, if not unique, feature of the cheques is that they were not completed by Mr. Bowen, but were completed by Mr. Fox. Mr. Dunne thought that it was only on very rare occasions that Mr. Fox ever completed such bearer cheques, and Mr. Fox believed that there was no other occasion on which he had done so. Despite this unusual feature, neither Mr. Dunne nor Mr. Fox had any recollection of the cheques and neither of them had any knowledge of how they were lodged to the Amiens account, controlled by Mr. Traynor, in Guinness & Mahon.

11-09 Both Mr. Dunne and Mr. Fox agreed that the date and numerical amount on each cheque had been written by Mr. Dunne, and that the cheques had been signed by Mr. Dunne. They also agreed that the payee and narrative description of the denomination of the cheques had been inserted by Mr. Fox. Although Mr. Fox had no recollection of the cheques being generated, he thought that the only logical explanation was that he and Mr. Dunne must have prepared the cheques together, and that it was probable that Mr. Dunne, having inserted the date, amount in figures and having signed the cheques, passed them on to Mr. Fox for completion.

11-10 There can be no doubt that these six cheques were distinguishable from the general class of bearer cheques, drawn for the purposes of

making bonus payments, at the end of the financial year. They were self-evidently not drawn from the body of cheques prepared by Mr. Bowen and brought to Mr. Dunne for signature and subsequent distribution. As these cheques were generated with the assistance of Mr. Fox, it appears to the Tribunal that from the outset they must have been intended for a different purpose. In view of Mr. Fox's subsequent role in payments made to Mr. Haughey through Mr. Traynor, the Tribunal does not consider that there was anything accidental or coincidental in Mr. Fox's involvement in the generation of these cheques. Rather, it is the Tribunal's view that, when these cheques were generated, they were intended for payment to Mr. Haughey.

11-11 While Mr. Dunne had no recollection of the matter, he accepted that either he must have given the cheques personally to Mr. Haughey, or that he must have given them to Mr. Fox for transmission to Mr. Haughey. In his evidence to the Tribunal, Mr. Haughey testified that he knew nothing about the bearer cheques or their lodgement to the Amiens account.

11-12 The Tribunal is satisfied that these cheques, which were lodged to the Amiens account in Guinness & Mahon, were at all times intended as payments by Mr. Dunne to Mr. Haughey, and that they were either transmitted directly by Mr. Dunne to Mr. Haughey, or through the intermediary of Mr. Fox. The Tribunal finds it difficult to accept that neither Mr. Dunne nor Mr. Fox could recollect these events, bearing in mind that the generation of the cheques was, according to Mr. Fox, a unique event. Furthermore, on the basis of the money trail evidence available to the Tribunal, which does not suggest that Mr. Dunne was the source of any payments to Mr. Haughey in the period from 1980 to 1986, it is probable that this was the first occasion on which Mr. Dunne provided funds to Mr. Haughey.

THE TRIPLEPLAN CHEQUE

Mechanics of payment

11-13 The Tripleplan Cheque was a cheque dated 20th May, 1987 for Stg.£282,500.00 drawn on an account of Dunnes Stores (Bangor) Limited with Ulster Bank Limited, Newry. The cheque was in favour of a company by the name of Tripleplan, of which Mr. John Furze and Mr. John Collins, both of whom were officers of Ansbacher Cayman, were Directors. The payment of Stg.£182,630.00 made in late November, 1987 and which was the first payment identified by the Report of the McCracken Tribunal, was drawn on the same account of Dunnes Stores (Bangor) Limited with Ulster Bank Newry. The Tripleplan cheque was drawn by Mr. Matt Price, an Executive Director of Dunnes Stores (Bangor) on the instructions of either Mr. Fox or Mr. Dunne, and was posted by Mr. Price to Mr. Fox in Dublin, by arrangement with Mr. Dunne.

11-14 The cheque was presented for payment to Ulster Bank, Newry on 28th May, 1987. The proceeds of the cheque were specially cleared, and the value of the proceeds was transmitted on the same day by electronic transfer to Guinness Mahon & Company, London, for crediting to Guinness & Mahon in Dublin. On the same date, Stg.£282,495.00 was credited to the Ansbacher Cayman sundry sub-company account no. 03154297 with Guinness & Mahon in Dublin, together with a further sum of Stg.£5.00 debited from the Ansbacher Cayman principal sterling call account No. 03154602, which brought the total sum credited to the sundry sub-company account on 28th May to Stg.£282,500.00. This Stg.£5.00 which was retained by Guinness Mahon & Company in London, reflected the charge made for the special clearance of the cheque by Ulster Bank. Following the crediting of those two sums to the sundry sub-company account, the total sum of Stg. £282,500.00 was moved on the same day to the Ansbacher Cayman principal sterling call deposit account No. 03154602 with Guinness & Mahon in Dublin.

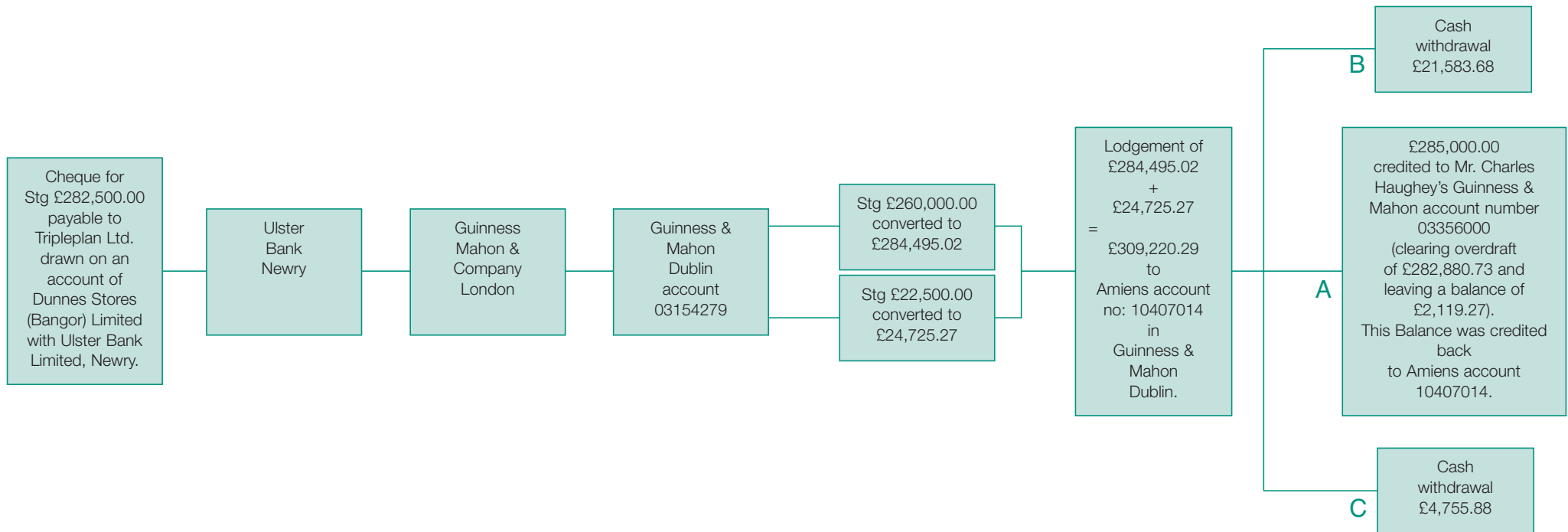
11-15 On the following day, 29th May, 1987, the funds were withdrawn from the Ansbacher Cayman sterling call account in two tranches of Stg.£260,000.00 and Stg.£22,500.00. The first tranche of Stg.£260,000.00 was converted into Irish pounds, and yielded £284,495.02. The second tranche of Stg.£22,500.00 was likewise converted into Irish pounds, and yielded £24,725.27. From the references printed on the dealing tickets for these two foreign exchange transactions, which were the internal Guinness & Mahon documents recording the conversion from sterling to Irish pounds, it is apparent that it was Mr. Pdraig Collery who was responsible for processing these transactions within Guinness & Mahon.

11-16 The Irish pound proceeds of the payment, that is, the sums of £284,495.02 and £24,725.27, were each lodged on 29th May, 1987 to Amiens Account No. 10407014, the same account to which the bearer cheques had been lodged in the previous February. On the same day, £285,000.00 was withdrawn from the Amiens account and was lodged to the sole account in Mr. Haughey's name remaining on the books of Guinness & Mahon, his Resident Current Account No. 1 (03356000). This lodgement cleared the debit balance on the account of £261,824.96 together with interest which was posted to the account on 29th May, of £21,055.77, leaving a small balance of £2,119.27 standing to the credit of the account. A further sum of £21,583.68 was withdrawn from the Amiens account in cash on 3rd June. Mr. Haughey's No. 1 account was closed on 9th June, 1987, and the credit balance on the account of £2,119.27 was transferred back to the same Amiens Account No. 10407014. On the previous day, 8th June, 1987, £4,755.88 had been withdrawn from that account in cash. The three withdrawals from the Amiens account, that is, £285,000.00 debited on 29th May, 1987, and credited to Mr. Haughey's account on the same date, £21,583.68 withdrawn in cash on 3rd June, 1987, and £4,755.88 withdrawn in cash on 8th June, 1987, less the sum of £2,119.27, (which was the credit balance left on Mr. Haughey's account

and which was transferred back to the Amiens account on 9th June, 1987), amounted to £309,220.29, which was exactly equivalent to the penny to the Irish pound conversion of the proceeds of the Tripleplan payment of Stg.£282,500.00. The routing of this payment is presented in diagramatic form in Figure 1.

Diagram 1

The Tripleplan Payment



This diagram illustrates how the Tripleplan Limited cheque for Stg £282,500.00 was transmitted through Ulster Bank Newry, Guinness Mahon & Company London, and Guinness & Mahon Dublin where it was converted into £309,220.29 before being applied as follows.

A: Lodgement of £285,000.00 to Guinness & Mahon account No. 03356000, of Mr. Charles Haughey, £282,880.73 was applied to clear the overdraft in that account and the balance of £2,119.27 was credited back to Mr. Charles Haughey's Amiens account no. 10407014.

B: Cash withdrawal of £21,583.68.

C: Cash withdrawal of £4,755.88.

After the Tribunal had led all of the evidence regarding the making, receipt, transmission and application of this payment, including detailed banking evidence regarding the contents of, in excess of thirty six different banking documents, through which the Tribunal had tracked the proceeds of the payment, Counsel for Mr. Haughey accepted, on Mr. Haughey's behalf, that Mr. Haughey had received the entire benefit of the Tripleplan payment.

Circumstances surrounding payment

11-17 Mr. Matt Price of Dunnes Stores (Bangor) drew the Tripleplan cheque on 20th May, 1987 on the instructions of either Mr. Dunne or Mr. Fox. While he could not recall whether it was in fact Mr. Dunne or Mr. Fox who gave him his initial instructions, he was absolutely clear in his evidence that, if it was Mr. Fox who was the source of his initial instructions, he would have contacted Mr. Dunne for confirmation of those instructions. An unusual feature of the payment was that Mr. Price was directed to draw the cheque on the Dunnes Stores (Bangor) No. 4 Account which was primarily used for the payment of the salaries of Senior Executives, and for the payment of tax liabilities.

11-18 Mr. Price posted the cheque to Mr. Fox at the offices of Oliver Freaney & Company in Dublin under cover of a compliment slip, a copy of which he had retained within the records of Dunnes Stores (Bangor) and which was available to the Tribunal. Mr. Price's recollection of the involvement of Mr. Fox and Mr. Dunne was confirmed by the terms of his compliment slip, which was dated 20th May, 1987 which was as follows:—

“Dear Mr. Fox,

I enclose herewith a cheque payable to Triple Plan Limited for £282,500.00 as agreed with Mr. Ben Dunne”.

While neither Mr. Fox nor Mr. Dunne had any recollection of the payment, Mr. Fox accepted that it was he who must have transmitted the cheque to Mr. Traynor.

11-19 The cheque payment had to be accounted for in the books of Dunnes Stores (Bangor), and it was recorded by Mr. Price as a debit to what was termed the inter-company account operated between Dunnes Stores (Bangor) in the North of Ireland and Dunnes Stores (George's Street) in Dublin. The debiting of the payment to the inter-company account represented an amount owed by Dunnes Stores (George's Street) to Dunnes Stores (Bangor). Such payments made by Dunnes Stores (Bangor) on behalf of Dunnes Stores (George's Street) were not infrequent, but in the usual case related to trade debts which, unlike this payment, were fully documented by invoices, statements and so forth.

11-20 The structure of the Dunnes Group involved a series of separate companies, and Oliver Freaney & Company, of which Mr. Fox was a

partner, were auditors to both Dunnes Stores (Bangor) and Dunnes Stores (George's Street). Mr. Kevin Drumgoole, an Accountant with Oliver Freaney & Company, was the Audit Manager who was responsible for the audit of the books of both of these companies. He recalled in evidence that, in the course of the 1987 audit of the two companies, which was conducted in the early months of 1988, both the Tripleplan cheque and the later cheque of November, 1987, payable to Mr. John Furze, came to his attention. At that time, he had noted that both of the payments had been charged to the inter-company account, and that both payments were recorded in the books of Dunnes Stores (George's Street) as suspense debtors items, which meant that they were recorded as payments for which there was a liability to Dunnes Stores (Bangor) and which required clarification. Mr. Drumgoole accepted that the two payments, that is the Tripleplan payment and the payment to Mr. Furze, were unusual in terms of payments charged to the inter-company account, in that they were not accompanied by a document trail; they were the only two such unusual payments which arose from the audit for the year 1987.

11-21 To enable Mr. Drumgoole to finalise the audit, he needed to obtain an explanation for the two payments. Mr. Drumgoole pursued inquiries with Mr. Price, Mr. Michael Irwin, Chief Accountant of the Dunnes Group in Dublin, and Mr. Dunne. Mr. Price informed Mr. Drumgoole of the involvement of Mr. Dunne and Mr. Fox, but could not assist Mr. Drumgoole as to the purpose for which the payments were made. Mr. Irwin did not know to what the payment related and agreed to take the matter up with Mr. Dunne. According to Mr. Irwin, he subsequently did so and was told by Mr. Dunne that he would have to ask Mr. Fox about the matter. Mr. Drumgoole also spoke directly to Mr. Dunne, who confirmed that he had no recollection, and asked Mr. Drumgoole to request Mr. Fox to speak to him about it. Mr. Drumgoole did so, and was informed by Mr. Fox that he would discuss the issue with Mr. Dunne. What is clear is that, despite all of these inquiries, Mr. Drumgoole received no clarification or explanation of the purpose for which the payments had been made. The Tribunal's impression is that Mr. Drumgoole's inquiry was not addressed by either Mr. Dunne or Mr. Fox, who were the only two persons who knew the purpose for which the payments were made, and that Mr. Drumgoole was referred back from one to the other.

11-22 The payment remained unresolved in the following years, although Mr. Drumgoole believed that he raised similar queries with both Mr. Fox and Mr. Dunne in subsequent years, and that he had received the same responses. Mr. Drumgoole's recollection of raising the matter in later years was borne out by the documentary evidence available to the Tribunal. This included a copy of an agenda for a meeting on 29th September, 1989, in which the second item listed was "*identification of payment to J Furze Tripleplan*", and an internal memorandum from Mr. Drumgoole to Mr. Fox, dated 3rd October, 1989, which Mr. Drumgoole believed arose from discussions at the meeting to which the agenda related. The memorandum

referred to an enclosed list of problems which required resolution before the accounts of the Dunnes Group could be finalised, and recorded that “*as mentioned on Friday last I asked Ben Dunne about the payments to Tripleplan and J Furze and he said that he would need to talk to you to jog his memory on these payments*”. The contents of these documents clearly confirm both the nature of the inquiries which were pursued by Mr. Drumgoole, and the responses which he received from Mr. Dunne and Mr. Fox. The matter of the payments to Tripleplan and to Mr. Furze remained unresolved, and the Tribunal is satisfied that the issue arose from year to year.

11-23 Mr. Paul Wyse, a partner in Oliver Freaney & Company, was appointed Audit Partner responsible for the Dunnes audits for the years from January, 1994 by which time Mr. Dunne had ceased to have any executive role in the Dunnes Group. In an effort to identify the purpose of the payment to Tripleplan, and to finalise the outstanding accounts of the Dunnes Group, Mr. Wyse directed searches in a number of jurisdictions for the company Tripleplan, none of which produced a positive result. It was not until January, 1998, some six months after the McCracken Tribunal had reported, and some three months after the appointment of this Tribunal, that Mr. Wyse became aware that standard searches of the United Kingdom Companies Register did not encompass companies that had been dissolved, and that particulars of such companies were maintained in a separate register. Mr. Wyse arranged for a search of the dissolved Companies Register in the UK, and this revealed that Tripleplan Limited had been struck-off by the Registrar of Companies, for failing to make returns on 21st June, 1988 and dissolved by notice published in the London Gazette on 12th July, 1998, that the Company Secretary had been Management and Investment Services Limited, of 3 Trinity Street, Dublin 2, and that the Directors had been Mr. John Furze and Mr. John Collins. In view of the involvement of Mr. Furze as a Director of Tripleplan, and in view of his role as the payee of the subsequent payment made for the benefit of Mr. Haughey in November, 1997, both Dunnes Stores Limited and Oliver Freaney & Company resolved to bring the information regarding the payment to the attention of the Tribunal.

11-24 In the course of the inquiries made by Mr. Wyse in connection with the Tripleplan payment between the years 1994 and 1998, he raised queries of Mr. Fox on one occasion, (of which he had a clear recollection), and believed that he may have raised the matter on a second occasion. On the occasion which he recalled, Mr. Fox informed him that he had no recollection of the matter.

11-25 In their evidence to the Tribunal, both Mr. Dunne and Mr. Fox insisted that they had no recollection of the Tripleplan payment. In the light of the evidence led by the Tribunal, they accepted that the payment had been made for the benefit of Mr. Haughey, and that the Tripleplan payment, made on 20th May, 1987, (rather than the later payment of November, 1987),

was the first of the series of payments which Mr. Dunne had agreed to make for the benefit of Mr. Haughey. Both Mr. Dunne and Mr. Fox accepted that, as the first payment was in fact made on 20th May, 1987 and not in November, 1987, Mr. Traynor's request to Mr. Fox that Mr. Dunne would assist Mr. Haughey financially, (which was conveyed by Mr. Fox to Mr. Dunne), must have occurred many months earlier than had been found by the McCracken Tribunal Report, based on the evidence available to the McCracken Tribunal. Mr. Dunne and Mr. Fox both stood over their earlier evidence to the McCracken Tribunal that Mr. Dunne took some time to consider Mr. Traynor's request, and then informed Mr. Fox of his intention to pay, what Mr. Dunne initially recollected was in the region of £700,000.00, and what Mr. Fox recollected was in the region of £900,000.00. Mr. Dunne also stood over his evidence that it was at all times his intention that he would fund these payments through a Far East operation, which he had then recently established, and that he had made it clear to Mr. Fox that he would need some time before funds would become available. Both Mr. Dunne and Mr. Fox were consistent in their evidence that some short time later, Mr. Traynor approached Mr. Fox with an urgent request for funds at an earlier date than had been anticipated, and before funds had come on stream from the Far East, and that this request gave rise to the first payment. In view of the altered time frame, which arose from the discovery of the Tripleplan payment made on 20th May, 1987, Mr. Dunne and Mr. Fox agreed that the initial approach of Mr. Traynor must have been made in March of 1987 or even as early as February, 1987. Mr. Dunne insisted that he had no recollection of the payment, notwithstanding the clear evidence of Mr. Drumgoole and Mr. Irwin regarding the inquiries that they had made in the context of the yearly audit. Mr. Dunne stated that he had no recollection of such inquiries regarding the Tripleplan payment, although he did recall inquiries made regarding the payment to Mr. Furze. As regards the payment to Mr. Furze, Mr. Dunne accepted that he had referred Mr. Drumgoole to Mr. Fox, as he expected Mr. Fox to handle the query. Mr. Dunne was not prepared to disclose the purpose of the Furze payment to Mr. Drumgoole or to Mr. Irwin, which he considered to be potentially explosive, and he expected Mr. Fox to handle the query in whatever way he considered appropriate.

11-26 Mr. Fox recalled that queries had arisen regarding the two payments in the course of the auditing of the inter-company account. As far as Mr. Fox was concerned, he was not overly anxious at the time, as he believed that Mr. Dunne had agreed to make these payments from his personal funds, and that Mr. Dunne would recoup the payments to the company. Mr. Dunne had no such understanding and he was unwavering in his evidence that at all times his agreement to make these payments for the benefit of Mr. Haughey had been made on behalf of the Dunnes Group; there was never any question of Mr. Dunne providing for the payments out of his personal funds; and he had expected Mr. Fox to handle the queries which had arisen.

11-27 Mr. Dunne could not explain how he had at all times continued to have a recollection of the November, 1987 payment to Mr. Furze, but that he had no recollection whatsoever of either the payment to Tripleplan, or the queries which had arisen regarding the Tripleplan payment on the audit of the inter-company account. Mr. Fox accepted that he had known the purpose of the Tripleplan payment, when queries had been raised by Mr. Drumgoole in the course of the audit exercise. Mr. Fox explained that as a result of significant events within the Dunnes Group in the early 1990s involving the departure of Mr. Dunne as an executive director, and the subsequent proceedings issued by Mr. Dunne against the Trustees of the Dunnes Settlement, (including Mr. Fox), in which allegations had been made in connection with the payments to Mr. Haughey, Mr. Fox ceased to have a memory of the Tripleplan payment, even though he retained a memory of the payment to Mr. Furze, and that his memory of the payment to Tripleplan did not resurface until the results of the company search against Tripleplan came to hand in January, 1998.

11-28 The Tribunal cannot accept the evidence of either Mr. Dunne or Mr. Fox regarding the Tripleplan payment. It is inconceivable that either of them could have forgotten the fact of the payment, or the circumstances in which it arose or was made. The Tripleplan payment was the first of the series of payments made to Mr. Haughey on foot of Mr. Dunne's commitment, and it arose in unique circumstances. It is all the more inconceivable that the Tripleplan payment could have slipped their minds, when entirely proper and appropriate inquiries were being made year in year out by Mr. Drumgoole, in the context of the annual audit. Those inquiries must have been the source of considerable discomfort for Mr. Dunne and Mr. Fox. Neither of them was willing to disclose the true purpose of the payment, and it seems to the Tribunal that each of them was seeking to visit the problem on the other. Mr. Dunne expected Mr. Fox to handle the query, and Mr. Fox expected Mr. Dunne to meet the payment out of his own funds.

11-29 In all of these circumstances, the Tribunal's view is that the only conclusion that can be drawn is that both Mr. Dunne and Mr. Fox deliberately concealed the fact of this payment from the Dunnes Group, from the Buchanan Inquiry and from the McCracken Tribunal. Had the connection between Tripleplan and Mr. Furze not become apparent from the result of the searches undertaken, the Tribunal considers it probable that this concealment would have continued, and that the payment would not have been revealed to this Tribunal. It was submitted on behalf of Mr. Dunne that Mr. Dunne's absence of recollection of this payment was borne out by the fact that the payment was not listed within the replies to particulars furnished in the course of the litigation between Mr. Dunne and the Trustees of the Dunnes Settlement. The Tribunal does not and cannot accept that this is supportive of Mr. Dunne's position. On the contrary, the Tribunal considers that, having regard to the timing of this payment in the context of dealings between the Revenue Commissioners and the Trustees of the Dunnes Settlement Trust, and in particular the proximity of the

payment to personal dealings between Mr. Dunne and Mr. Seamus Pairceir, the then Chairman of the Revenue Commissioners, which were initiated by Mr. Haughey, that the potential consequences of the payment coming to light would have been sufficient motivation for the exclusion of the payment from the Replies to Particulars furnished in the litigation between Mr. Dunne and the Trustees.

THE WYTREX PAYMENT

Mechanics of payment

11-30 In November, 1990, a further payment of Stg. £200,200.00 was made by Mr. Dunne which was ultimately lodged to the Ansbacher Cayman sterling call account with Guinness & Mahon, on 20th November, 1990. Mr. Dunne, although having no recollection of the payment, accepted that it was in all probability a payment made by him to Mr. Haughey.

11-31 The payment was remitted by order of Wytrex (Far East) Limited to an account of Ansbacher Cayman with Henry Ansbacher & Company, London, on 16th November, 1990. Wytrex was a Hong Kong registered company, and was the principal purchasing agent for the Dunnes Group in the Far East. The precise routing of the funds is unclear, as the relevant banking documents are held by Henry Ansbacher & Company in London, and were not accessible to the Tribunal. It is however clear that there was some delay in the anticipated receipt of the funds as instructions regarding them were initially furnished by Ansbacher Cayman to Henry Ansbacher & Company, London, by telex dated 28th September, 1990. The telex informed Henry Ansbacher & Company that they would receive on 3rd or 4th October, 1990, Stg. £200,000.00 marked for the attention of Mr. Traynor, for credit to Ansbacher Cayman account number 190017202 and that, as that account had been closed, the funds should be lodged to Ansbacher Cayman account 190017101, and that on receipt, the funds should be transferred to Guinness & Mahon in Dublin for credit to Ansbacher Cayman account 13154602.

11-32 The funds were not in fact received by Henry Ansbacher & Company in London until 16th November, 1990, and were routed through Bank of America, Cannon Street, London. The earlier instructions of 28th September, 1990 were confirmed by telex dated 19th November, 1990, from Ansbacher Cayman instructing Henry Ansbacher & Company to transfer Stg. £200,200.00 to the Ansbacher Cayman account in Dublin for the attention of Mr. Traynor. The transfer was made, and the proceeds were lodged to that account, on 20th November, 1990.

11-33 As the source of these funds was Mr. Dunne, as they were lodged to the Ansbacher account in Guinness & Mahon in Dublin, to which earlier payments made by Mr. Dunne to Mr. Haughey were lodged, and as the payment was marked for the attention of Mr. Traynor, it is beyond doubt that this payment also represented funds made available by Mr. Dunne for

the benefit of Mr. Haughey, although this was not accepted by Mr. Haughey.

Circumstances of payment

11-34 Wytrex (Far East) Limited, together with another Hong Kong registered company, Carica Limited, were purchasing agents in the Far East for the Dunnes Group. In approximately 1987, Mr. Dunne put in place an arrangement whereby Wytrex and Carica purchased goods on behalf of the Dunnes Group, and invoiced the Dunnes Group for the cost of the goods plus an additional 5%, together with the costs of carriage and shipment. That additional 5%, less the expenses of the operation of the companies including the salaries of its employees, came under the direct control of Mr. Dunne. Mr. Dunne described the system as being similar to a “kick back” arrangement. It appears to the Tribunal that the net effect of the scheme was that funds of the Dunnes Group, approximating to 5% of the cost of goods purchased in the Far East, which would have been set off against profits as legitimate expenses of the Dunnes Group for tax purposes, were converted into cash funds available free of tax to Mr. Dunne off-shore.

11-35 These funds were controlled by Mr. Dunne, and were transferred to off-shore trusts held for his benefit; and were then transferred at his direction, or were applied in the purchase of bank drafts, which he personally collected when visiting the Far East. Some of these funds were, according to Mr. Dunne, distributed to members of the Dunne family. Equifex was the principal trust vehicle used by Mr. Dunne for the reception of funds until approximately 1990. In that year, Tutbury Limited was set up by Mr. Noel Smyth, Mr. Dunne’s Solicitor, in the Isle of Man, and from that time until Mr. Dunne’s involvement with the Dunnes Group ceased, these funds were remitted to Tutbury Limited.

11-36 It was Mr. Dunne’s evidence that he had earmarked these Far East funds as the source of the payments that he had agreed to make for the benefit of Mr. Haughey. At that time, in 1987, the scheme was in its infancy and Mr. Dunne anticipated that it would be some months before sufficient funds would be accumulated to meet the commitments which he had made to Mr. Haughey, which he considered to be in the region of £700,000.00 but which Mr. Fox thought were in the region of £900,000.00. Mr. Dunne believed that Mr. Fox knew about the scheme that he had set up in the Far East for the accumulation of profits and the routing of those profits at the direction of Mr. Dunne. He also believed that Mr. Fox knew that Mr. Dunne intended to use these funds to meet his commitment to Mr. Haughey. Mr. Fox denied that he had any knowledge of the Wytrex or Carica scheme or of the profits that would be generated in the Far East. As far as Mr. Fox was concerned, it was his belief that Mr. Dunne intended to make the payments from his own personal funds, rather than from the funds of the Dunnes Group. It is unnecessary for the Tribunal to determine the extent of Mr. Fox’s

knowledge of the Far East scheme for generating tax-free profits off-shore, or Mr. Fox's knowledge of Mr. Dunne's intention to use these funds for the purposes of the intended payments to Mr. Haughey. The Tribunal is however satisfied that it is unlikely that Mr. Fox, an experienced and skilled accountant, who was intimately involved in the affairs of the Dunnes Group, who was then a close personal confidante of Mr. Dunne, and who was the sole person to have dealings with Mr. Dunne regarding the payments to Mr. Haughey identified by the McCracken Tribunal, could have believed that Mr. Dunne had access to funds of sufficient magnitude to meet those payments unconnected with the affairs of the Dunnes Group.

11-37 In common with all of the further payments identified by the Tribunal, Mr. Dunne testified that he had no recollection of the payment. He accepted that, if the payment came from Wytrex, as it did, it could only have been initiated by him. As the payment and the method of payment was similar to previous payments made by him for the benefit of Mr. Haughey, Mr. Dunne assumed that he received payment details from Mr. Fox, although he could not be certain, as he had no recollection of the payment. He presumed that the payment was part of the series of payments which he had agreed to make, in response to the initial approach made by Mr. Fox.

11-38 Mr. Fox insisted that he had no knowledge of the payment, that he was not involved in any communications between Mr. Dunne or Mr. Traynor in relation to it, and that he was unaware of its existence until he learned of it from information provided by the Tribunal. He was certain that he received no further approaches from Mr. Traynor, seeking funds on behalf of Mr. Haughey, after February, 1990. Mr. Fox found support in the fact that the account number to which the funds were routed was incorrect, as that account had been closed at some point between February, 1990, when the final payment with which he was involved had been made, and November, 1990 when this payment was made. His rationale was that, if the routing instructions for this payment had originated with Mr. Traynor and had been transmitted through him, no such error would have occurred, as Mr. Traynor was precise about such matters.

11-39 Mr. Fox further explained that he considered that Mr. Dunne's commitment to provide financial assistance to Mr. Haughey, which Mr. Dunne had voluntarily assumed in 1987, had been fulfilled by the payment of Stg.£471,000.00 in July, 1988; and that the subsequent two payments with which Mr. Fox was involved and which were identified by the McCracken Tribunal, (that is the payment of Stg.£150,000.00 in April, 1989 and Stg.£200,000.00 in February, 1990), were not made in pursuance of that commitment, which had been discharged, but were additional payments made by Mr. Dunne separately .

11-40 The Tribunal was faced with an apparent conflict of evidence between Mr. Dunne and Mr. Fox. Mr. Dunne had no recollection of the

payment, but assumed that Mr. Fox had furnished instructions, as he had in relation to the previous payments. As against Mr. Dunne's evidence, there was no question of Mr. Fox having any absence of recollection, and his very clear evidence was that he had no such involvement. The Tribunal is inclined to accept Mr. Fox's evidence in this regard. The Tribunal further accepts that there is substance in the point made by Mr. Fox regarding the incorrect account number used in the routing of the payment. The Tribunal recognises that there is validity in Mr. Fox's view that it is unlikely that Mr. Traynor would not have known that the account number of Ansbacher Cayman with Henry Ansbacher & Company had changed, and that, had Mr. Traynor furnished routing instructions through Mr. Fox, it is probable that those instructions would have encompassed the correct account number.

11-41 All of these matters suggest to the Tribunal that this payment may not have been one of the series of payments made by Mr. Dunne on foot of the commitment which he gave in 1987, and which were mediated by Mr. Fox. The Tribunal considers that it is more probable than not that this payment was made without the direct involvement of Mr. Fox, or possibly the direct involvement of Mr. Traynor. Clearly Mr. Traynor was at some stage appraised of the payment, and of the fact that the routing instructions were incorrect, as Ansbacher Cayman notified Henry Ansbacher & Company in London of the matter, and directed that on receipt of the funds they should be lodged to the newly opened account and should be transferred to Guinness & Mahon in Dublin, marked for the attention of Mr. Traynor. All of these matters point to some material change in the circumstances surrounding the making of the payment. Mr. Dunne, at all times in his evidence, insisted that he had no more than a nodding acquaintance with Mr. Traynor and was not on close terms with him, so that it is unlikely that Mr. Dunne dealt directly with Mr. Traynor. It is common case that by that time, Mr. Dunne and Mr. Haughey were in relatively regular contact, and were certainly close acquaintances. By a process of elimination, and in circumstances where Mr. Dunne was not able to suggest that any other intermediary was involved, it appears to the Tribunal that this may have been a payment that arose as a result of direct contact between Mr. Dunne and Mr. Haughey, even though Mr. Haughey claimed to have no knowledge of the payment, and did not accept that he had received the benefit of it. As regards the error that was made in the routing instructions furnished to Wytrex (Far East) Limited, this may well have arisen from the use by Mr. Dunne of the routing instructions with which he had been furnished by Mr. Fox for the purposes of the earlier payment in February, 1990, when the funds, although originating in the Far East, had been paid from an account of Tutbury Limited at Rea Brothers (Isle of Man) Limited. A written record of those instructions had been retained by Mr. Dunne's solicitor, and was produced to the McCracken Tribunal.

11-42 The Tribunal, in inquiring into the circumstances of this payment did not have the assistance of any documentation that may have been

generated in the Far East by Wytrex. Following Mr. Dunne's departure from the Dunnes Group, the business of Wytrex was wound down and the company was ultimately liquidated. Mr. Laurence Tse, who was the Managing Director of that company, was not agreeable to furnishing documents for the assistance of the Tribunal, and as those documents were outside the jurisdiction, they were not accessible to the Tribunal.

PAYMENT OF £180,000.00 ROUTED THROUGH CARLISLE TRUST LIMITED

Mechanics of payment

11-43 The routing of this payment, and the tracing of it by the Tribunal, was the most convoluted of all of the five payments identified by the Tribunal. It involved the channelling of cheques through accounts, the switching of the proceeds between Irish pound accounts and off-shore accounts, and the lodgement of instruments into off-shore accounts outside the jurisdiction, resulting in credits to off-shore accounts within the jurisdiction. The payment was made by three separate cheques drawn on the Dunnes Stores Grocery No. 6 Account with Bank of Ireland, College Green, each of which was payable to cash. The handwritten details on the cheques, that is, the payees and the amounts both in figures and in narrative were written by Mr. Michael Irwin, then Chief Accountant seconded to the Dunnes Group by Oliver Freaney & Company, who were Auditors to a number of the Dunnes companies. The cheques were dated and signed by Mr. Dunne and their dates and denominations were as follows:—

- (i) 20th November, 1992 — £49,620.00;
- (ii) 23rd November, 1992 — £50,962.00;
- (iii) 27th November, 1992 — £79,418.00.

11-44 The total of the three cheques amounted to £180,000.00. All three cheques were post-dated, and were in fact written and signed before 20th November, 1992. The cheques were lodged to an account of Carlisle Trust Limited with Bank of Ireland, Rotunda Branch, by two separate lodgements of £100,582.00 on 20th November, 1992, (representing the proceeds of the cheques for £49,620.00 and £50,962.00) and £79,418.00 on 27th November, 1992. Mr. Traynor, who was at that time Chairman of Cement Roadstone Holdings, was also a Director of Carlisle Trust Limited, a property holding company owned through a series of trusts by Mr. John Byrne. The lodgement on 20th November, 1992 was made by Mr. Patrick McCann who was then a Director of Management and Investment Services Limited which provided company secretarial and administrative services to Carlisle Trust. Mr. Traynor forwarded the two cheques for £49,620.00 and £50,962.00 to Mr. McCann, and instructed him to lodge them to the Carlisle account, and to expect a further lodgement of £79,418.00. As the lodgement was made by Mr. McCann on 20th November, 1992, and as the

cheques were posted to him by Mr. Traynor, it follows that the cheques must have been in Mr. Traynor's possession prior to that date. The second lodgement of £79,418.00 was made on 27th November, 1992 by Mr. Traynor directly.

11-45 Mr. Traynor also instructed Mr. McCann that, when these funds cleared, two cheques should be drawn on the Carlisle Trust bank account with Bank of Ireland, one for £100,000.00 payable to Celtic Helicopters, and one for £80,000.00 payable to cash. Mr. McCann followed Mr. Traynor's instructions, and both the £100,000.00 cheque dated 24th November, 1992 and the £80,000.00 cheque dated 30th November, 1992 were signed by Mr. Sam Field-Corbett, a Director of Management and Investment Services Limited, and a signatory on the account of Carlisle Trust. The cheques once drawn and signed, were sent to Mr. Traynor.

11-46 The cheque for £80,000.00 payable to cash was lodged on 1st December, 1992, to the account of Kentford Securities Limited with Bank of Ireland, which was an account controlled by Mr. Traynor, and used by him in conjunction with the Ansbacher accounts, in much the same way as the Amiens and Kentford accounts in Guinness & Mahon had been used when the Ansbacher accounts had been held in Guinness & Mahon. The sterling equivalent of that sum, Stg. £84,800.00, was credited to the S8 sterling memorandum account on 10th December, 1992, and it is clear from the face of the account statement that the lodgement represented the proceeds of a sum of £80,000.00. There was no lodgement to any Ansbacher account with Irish Intercontinental Bank of Stg.£84,800.00 on or on a date proximate to 10th December, 1992. Nor was there any record in Irish Intercontinental Bank of a sum of £80,000.00 being lodged to the bank for conversion to sterling.

11-47 The credit to the S8 memorandum account arose as a result of a system operated by Mr. Traynor, whereby Irish currency funds lodged to the Kentford account were used to meet Irish currency drawings of other customers of Ansbacher or Hamilton Ross and, as and when those funds were drawn down, the memorandum accounts of the relevant customers were debited by that amount, and a corresponding credit was made to the S8 account. In this way, funds could be notionally credited and debited to the pooled sterling accounts in Irish Intercontinental Bank without any actual change in the balance on the account, and without any withdrawal from or lodgement to the Sterling account. This system also enabled funds to be converted from Irish Pounds to Sterling, and credited to an off-shore Sterling account without any exchange control implications.

11-48 The cheque for £100,000.00 payable to Celtic Helicopters, dated 24th November, 1992, was lodged to Celtic Helicopters' account at Bank of Ireland, Dublin Airport Branch on 27th November, 1992 as representing an investment in Celtic Helicopters made by Mr. Michael Murphy of Mike Murphy Insurance Brokers Limited. Mr. Murphy did indeed make funds available for

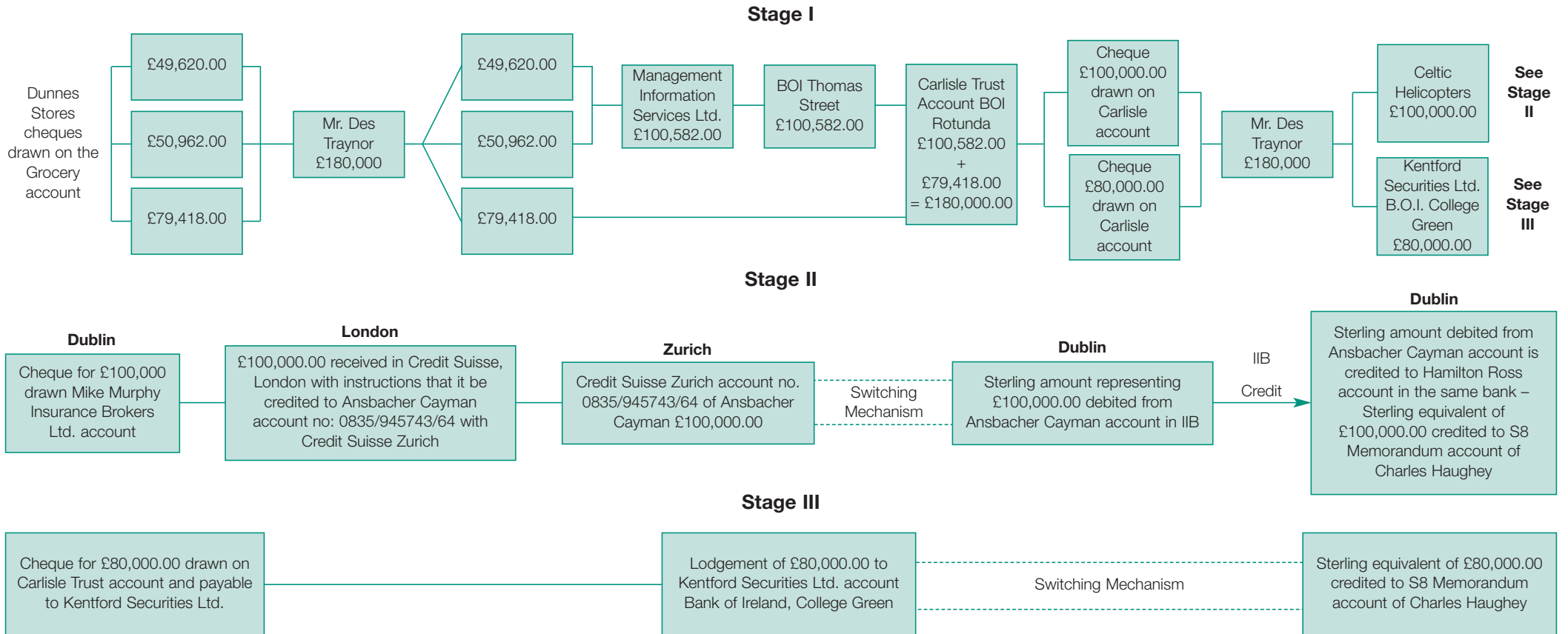
investment in Celtic Helicopters, but this was by means of a cheque for £100,000.00, dated 21st September, 1992 drawn on an account of Mike Murphy Insurance Brokers Limited with Bank of Ireland, Dundrum branch, and payable to Credit Suisse, London. That cheque was sent to the Manager of Credit Suisse, London, by letter dated 4th November, 1992, signed by Mr. Murphy, with instructions that it should be credited to the account of Credit Suisse, Zurich, for ultimate credit to an account of Ansbacher Cayman account number 0835/945743/64, with Credit Suisse, Zurich.

11-49 At that time, a system was operated, between Mr. Traynor on behalf of Hamilton Ross and Mr. Furze on behalf of Ansbacher Cayman, whereby funds lodged to Ansbacher Cayman's account with Credit Suisse Zurich could be switched with sterling funds held by Ansbacher Cayman in its sundry sub-company account with Irish Intercontinental Bank in Dublin. An equivalent sterling sum to the Irish pound sum lodged to Ansbacher Cayman's account with Credit Suisse Zurich was debited from the Ansbacher Cayman sundry sub-company account in Irish Intercontinental Bank, and was credited to the Hamilton Ross principal sterling with Irish Intercontinental Bank. That was precisely how the proceeds of Mr. Murphy's cheque were applied. Mr. Murphy's cheque for £100,000.00 was lodged to Ansbacher Cayman's account with Credit Suisse Zurich, and on Mr. Traynor's instructions to Irish Intercontinental Bank, an equivalent sum of Stg. £108,017.69 was transferred on 26th November, 1992 from the Ansbacher Cayman No. 2 sterling account with Irish Intercontinental Bank to the Hamilton Ross sterling account. On 30th November, 1992 a corresponding credit of Stg. £108,017.69 was made to the S8 memorandum account.

11-50 By channelling the payment of £180,000.00 made by three separate cheques for uneven amounts through the Carlisle Trust account, by converting them into two cheques for £80,000.00 and £100,000.00, by lodging the cheque for £80,000.00 to the Kentford account with Bank of Ireland and making a corresponding credit to the S8 sterling account without any conversion of funds or movement of funds to Irish Intercontinental Bank, by swapping Mr. Murphy's cheque intended for Celtic Helicopters with the cheque for £100,000.00 drawn on the Carlisle account and by lodging Mr. Murphy's cheque to the Ansbacher Cayman account in Zurich whilst transferring a corresponding sterling sum from an Ansbacher Cayman account in Irish Intercontinental Bank to the Hamilton Ross sterling account in Irish Intercontinental Bank, the entire proceeds of the three cheques were converted from Irish pounds to sterling, and were credited to an off-shore sterling account held in an Irish bank. An equivalent credit was then made to the confidential S8 sterling memorandum account held for the benefit of Mr. Haughey. This most elaborate scheme, which avoided any exchange control restrictions, also enabled the greatest possible distance to be put between the source of the payment, which was Mr. Dunne, and the beneficiary of the payment, which was Mr. Haughey. Figure No. 2 sets forth this process.

Diagram 2

The Carlisle Payments



The above diagrams of Stage I, II and III illustrate as follows:

- Stage I : The scheme devised by Mr. Desmond Traynor, whereby the £180,000.00 intended by Mr. Ben Dunne for the benefit of Mr. Charles Haughey, was transmitted in part to Kentford Securities account under the control of Mr. Desmond Traynor and in part to Celtic Helicopters.
- Stage II : How £100,000.00 intended by Mike Murphy Insurance Brokers/David Gresty as an investment in Celtic Helicopters was transmitted to the Hamilton Ross Account in IIB, which account was operated by Mr. Desmond Traynor for the benefit of Mr. Charles Haughey.
- Stage III : How the balance of £180,000.00, intended by Mr. Ben Dunne for the benefit of Mr. Charles Haughey was transmitted through the Kentford Securities account and into the S8 Memorandum account of Mr. Charles Haughey.

11-51 It was only after the Tribunal had undertaken the task of tracking the payment and had led all of the evidence regarding the drawing, receipt, transmission and application of the cheques, that Mr. Haughey's Counsel accepted on Mr. Haughey's behalf, that Mr. Haughey had received the entire benefit of the payment of £180,000.00.

Circumstances of payment

11-52 Mr. Dunne had no recollection of any aspect of the circumstances of the payment or the payment itself. Other witnesses from whom the Tribunal heard evidence did have a clear recall, and from their evidence it is apparent that from the outset the circumstances of the payment were unusual, and were shrouded in secrecy. This was evident in the initial circumstances surrounding the payment, and was also evident when the payment came to the attention of various persons in subsequent years.

11-53 The three cheques were drawn on the Dunnes Stores No. 6 Account with Bank of Ireland, College Green. The account known, as the Grocery account, was the designated account from which all payments to suppliers of groceries to the Dunnes Group were made. All cheques drawn on the account were generated from a computerised creditors system and were computer-printed cheques. Mr. Joe Cummins, who was seconded from Oliver Freaney & Company to the Dunnes Group from the early 1980s and who continued to work for the Dunnes Group until 1993, had overall responsibility for the operation and reconciliation of the account. He recalled Mr. Dunne, around November, 1992, requesting three blank cheques for the grocery account. As there was such a volume of drawings on the account, the cheques were not printed in bound cheque books, but were printed in a continuous stream and were stored in a box adjacent to the computer system by which they were generated.

11-54 The next employee of the Dunnes Group who had an input into the processing of the cheques was Mr. Michael Irwin. By that time, Mr. Irwin was Chief Accountant of the Dunnes Group in this country, and had regular operational meetings with Mr. Dunne which were held on a weekly, fortnightly or monthly basis depending on Mr. Dunne's availability. At the end of such meetings, Mr. Dunne frequently asked Mr. Irwin to complete documents on his behalf or to prepare cheques for him. While Mr. Irwin had no memory of these specific cheques, he confirmed that all of the entries on the cheques were made by him, with the exception of the dates and the signature, which were in Mr. Dunne's handwriting. He believed that all three cheques would have been written by him on the one occasion.

11-55 Mr. Dunne, based on information provided to him by his Solicitor, confirmed that he was not in the country between the 20th and 27th of November and it follows that all three cheques, which were respectively dated 20th, 23rd and 27th November, 1992, must have been dated and

signed by Mr. Dunne prior to 20th November, 1992. In the course of his evidence to the Tribunal, Mr. Dunne had what he characterised as “*the vaguest recollection*” of having given these cheques to Mr. John Barnicle, a director of Celtic Helicopters Limited, following an approach by Mr. Barnicle to him for financial assistance. This information was not disclosed in the written narrative statement which had Mr. Dunne provided to the Tribunal in advance of giving evidence, and Mr. Dunne confirmed that he had only had this “*vague recollection*” a short time prior to his attendance to give evidence, and had not had such a recollection when the cheques were first drawn to his attention by the Tribunal in May of 1998. Mr. Dunne felt that his memory had been jogged by the information which the Tribunal had discovered, that part of the proceeds of the cheques had ultimately been lodged to an account of Celtic Helicopters. Mr. John Barnicle was clear in his evidence that he had never received these cheques from Mr. Dunne, although he accepted that he may have discussed aspects of the business of Celtic Helicopters with Mr. Dunne from time to time, when he was piloting Mr. Dunne.

11-56 The Tribunal does not consider that Mr. Dunne’s vague recollection in this regard is reliable. Apart from Mr. Dunne’s qualified evidence, there was no other evidence available to the Tribunal to support his vague recollection. Mr. Dunne admitted that he had not had his recollection when initially furnished with information by the Tribunal regarding the application of the funds, and the Tribunal believes that Mr. Dunne himself had little confidence in that aspect of his evidence.

11-57 Mr. Joe Cummins, who it will be recalled was responsible for the operation and reconciliation of the grocery account, had further dealings with these cheques in connection with the monthly reconciliation. He explained that at the end of each month, all of the drawings on the grocery account were matched to invoices raised by suppliers. In that context, Mr. Cummins recalled that he had asked Mr. Dunne how he should treat the three cheques which he had furnished to Mr. Dunne, two of which were debited to the grocery account on 25th of November and one of which was debited on the 1st of December, 1992. He recalled in evidence that Mr. Dunne told him to “*write them off*” and to make sure that they were not found. In view of the instructions which he had received from Mr. Dunne, Mr. Cummins posted the payments to the accounts of Neville’s Bakery and of Tender Meats. These were two suppliers to the grocery division of Dunnes Stores, which were both subsidiaries of the Dunnes Group; each of the accounts was particularly active, involving five hundred to six hundred transactions per week. At the end of the trading year, when there was a full reconciliation of the account, Mr. Cummins had to take further steps to deal with the payments. The payments could not remain on the Neville’s Bakery or Tender Meats accounts, as no invoices had been issued to match them. Accordingly, Mr. Cummins moved the payments to the grocery discount account, by debiting the two trading accounts and crediting that account.

11-58 In February, 1993, Mr. Dunne was removed from his position as Chairman of the Dunnes Group and from July, 1993, he ceased to have any executive function within the Group. Arising from those events, Mr. Dunne issued proceedings against the Dunnes Group and against the Trustees of the Dunnes Settlement who, through a series of holding companies, were the ultimate beneficial owners of the Dunnes Group of Companies. The issues in those proceedings prompted a series of internal investigations within the Dunnes Group, and an external investigation conducted on behalf of Mr. Dunne.

11-59 In late 1993, Price Waterhouse (as it then was) was commissioned by the Dunnes Group to carry out an analysis of certain sets of cheques drawn on various accounts. The three cheques drawn on the groceries account in November, 1992 were amongst the cheques that were subject to this inquiry. A large number of the cheques to which the inquiry related were drawn on accounts with Bank of Ireland, and Mr. Pat O'Donoghue, who was then Group Financial Controller, liaised with Mr. Peter McHale, of the Credit Division of Bank of Ireland, College Green, regarding those inquiries. By then, the Dunnes Group had discovered that these three cheques had been incorrectly posted, in the first instance to the accounts of Neville's Bakery and Tender Meats, and had then been erroneously posted to the groceries discount account. The Dunnes Group had also obtained the returned paid cheques, and had noted from the markings on the reverse side of two of the cheques that they had been lodged to Bank of Ireland, Rotunda Branch to an account, the number of which had been written in manuscript. These markings would have been applied to the cheques by Bank of Ireland in the course of their processing in November, 1992.

11-60 Mr. McHale made inquiries of the Rotunda Branch, and was informed that the account to which the two cheques had been lodged was that of Carlisle Trust Limited. Mr. McHale recalled that he made this inquiry in January of 1994. Whilst he could not remember whether he made that inquiry of Mr. Brendan Vaughan, a Manager in the Rotunda Branch, with overall responsibility for the accounts of Mr. John Byrne, including the Carlisle Trust account, he believed that, had he spoken to Mr. Vaughan, the inquiry would have been what he termed an official inquiry and would, in all probability, have resulted in notification to Mr. Byrne. Mr. McHale thought that a second inquiry might have been received some time later in the form of a formal communication from Solicitors for the Dunnes Group requesting access to documents from the Rotunda Branch, but he accepted that he had no knowledge of any such second inquiry, and that his evidence was based solely on information which he had received from Mr. Vaughan, after Mr. Vaughan had given evidence to the Tribunal, and prior to Mr. McHale's attendance to give evidence. The ultimate significance of this issue relates to the timing of notification to Mr. Byrne, and in particular whether he was notified before or after Mr. Traynor's death.

11-61 On receipt of that information from the Rotunda Branch in January, 1994, Mr. McHale contacted the Legal Department of Bank of Ireland, and discussed the matter with Mr. Patrick Monaghan, Solicitor. Mr. Monaghan kept an attendance of their discussion, and the advice which he gave to Mr. McHale. His attendance, which was available to the Tribunal, was dated 7th January, 1994. The attendance recorded, and Mr. Monaghan confirmed in evidence, that he advised Mr. McHale that he could not disclose to the Dunnes Group that Carlisle Trust was the holder of the account into which the proceeds of the cheques had been lodged, without the consent of Carlisle Trust, or without a Court Order. What happened following the receipt of that advice is not clear, but what is undoubted is that Bank of Ireland refused to reveal the identity of the account holder to the Dunnes Group, as recorded in the draft Price Waterhouse Report dated 14th January, 1994 and in the final report dated 12th April, 1994.

11-62 Mr. John Byrne was informed of the queries which had been raised by the Dunnes Stores regarding the cheques lodged to the account of Carlisle Trust. Mr. Brendan Vaughan contacted Mr. Byrne by telephone about the matter. Mr. Vaughan did not have a full recollection of the date or circumstances of that contact, but he believed that the matter arose from a request for documents made by Solicitors for the Dunnes Group. Mr. Vaughan could not locate the documents relevant to this matter, and there was no record within Bank of Ireland of any such correspondence.

11-63 Mr. Byrne recalled that Mr. Vaughan contacted him, to inform him that the Dunnes Group was seeking documentation for the purposes of High Court proceedings regarding cheques which had been lodged to the Carlisle Trust account in November, 1992. Mr. Byrne insisted that this matter arose in late 1994 or early 1995, and that it was certainly after Mr. Traynor had died in May, 1994. He indicated that he was amazed by the matter, and that he made inquiries of Mr. McCann who advised him that cheques totalling £180,000.00 received from the Dunnes Group had been lodged to the Carlisle account in November, 1992 and had been paid out immediately on the instructions of Mr. Traynor. Mr. Byrne also ascertained that the payments out were by cheques payable to Celtic Helicopters and to cash. Mr. Byrne testified that once he had established that there had been no net loss to Carlisle Trust, he had not paid any further attention to the matter, and had forgotten all about it. In his initial evidence to the Tribunal, he thought that he had instructed Mr. McCann to make inquiries of Celtic Helicopters to determine whether they had received the cheque drawn on Carlisle's account, and that he had instructed his Solicitors to make similar inquiries, but in subsequent evidence to the Tribunal he corrected his earlier evidence, and confirmed that he had given no such instructions to Mr. McCann, or to his Solicitors, and having satisfied himself that Carlisle Trust was not out of pocket, no further inquiries were made at that time.

11-64 Mr. Byrne's evidence was that Mr. Vaughan contacted him to inform him of the inquiry, and did not seek his consent or the consent of Carlisle

Trust to the disclosure of information to the Dunnes Group. Mr. Byrne had realised that the Dunnes Group was seeking to identify the application of the proceeds of the cheques, but he testified that he had assumed that Bank of Ireland had already disclosed that information to the Dunnes Group, and he insisted that he did not refuse consent to the Bank releasing that information. Mr. Byrne indicated that, had Mr. Traynor been alive when the inquiry was made, he would have taken the matter up with him, but he was certain that he knew nothing of the matter until after Mr. Traynor's death in May, 1994. Mr. Byrne confirmed that he was familiar with Mr. Traynor's relationship with Celtic Helicopters, and with Mr. Haughey and his family. According to Mr. Byrne, having satisfied himself that Carlisle Trust was not out of pocket, he promptly forgot all about the inquiry, and it never occurred to him that the matter might be material to the inquiries of the McCracken Tribunal. Whatever Mr. Byrne may have assumed regarding the release of information to the Dunnes Group, it is clear that the Dunnes Group was never told that the cheques were lodged to the account of Carlisle Trust, and was not furnished with that information until January, 1998. Mr. Dunne, in his evidence to the Tribunal, indicated that when he was considering the cheques in the context of the litigation with the Dunnes Group and the Trustees of the Dunnes Settlement, he had thought that he had applied them for personal purposes.

11-65 The Tribunal considers that it is highly improbable that Bank of Ireland would not have informed Mr. Byrne of the inquiry which was made in December, 1993 and which was handled by Mr. McHale in early January, 1994. It is unlikely that Mr. McHale, having gone to the trouble of taking Mr. Monaghan's advice, would not have acted on that advice by seeking the consent of Carlisle Trust to the disclosure of information to the Dunnes Group. If that be so, the only possible conclusion is that Carlisle Trust must have refused such consent. The Tribunal does not consider that Mr. Byrne's evidence in this regard was convincing, and believes that it is more probable that Mr. Byrne was notified in January, 1994 when Mr. Traynor was alive. It appears to the Tribunal probable that, from that time, Mr. Byrne knew that Mr. Dunne was the source of the cheques lodged to the Carlisle account, and that he also knew, at a minimum, that £100,000.00 of the proceeds of those cheques was transmitted to Celtic Helicopters with which he knew Mr. Haughey to be associated.

11-66 The Tribunal does not accept Mr. Dunne's evidence that he had no recollection of these cheques, nor that he had believed in the context of the litigation with the Dunnes Trustees that he had applied them for his own personal use. The cheques were provided shortly after Mr. Dunne had attended a dinner party in Abbeville hosted by Mr. Haughey. Mr. Dunne and his wife, and Mr. Noel Smyth, Mr. Dunne's Solicitor, together with his wife, attended on that occasion and according to Mr. Haughey, that was the first time he had met Mr. Smyth. The party occurred very shortly before

the drawing of these cheques, and the Tribunal considers it unlikely that the two events were wholly unrelated.

11-67 Mr. Fox was not involved in any aspect of the drawing, transmission or payment of these cheques, so that it is clear that they were not channelled by Mr. Dunne through Mr. Fox to Mr. Traynor, and it is also equally clear that they cannot have formed part of the commitment which Mr. Dunne assumed in 1987. It is beyond doubt that the cheques were in Mr. Traynor's possession prior to 20th November, 1992, the date on which they were received through the post by Mr. McCann from Mr. Traynor. Mr. Dunne insisted throughout his evidence that he had never met Mr. Traynor except on one occasion when they were introduced. Mr. Haughey, in his evidence, indicated that he was not aware of any of these transactions, and was never informed of them by Mr. Traynor. Despite Mr. Haughey's evidence, and in the absence of any other reasonable explanation, the Tribunal considers it a very real possibility that these three cheques were given directly by Mr. Dunne to Mr. Haughey.

11-68 Mr. Dunne again sought to justify his absence of recollection by reference to the omission of details of this payment from the Replies to Particulars furnished in his litigation with the Dunnes Trustees in November, 1994. The Tribunal cannot accept that such omission supports Mr. Dunne's contention that he had no recollection of the payment. It appears to the Tribunal that this payment could not have fallen within the category of relevant payments for the purposes of the proceedings issued by Mr. Dunne, in which he alleged that the Dunnes Settlement Trust was a sham because payments of trust funds were made to third parties, including Mr. Haughey, to the knowledge of the Trustees, and in particular to the knowledge of Mr. Fox. As Mr. Fox had no input into, or knowledge of, this payment, it follows that the payment was not one which would have assisted Mr. Dunne in advancing his case, and consequently was not one which his lawyers would have deemed appropriate for inclusion in Replies to Particulars if they had been made aware of it.

11-69 This payment was brought to the attention of the Tribunal by letter dated 28th January, 1998, from the Solicitors acting for Carlisle Trust, Mr. Byrne's company. As far as the Tribunal is concerned, the actions of Carlisle Trust and Mr. Byrne did not constitute a voluntary disclosure of relevant information to the Tribunal. What prompted their actions were queries made by the Authorised Officer appointed by the Minister for Enterprise, Trade & Employment to inquire into the affairs of Celtic Helicopters, about the Carlisle Trust cheque for £100,000.00 to Celtic Helicopters which had been lodged to the account of Celtic Helicopters on 27th November, 1992. Once that inquiry had been made, it would have been clear to all concerned that it was inevitable that the matter would come to the attention of the Tribunal. Had such an inquiry not been made, the Tribunal believes that it is unlikely that information would have been

volunteered to the Tribunal bearing in mind that such information was not volunteered to the McCracken Tribunal, and was not brought to the attention of this Tribunal over the four month period after the Tribunal had been established.

PERSONAL PAYMENT OF £20,000.00

Mechanics of payment

11-70 The mechanism by which this payment was made was strikingly simple, by comparison with all other payments from Mr. Dunne to Mr. Haughey, of which the Tribunal heard evidence. The payment was made by a cheque dated 29th of May, 1993 in the sum of £20,000.00, payable to cash, and signed by Mr. Dunne. The cheque was drawn on Mr. Dunne's personal current account with Allied Irish Banks, Upper O'Connell Street, Dublin 2. The cheque was lodged to an account in National Irish Bank, Malahide, in the name of Mr. Haughey trading as Abbeville Farm, account number 13068013. This was one of the series of accounts opened by Mr. Haughey with National Irish Bank, Malahide after he left office. The docket was stamped 2nd June, 1989 and recorded that the lodgement was made at the Malahide Branch of National Irish Bank. The docket was signed by Mrs. Maureen Haughey. The reverse side of the cheque, a copy of which was available to the Tribunal, bore two endorsements, "*CJ Haughey, Abbeville Farm account deposit*" and "*M Haughey*" respectively. The payment came to light in the course of inquiries made by the Tribunal regarding the sources of lodgements to the National Irish Bank accounts, and was not brought to the attention of the Tribunal either by Mr. Dunne or by Mr. Haughey.

Circumstances surrounding payment

11-71 Mr. Dunne had no recollection of writing the cheque for £20,000.00 or furnishing it to Mr. Haughey or to any other person. The early months of 1993 were an eventful period in Mr. Dunne's life. He had been removed from his position of Chairman of the Dunnes Group in February, 1993 and was involved in the early stages of litigation with the trustees and with his siblings. He had suffered a serious injury to his leg in an accident, and was hospitalised in Dublin for a four week period from the end of April, 1993 to the end of May, 1993. When he was discharged from hospital, he recuperated at home for a period of two weeks before he went abroad on holidays. He was discharged from hospital on crutches and during his weeks of hospitalisation, he was immobile and was confined to a wheelchair.

11-72 Mr. Dunne recalled that while he was in hospital Mr. Haughey contacted him and that on two occasions he had been asked by Mr. Haughey for lunch at Abbeville. He remembered that on both occasions he was in a wheelchair, and was driven to Abbeville by a friend who joined the

lunch party. Mr. Dunne further recalled that the lunches were simple affairs, taken in the gardens at Abbeville. Mr. Dunne was not in wide circulation at the time, and indicated that his social interaction was limited to members of his family, and to his Solicitor, with whom he was consulting on a regular basis in connection with his litigation. By a process of elimination, Mr. Dunne, although stating that he had no recollection, thought it probable that he had given this cheque to Mr. Haughey on one of the two occasions that he had attended for lunch at Abbeville. Mr. Dunne thought that the cheque may have represented a direct payment to Mr. Haughey, or that it may have related to some charitable cause to which he was asked to contribute by Mr. Haughey.

11-73 The payment was unusual in two respects: firstly, it was the only payment of which the Tribunal heard evidence, which was made by a cheque drawn on Mr. Dunne's personal account and, secondly, all of the entries on the cheque were completed by Mr. Dunne. By that time, Mr. Dunne would not have had access to the Dunnes Group cheque books and was unlikely to have been a signatory on the Dunnes Group bank accounts. The current account on which the cheque was drawn was an account into which Mr. Dunne's salary from the Dunnes Group was paid, and Mr. Dunne accepted that a drawing of £20,000.00 from that account at that time was a substantial drawing.

11-74 Mr. Haughey had no recollection of the payment, and queried the authorship of the endorsement in his name on the reverse side of the cheque. He did not accept that the endorsement in his name had been made in his handwriting, nor could he confirm that the endorsement in the name of Mrs. Haughey was in her handwriting. Mr. Haughey further denied that the account name completed on the lodgement docket, namely, Abbeville Farm, was in Mrs. Haughey's handwriting.

11-75 There was a series of lodgements to the National Irish Bank accounts including this account of which the Tribunal heard evidence. In all, evidence was heard in relation to 13 lodgements. With the exception of this lodgement, all other lodgement dockets were signed by one of the secretaries employed by Mr. Haughey in Abbeville. The docket in this instance was signed by Mrs. Haughey, and it was unusual in comparison to other dockets for lodgements to the National Irish Bank accounts in that, apart from the account name and number and the amount of the lodgement, no other details such as the account address or the date were completed.

11-76 The Tribunal cannot accept that Mr. Dunne could have forgotten this cheque or the person to whom he transmitted it. It appears to the Tribunal that Mr. Dunne's frailty of memory in that regard was in stark contrast to the clarity of his memory of events at that time, including his social interaction with Mr. Haughey. The cheque, which Mr. Dunne admitted

was substantial, was completed by Mr. Dunne and in all of these circumstances it seems improbable to the Tribunal that Mr. Dunne would have had no recollection of it, and even more improbable that his memory would not have been stimulated by sight of a copy of the cheque, which was available to him. It appears to the Tribunal probable that the cheque was handed by Mr. Dunne to Mr. Haughey on one or other of the occasions on which he attended for lunch with Mr. Haughey at Abbeville. As the cheque was dated 29th May, 1993, it is more likely that this occurred on the second of the two occasions.

11-77 The cheque was undoubtedly lodged by Mrs. Haughey at National Irish Bank on 2nd June, 1993. It is quite clear from the evidence available to the Tribunal regarding lodgements to those accounts that Mrs. Haughey was not in the habit of making lodgements personally, and that this was usually attended to by the secretaries employed by Mr. Haughey at Abbeville. The endorsement on the reverse side of the cheque was also unusual, as the cheque was payable to cash, and in the ordinary course would not have required an endorsement for lodgement to the Abbeville Farm account. Mr. Trethowen of National Irish Bank testified that it would be common practice, particularly in the case of a cheque payable to cash, to identify the account into which such a cheque was lodged by writing the account number on the reverse side of the cheque. It is possible that Mrs. Haughey may have been asked to endorse the reverse side of the cheque and this, may well explain why the endorsement in Mr. Haughey's name was not in his own handwriting. There was undoubtedly a departure in the case of this lodgement from the usual banking practice employed by Mr. Haughey, in that the lodgement was made personally by Mrs. Haughey. Whilst the Tribunal has no means of knowing precisely why such a departure was made, it does not seem unreasonable to speculate that it may have been consequent on a desire on the part of Mr. Haughey to keep the source of the cheque lodgement confidential, and specifically to ensure that his secretarial staff did not learn that Mr. Dunne was providing funds to Mr. Haughey.

CONCLUSIONS

11-78 The Tribunal has identified the following five further payments made by Mr. Dunne to Mr. Haughey:—

DATE	AMOUNT (€)
January, 1987	IR£32,200.00
May, 1987	Stg.282,500.00
November, 1990	Stg.200,200.00
November, 1992	IR£180,000.00
May, 1993	IR£20,000.00

11-79 None of these payments was brought to the attention of the McCracken Tribunal by Mr. Dunne, or by Mr. Haughey, notwithstanding that Mr. Dunne had disclosed to the McCracken Tribunal the payments referred to in the Report of that Tribunal. Nor were the payments disclosed by Mr. Dunne to this Tribunal, but were either discovered by the Tribunal in the course of its scrutiny of relevant bank accounts, or were reported to the Tribunal by third parties. What distinguished these payments from those disclosed by Mr. Dunne to the McCracken Tribunal is that the payments were not referred to in the Replies to Particulars delivered by Mr. Dunne in November, 1994 in the litigation between Mr. Dunne, the Trustees of the Dunnes Settlement Trust (including Mr. Noel Fox) and his siblings.

11-80 Throughout his evidence, Mr. Dunne stated that he had no recollection of these five payments, and it was submitted to the Tribunal, on his behalf, that his absence of recollection was supported by the fact that the payments were not referred to in the Replies to Particulars furnished in November, 1994. The substance of the point made was that, had Mr. Dunne recalled the additional payments in November, 1994, they would have been included in the Replies to Particulars to fortify his case. That point is not, in the view of the Tribunal, sustainable. Mr. Dunne's case against the Trustees and his siblings was that the Dunnes Settlement Trust was not a valid trust, as funds subject to the Trust were applied, to the knowledge of the Trustees, and specifically to the knowledge of Mr. Fox, for purposes not contemplated by the Trust Deed, including payments to Mr. Haughey. As the Tribunal is satisfied that Mr. Fox had no role whatsoever in connection with the Wytrex payment or the Carlisle payment, neither of these payments was material to Mr. Dunne's claim. Similarly, the payment made in 1993 was from Mr. Dunne's own personal funds, and accordingly had no relevance whatsoever to the litigation. Both the payments made by the bearer cheques, and the Tripleplan cheque, were most certainly material to Mr. Dunne's claim, and the Tribunal must consider why they were omitted from the Replies to Particulars. It seems to the Tribunal that the potential risks attendant on disclosure of these payments, (in view of their proximity, and in particular the immediate proximity of the Tripleplan payment, to dealings between Mr. Dunne and the Revenue Commissioners at the behest of Mr. Haughey), may have been considered by Mr. Dunne to outweigh the benefits of disclosure in terms of the litigation, bearing in mind that Mr. Dunne's claim was sufficiently particularised by the four payments made subsequent to May, 1987.

11-81 It is the Tribunal's view that Mr. Dunne was at all times fully aware of all of the payments which he made to Mr. Haughey, and the Tribunal cannot accept that he had any absence of recollection. It appears to the Tribunal that Mr. Dunne was selective in the information that he provided to the McCracken Tribunal, and deliberately confined his disclosure to those payments which were discoverable by that Tribunal. Mr. Dunne's approach to this Tribunal was no different: he disclosed none of these payments to

the Tribunal and on each occasion that the Tribunal unearthed further payments, he pleaded ignorance through lack of recollection.

11-82 The initial payments found by this Tribunal predated by many months the first payment identified by the McCracken Tribunal. The Tribunal is satisfied that the approach made to Mr. Dunne, through Mr. Fox, to contribute to Mr. Haughey's finances was not made in November, 1987, (as found by the McCracken Tribunal based on the evidence heard by that Tribunal), but was in fact made some time prior to May, 1987 and may have been made as early as February, 1987 when the Fianna Fáil Party was returned to Government, and Mr. Haughey was elected Taoiseach. It further appears from the evidence heard by the Tribunal that subsequent payments by Mr. Dunne to Mr. Haughey were payments with which Mr. Fox had no involvement, and that, as testified by Mr. Fox, Mr. Dunne's commitment to support Mr. Haughey financially was fulfilled at latest in February, 1990 and possibly at an even earlier date. All later payments made by Mr. Dunne arose in different circumstances, were made without any involvement on the part of Mr. Fox and were independent of the commitment made in 1987. In view of the fact that Mr. Dunne had no more than a nodding acquaintance with Mr. Traynor, it appears to the Tribunal very probable that the subsequent payments arose as a result of direct interaction between Mr. Haughey and Mr. Dunne, who were by then on close personal terms. There can certainly be no doubt that the final payment made in May, 1993, was made directly by Mr. Dunne to Mr. Haughey.

11-83 The McCracken Tribunal found, from the inquiries which it had made, and from the evidence which it had heard, that there was "*no wrongful use of his position by Mr. Haughey*" in connection with the payments made to him by Mr. Dunne. In the light of the further payments identified, and the additional evidence which it has heard, the Tribunal cannot share that view. That aspect of the Tribunal's findings is addressed in detail in Chapter 16 of the Report. The Tribunal is satisfied that the payments made by Mr. Dunne to Mr. Haughey were all substantial payments and were all made in circumstances giving rise to a reasonable inference that the motive for making the payments was connected with the office of Taoiseach held by Mr. Haughey and in the case of the payments made during the years that Mr. Haughey held office, had the potential to influence the discharge of such office by Mr. Haughey.

11-84 With the exception of the final payment made in May, 1993, from Mr. Dunne's personal account, the four payments found by the Tribunal were made from accounts of the Dunnes Group or, in the case of the Wytrex payment, from funds which were ultimately beneficially owned by the Dunnes Group. While the Tribunal has heard no evidence that any other director of the Dunnes Group was aware of the payments, it is clear that Mr. Fox, who was a trustee of the Dunnes Settlement Trust, and who attended meetings of the Board of the Dunnes Group, played a pivotal role in relation

to a number of the payments. Mr. Dunne testified that in making these payments, he was not doing so in his own right but was at all times acting in his capacity as managing director of the Dunnes Group and doing so on behalf of the Group.

12 POST-RETIREMENT PAYMENTS TO MR HAUGHEY BY MR DERMOT DESMOND

DEALINGS BETWEEN THE TRIBUNAL AND MR DESMOND

12-01 Mr. Dermot Desmond made two payments to Mr. Haughey, one in 1994 of Stg.£100,000.00, and one in 1996 of Stg.£25,000.00. In January, 1998, three months after the establishment of the Tribunal, Mr. Desmond, in response to media comment, made two Press statements dated 8th January, 1998, and 10th January, 1998, respectively. These statements were made in response to media comment relating to details of financial involvements on the part of Mr. Desmond with members of Mr. Haughey's family, and investments made by Mr. Desmond in businesses with which Mr. Haughey was involved, albeit at a remove through his children. The statement of 8th January 1998 recorded as follows:—

"Mr. Desmond did not make any payments to Mr. Haughey while he was in public office or, indeed, prior to 1994. Any arrangements which he had with Mr. Haughey since that time are of a private nature".

The subsequent statement of 10th January outlined financial transactions involving Mr. Desmond and members of Mr. Haughey's family and concluded in the following terms:—

"If the foregoing transactions, and payments made by Mr. Desmond to Mr. C.J Haughey since 1994 are matters that fall within the Terms of Reference of the Moriarty Tribunal, Mr. Desmond has already stated that he will fully co-operate with this Tribunal."

12-02 Following the publication of those statements, the Tribunal requested information from Mr. Desmond about payments made by Mr. Desmond to Mr. Haughey after Mr. Haughey ceased to hold public office, in November, 1992. Mr. Desmond did not provide the Tribunal with any information regarding such payments until 22nd March, 1999, by which time the Tribunal had already identified the two payments in question, from statements of the S8 Sterling Memorandum Account which were available to the Tribunal, and from information provided by Mr. Pdraig Collery and by Mr. Jack Stakelum. Mr. Desmond, through his Solicitors, Michael Houlihan & Co. of Ennis, Co. Clare, initially declined to provide any information regarding these payments pending the delivery of judgment by the Supreme Court in proceedings brought against the Tribunal by Mr. Haughey. Following the delivery of judgement by the Supreme Court on 28th July, 1998, Mr. Desmond, through his Solicitors, declined to provide information regarding the payments until the Tribunal had furnished a formal interpretation of its Terms of Reference. Following the Tribunal delivering itself of its interpretation of its Terms of Reference at public sittings of the Tribunal on 24th September, 1998, Mr. Desmond, through his Solicitors, reserved his entitlement to make submissions regarding the Tribunal's interpretation, and in the meantime declined to assist the Tribunal. It was only after the Tribunal was in receipt of information regarding the amounts and dates of the payments, and regarding some of the circumstances surrounding the making of the payments from other sources, and brought

that information to the attention of Mr. Desmond's Solicitors, and conveyed to them that the Tribunal was minded to proceed by way of an Order against Mr. Desmond, that details of these payments and their surrounding circumstances were provided by Mr. Desmond to the Tribunal.

BACKGROUND TO PAYMENTS

12-03 Mr. Desmond, who was then Chief Executive of NCB Stockbrokers, was introduced to Mr. Haughey at some time prior to the February, 1987 Election. It is apparent from evidence heard by the Tribunal regarding Mr. Desmond's investments in business ventures of Mr. Haughey's children, and his funding of the refit of the yacht, Celtic Mist, that Mr. Desmond had demonstrated a willingness to be of financial assistance to those associated with Mr. Haughey, during the years in which Mr. Haughey was Taoiseach.

12-04 Mr. Desmond was also approached by Mr. Traynor, who he knew through Guinness & Mahon, with which he had undertaken some of his banking business, to contribute directly to Mr. Haughey's finances. At a date which Mr. Desmond believed was in November, 1987, Mr. Traynor asked Mr. Desmond if he would be willing to participate in a proposed five or six person syndicate to fund the repayment of Mr. Haughey's borrowings. Mr. Traynor apparently indicated that these borrowings were in excess of £1 million. Mr. Desmond recalled that Mr. Traynor's approach was made shortly after a serious collapse in the stock market in October, 1987, which had had a detrimental impact on Mr. Desmond's finances, and that, as he did not have sufficient resources to provide assistance at that time, he had declined Mr. Traynor's request.

12-05 Mr. Desmond recalled that a short time later, he thought no more than a week or ten days after Mr. Traynor's approach, he was in the company of Mr. Ben Dunne on what was a social occasion. Mr. Dunne, according to Mr. Desmond, informed Mr. Desmond that he was aware that Mr. Desmond had been approached and had declined to contribute to funds for Mr. Haughey, and that Mr. Dunne had provided funds for that purpose. It is perhaps significant that Mr. Dunne did not apparently convey to Mr. Desmond that he had assumed responsibility for the entire amount which Mr. Traynor was seeking to collect. Mr. Dunne had no recollection of this exchange, but accepted Mr. Desmond's evidence. It is surprising that Mr. Dunne initiated a conversation of this type, bearing in mind that Mr. Fox had impressed on Mr. Dunne the absolute necessity for confidentiality, and that, according to Mr. Dunne, it was his own concerns for discretion which had prompted him to assume responsibility for the entire of the funds required. What is equally significant is that Mr. Traynor, who by all accounts was cautious and discreet in all of his professional dealings, felt sufficient confidence in Mr. Desmond's commitment to Mr. Haughey to ask him to contribute to Mr. Haughey's finances in such a direct fashion, at such a relatively short time after Mr. Desmond's initial introduction to Mr. Haughey.

THE CIRCUMSTANCES OF THE PAYMENTS AND THE MANNER IN WHICH THEY WERE MADE

September 1994 payment

12-06 In September, 1994, some short months after Mr. Traynor's death, Mr. Haughey was considering whether he should accept an offer of a directorship of a German Bank which intended to establish a place of business in the International Financial Services Centre. Mr. Haughey had apparently taken a decision when he left office that he would not accept any such position. He discussed the matter with Mr. Dermot Desmond, indicating that his reasons for considering the position were financial, and that the income which would be generated would be helpful. Mr. Desmond strongly advised Mr. Haughey against accepting the proposal, and offered to assist Mr. Haughey by providing funds, which offer was accepted by Mr. Haughey.

12-07 According to Mr. Stakelum, Mr. Haughey got in touch with him and asked Mr. Stakelum to make contact with Mr. Desmond, and to advise him as to how funds which he wished to make available to Mr. Haughey should be routed. Mr. Stakelum met with Mr. Collery, and told him that he wished to arrange for a transfer of funds to the account from which Mr. Collery was providing cheques to Mr. Stakelum to meet Mr. Haughey's bills. It appears that Mr. Stakelum did not identify the source of the intended transfer to Mr. Collery at that time, and it was not until the establishment of the McCracken Tribunal that Mr. Collery asked Mr. Stakelum if he knew the provenance of that payment and was informed by Mr. Stakelum that the payment had been made by Mr. Desmond.

12-08 Mr. Collery furnished Mr. Stakelum with the routing instructions for a transfer of funds to the Hamilton Ross Sterling Account with Irish Intercontinental Bank, and Mr. Stakelum passed on that information to Mr. Desmond by telephone. Mr. Stakelum did not know in advance the amount of the intended payment, nor was he aware that the payment had been made, although he would have known from the schedule with which he was furnished by Mr. Collery dated 3rd October, 1994, that a sum of Stg.£99,988.00 had been lodged to the No. 1 Sterling Account, as it was described in the schedule.

12-09 The transmission of this payment involved a series of movements from an off-shore account held for the benefit of Mr. Desmond to the Hamilton Ross Sterling Account which was also, at least nominally, an off-shore account in Irish Intercontinental Bank. The payment was made from a bank account in the name of Anesia Etablissement, which was either a Swiss or Lichtenstein registered company, of which Mr. Desmond was the beneficial owner. The Company was managed by a Swiss lawyer, to whom Mr. Desmond furnished routing instructions for the payment in question. The account from which the payment was made was with Banque Scandinave en Suisse in Geneva, which was subsequently known as

Banque Edouard Constant. The Swiss Franc equivalent of Stg.£100,000.00 was debited to the account on 21st September, 1994; it was converted into Stg.£100,000.00; and was transferred to the account of Henry Ansbacher & Company Limited with the Royal Bank of Scotland for further credit to Cayman International Bank Trust Company, Account No. 190017/101. A sum of Stg.£99,993.00 representing the payment of Stg.£100,000.00, less bank charges, was received from Irish Intercontinental Bank's correspondent bank and was credited by Mr. Collery to the S8 Sterling Memorandum Account on 3rd October, 1994.

November 1996 payment

12-10 The second payment of £25,000.00 was not lodged to the Hamilton Ross account in Irish Intercontinental Bank, but was made directly to a sterling account of Mr. Stakelum, and was credited on 12th November, 1996 by Mr. Stakelum to the dedicated account which he operated on behalf of Mr. Haughey with Allied Irish Banks, Upper Baggot Street. Mr. Desmond could not recall the precise circumstances in which this payment arose, but testified that it was made following an indication by Mr. Haughey that he had a need for funds. Mr. Haughey had no recollection whatsoever of the matter, but accepted that the payment had been made by Mr. Desmond. It is surprising that, while both Mr. Desmond and Mr. Haughey had a detailed recollection of the circumstances surrounding the earlier payment in 1994, neither of them had a precise memory of the matters which gave rise to this payment, even though it was made no more than ten months prior to the establishment of the Tribunal, and at a time immediately proximate to the establishment of the inquiry undertaken by Judge Buchanan. What is also surprising is that it is clear from the records of the Memorandum Accounts, and indeed was pointed out by Mr. Stakelum in his evidence, that there was no immediate shortage of funds at the time, although the balances held for Mr. Haughey's benefit were gradually dwindling.

12-11 Mr. Stakelum did recall the events surrounding the payment. In the course of one of his meetings with Mr. Haughey, around October, 1996, Mr. Haughey informed Mr. Stakelum that Mr. Desmond wished to make a payment to defray Mr. Haughey's bills, and asked Mr. Stakelum to make contact with Mr. Desmond to make the necessary arrangements. Mr. Stakelum contacted Mr. Desmond's secretary, and arranged to meet with Mr. Desmond at his office in Dublin. Mr. Stakelum recalled the meeting quite vividly, although Mr. Desmond had no recollection of it. Accordingly to Mr. Stakelum, both he and Mr. Desmond understood the purpose of the meeting. Mr. Desmond informed Mr. Stakelum that he wished to make a lodgement to meet Mr. Haughey's bills, and Mr. Stakelum furnished Mr. Desmond with routing instructions for his own sterling account with Allied Irish Banks, Channel Islands. While Mr. Stakelum could not recall whether he was aware in advance of the amount of the intended payment, it is clear that he must have known the currency in which the payment would be

made, as he furnished Mr. Desmond with the routing instructions for the sterling account which he operated in connection with his business.

12-12 The routing of this payment was also made from one off-shore account to another off-shore account. The payment was made from an account of Bottin International Investments Limited, a Gibraltar registered company beneficially owned by Mr. Desmond. Stg.£25,000.00 was debited to an account of Bottin with Anglo Irish Bank, Isle of Man, on 28th October, 1996, and was transferred to Royal Bank of Scotland, St. Helier, Jersey, for onward transmission to Allied Irish Banks, Channel Islands, for Account No. 11158833. The Irish Pound equivalent of Stg.£25,000.00, which at that time was £24,630.50, was credited to the dedicated account operated by Mr. Stakelum at Allied Irish Banks, Baggot Street, on 12th November, 1996.

THE NATURE OF THE PAYMENTS

12-13 In his evidence to the Tribunal, Mr. Desmond testified that these two payments of Stg.£100,000.00 and Stg.£25,000.00 were loans which he made to Mr. Haughey on the strength of Mr. Haughey's assets. The payments were clearly not intended by Mr. Desmond to be commercial loans, as he agreed that they were made without documentation, without any agreement regarding interest, and without any terms governing repayment. As far as Mr. Desmond was concerned, they were unsecured advances, and were characterised by him as debts of honour. Mr. Desmond accepted, that in his dealings with the Tribunal prior to attending to give evidence, he had never suggested that these payments were in the form of loans which he expected to be repaid by Mr. Haughey. Mr. Desmond further accepted that his true intention was to assist Mr. Haughey, as a friend, and that the advances were not, in his own terms, "*bankable*". Whatever Mr. Desmond's view of matters was, it is clear from Mr. Haughey's evidence that he had never addressed the possibility of repaying these funds to Mr. Desmond. If the payments were loans, Mr. Haughey had no understanding of how, or when, repayment might be triggered, and he had never given any consideration to the matter. As far as Mr. Haughey was concerned, nothing had been said by Mr. Desmond, or discussed between them, that might have indicated one way or the other whether these payments were loans repayable by Mr. Haughey, or outright donations by Mr. Desmond in favour of Mr. Haughey.

12-14 The Tribunal cannot accept Mr. Desmond's evidence that these payments were ever intended by him to be repayable by Mr. Haughey. There was nothing evident in the conduct of either Mr. Desmond or of Mr. Haughey which would support Mr. Desmond's characterisation of the payments as loans. On the contrary, all of the objective evidence available to the Tribunal suggests otherwise, and the Tribunal is satisfied that the payments were outright dispositions by Mr. Desmond to Mr. Haughey. While Mr. Desmond confirmed to Mr. Haughey's accountants, for the purposes of dealings with the Revenue Commissioners, that the payments

made by him were loans, the Tribunal is of the view that these confirmations were not correct, and can have been furnished for one purpose only, which was in ease of Mr. Haughey's position, and with a view to reducing his potential exposure to taxation. The Tribunal believes that this is borne out by the fact that, in negotiations with the Revenue Commissioners which ultimately led to a settlement with Mr. Haughey and the payment of €5 million by Mr. Haughey to the Revenue Commissioners, Mr. Haughey's advisers themselves accepted that the two payments by Mr. Desmond should be included for the purposes of arriving at a base figure on which Gift Tax would be computed.

12-15 Had these payments been nothing more than loans made by Mr. Desmond to Mr. Haughey on favourable terms for the purposes of assisting Mr. Haughey as a friend, there was no reason that they could not have been made in an orthodox manner by a direct payment from Mr. Desmond to Mr. Haughey, lodged by Mr. Haughey to the account which he then held with National Irish Bank. Instead, the payments, in common with the earlier payments made by Mr. Dunne, were made from one off-shore account to another off-shore account, through a series of off-shore banks. None of the accounts from which, to which, or through which these funds passed were identifiable with either Mr. Desmond as the donor or Mr. Haughey as the donee.

12-16 Mr. Desmond testified to the Tribunal that apart from these payments amounting to Stg.£125,000.00, apart from the investments that he made in companies with which Mr. Haughey was associated and apart from the funding to the tune of £75,456.00 of the cost of refitting the Haughey family yacht, Celtic Mist, he made no other payments to Mr. Haughey, or to persons associated with him, within the meaning of the Tribunal's Terms of Reference. In particular, Mr. Desmond testified that he made no direct payments to Mr. Haughey prior to 1994, after Mr. Haughey had left office. While it must be said that the Tribunal has heard no evidence to the contrary, the Tribunal cannot make a finding to that effect as neither Mr. Haughey's off-shore accounts, nor Mr. Desmond's off-shore accounts were accessible to the Tribunal for the purposes of verifying this matter.

12-17 What remains to be considered is whether these two payments constituted payments within the meaning of paragraph (a) of the Tribunal's Terms of Reference. As the payments were made prior to 31st December, 1996, and as each of them was substantial, they are both, in terms of timing and quantum, potential payments for the purposes of paragraph (a) of the Tribunal's Terms of Reference. Each of the payments was made after Mr. Haughey ceased to hold public office, so that it follows that neither had the potential to influence the discharge by Mr. Haughey of his office as Taoiseach.

12-18 What must be determined is whether the payments were made "*in circumstances giving rise to a reasonable inference that the motive for*

making the payment [s] was connected with any public office held by [Mr. Haughey]. . . .” In other words, what the Tribunal must address is whether the circumstances warrant a reasonable inference that Mr. Desmond’s motive for making the payments was connected with Mr. Haughey’s former public office of Taoiseach. These were not isolated payments made in an open manner by Mr. Desmond to Mr. Haughey after Mr. Haughey ceased to hold office as Taoiseach. On the contrary, they were shrouded in secrecy, and they were made from one off-shore account, through a series of off-shore accounts to what was, at least nominally, an off-shore account at least in part held for the benefit of Mr. Haughey. They followed in the path of an established pattern of support by Mr. Desmond of the business ventures of Mr. Haughey’s family, and they further followed the conferring of an indirect benefit of £75,546.00 on Mr. Haughey by Mr. Desmond through the financing of the refit of the Haughey family yacht, Celtic Mist, all of which occurred during Mr. Haughey’s tenure as Taoiseach. In considering the circumstances of the payments, the Tribunal also believes that it is material that Mr. Desmond was asked by Mr. Traynor to provide funding for Mr. Haughey while Mr. Haughey was Taoiseach, which Mr. Desmond declined, not as a consequence of any principled objection but due to of his then financial frailty.

12-19 Mr. Desmond maintained throughout his evidence that these payments were prompted by no more than friendship for Mr. Haughey, a friendship which it is clear arose in the context of Mr. Haughey’s office as Taoiseach. Taking all of these circumstances into account, it is the Tribunal’s view that they do give rise to a reasonable inference that Mr. Desmond’s motive for making these payments was connected with the public office of Taoiseach, which had been formerly held by Mr. Haughey.

INDIRECT PAYMENTS AND BENEFITS

FELTRIM PLC AND CELTIC MIST

13-01 From the somewhat unwieldy wording of Term of Reference (a), it has already become clear that its focus upon any substantial payments to Mr. Charles Haughey, between 1979 and 1996 inclusive is not limited to payments made directly to Mr. Haughey. The relevant wording equally requires the Tribunal to investigate such payments when made indirectly. As with direct payments, it must be apparent that any such indirect payment was made in circumstances warranting an inference that its motive was connected with Mr. Haughey's holding of public office or could have influenced his discharge of that office. The concept of an indirect payment as referred to in Term of Reference (a) is expressed in terms that leave at large the full ambit of what comes within its meaning. A number of specific incidences are mentioned in the Terms of Reference but are preceded by the phrase "whether or not" which clearly indicates that it was not intended to set forth an exhaustive enumeration but merely to identify a number of classes of payment lest they be thought not to come within the ambit of the concept of an indirect payment. In simple terms, and without purporting to be the conclusive on the point, the concept involves payments made not directly to Mr. Haughey, but from which he or persons related to, or associated with, him derive a benefit, or where there is a sufficient connection with Mr. Haughey in the soliciting, or disposal of the payment. It accordingly appears to the Tribunal that an indirect payment to Mr. Haughey, as contemplated by Term of Reference (a), apart from the general case mentioned above, may also arise in any of four instances;

- (i) Payments used to discharge monies or debts due by Mr. Haughey;
- (ii) Payments used to discharge monies or debts due by any company with which Mr. Haughey was associated;
- (iii) Payments used to discharge monies or debts due by any connected person to Mr. Haughey within the meaning of the Ethics in Public Office Act, 1995;
- (iv) Payments used to discharge monies or debts, presumably due by some other party, but discharged at the direction of Mr. Haughey;

13-02 It was in this context that it became necessary to investigate and hear evidence in relation to certain transactions relating to the company Celtic Helicopters, and it similarly proved necessary to deal with a more limited and less complex number of aspects relating to another company closely connected to the Haughey family, Feltrim Plc. That company came to the attention of the Tribunal when Mr. Dermot Desmond informed it that he had invested in the company in 1990, and that he had also made a loan to the company in the following year, as well as making further investments after the company had been taken over and acquired the new name of Minmet Plc in 1993.

13-03 Mr. Desmond also conveyed the nature of certain dealings had directly with Mr. Charles Haughey, which are addressed elsewhere, and further referred to a number of payments in 1990 and 1991, initiated by him and referable to the refurbishment and refitting of the yacht “*Celtic Mist*”, acquired in January, 1988 and transferred into the name of the Haughey family company, Larchfield Securities Limited. The relevant matters pertaining to “*Celtic Mist*” will be set forth after the evidence relating to Feltrim Plc has been summarised. Larchfield Securities Limited was at all times a holding company referable to the Haughey family. Mr. Charles Haughey and Mrs. Maureen Haughey were Directors, and their four children were shareholders. Apart from the references that will emerge to it later in this Chapter in regard to “*Celtic Mist*”, and in the next succeeding Chapter in relation to Celtic Helicopters, it also came to the attention of the Tribunal in a context of the loan made to it by Merchant Banking Limited, the private bank owned by the Gallagher Group of companies, in July, 1976, which was repaid with interest only subsequent to the collapse of that Group in 1982.

13-04 In principle, where evidence may establish that a payment has been made for or to the use of Feltrim Plc in circumstances sufficiently referable to Mr. Charles Haughey’s office as Taoiseach at such time, it appears to the Tribunal that it may be viewed as an indirect payment to Mr. Haughey, either as a payment due by a connected person to him within the meaning of the Ethics in Public Office Act, 1995, or was otherwise a payment indirectly to him, in either event within Term of Reference (a). Where such alternative findings are open, it would be the preference of the Tribunal, having regard to the somewhat intricate and convoluted legislative provisions applicable to connected persons, to favour the latter alternative basis, which in any event accords more with an ordinary and natural understanding of an indirect payment.

ORIGINS OF FELTRIM AND PERSONS INVOLVED

13-05 Feltrim Plc was very much the brainchild of Mr. Conor Haughey, son of Mr. Charles Haughey. Having previously trained in Canada and the USA, Mr. Conor Haughey qualified as a Mining Engineer in 1979. Viewing the climate in Ireland as ripe for establishing another mining exploration company, and having identified various prospects, and applied for some exploration licences, Mr. Haughey went with his proposal to Mr. James Stafford, who had wide experience of related matters. Mr. Stafford put the proposal to set up Feltrim to Mr. Emmet O’Connell of Texas Continental Securities, which specialised in bringing companies to the Stock Market in the resources sector.

13-06 After deliberation over the intended type of mining activities, and the preparation of a Business Plan, it was decided that prospects for the new company were sufficiently promising to justify proceeding with a flotation in early 1988, at which it was hoped to raise approximately £1

million. These hopes proved well- founded in the first instance, when the company was floated on the London and Dublin Stock Exchanges: the shares were oversubscribed, the £1 million was duly raised and, although matters thereafter were not to fulfil these expectations, the initial share price of 40p doubled on the first day. The promoters of the company were Mr. Stafford, Mr. O'Connell and Messrs. Davys Stockbrokers.

13-07 In addition, a number of other senior individuals in the Irish business community became involved in the new company. The late Mr. Bernard Cahill, a business executive of much seniority and experience, agreed to become Chairman, and stated in his evidence to the Tribunal that this was on foot of a telephone request in that behalf from Mr. Charles Haughey. In his evidence given on commission, Mr. Haughey stated that he did not recall making such an approach to Mr. Cahill, but was entirely willing to accept this if it was the latter's evidence. A further senior figure in Dublin financial circles to assume a major role was Mr. Jack Stakelum, who agreed to become Financial Director. In evidence he stated that this was at the request of Messrs. Deloitte & Touche, who had been appointed as Auditors to the company, and who conveyed to him that the Stock Exchange had expressed anxiety that a person of some substance in the financial community should hold this position. Whilst stating that he would not have regarded himself as particularly close to the Haughey family, he acknowledged that he had long previously been articled to Mr. Charles Haughey, and that he had more recently through his company taken over the bill-paying service operated on behalf of Mr. Haughey. Mr. Trevor Watkins, Director of Computershare Services Limited, which acted as Registrars for Feltrim, was also a Director of Feltrim for a number of years. In his evidence, he stated that it appeared to him from his involvement with the company that the purpose for which Feltrim was formed was to provide employment for Mr. Conor Haughey. Mr. Conor Haughey was appointed as Managing Director upon the flotation, and other Directors included Mr. Niall Haughey, Mr. M. J. O'Connor, Mr. Somerset Gibbs, a Stockbroker based in the UK, Mr. James Patrick Shannon and Mr. John Barnicle, a person centrally connected with Celtic Helicopters and whose interest related to his holding of certain exploration licences which he transferred into the name of Feltrim. Secretarial services to the company were provided by Secretarial Trust Company, an associate company of Deloitte & Touche, and Mr. Ralph MacDarby furnished brief evidence of his involvement in that regard, as did Mr. Gerry McGee of Deloitte & Touche, in relation to the auditing of the accounts of Feltrim. Messrs. Arthur Cox were appointed as Solicitors to the company.

FORTUNES OF THE COMPANY

13-08 Despite the successful flotation and the considerable range of expertise retained at Board and advisory level, the subsequent trading history of Feltrim unfortunately did not fulfil that promise, but rather transpired to be a course of lurching from one crisis to another. Mr. Conor

Haughey stated in evidence that all exploration companies lose money in their early years, with some never showing a profit, and this unhappily transpired to be the case with Feltrim. Of the money raised at the flotation, £600,000.00 was spent without success in respect of platinum prospects in New Mexico, although Mr. Haughey stated that he sought to apply the money as economically as possible, and was paid no more than a reasonably modest salary.

13-09 Matters did not improve, the share price of the company fell steadily backwards, and a loss was incurred for the year 1989 of £838,804.00. By 1990, there was a deficit on the profit and loss account of in excess of £2 million. The company was in urgent need of further funds, and there was in 1990 a reverse takeover of the company by Connery Minerals. This company was then developing a leaching process for gold and other metals in Avoca, Co. Wicklow, and Mr. Trevor Watkins was also a Director of it. In conjunction with this reverse takeover, Feltrim sought to raise a sum in the region of £300/400,000.00 as additional capital at 32p per share. This proved to be the first involvement with the company on the part of Mr. Dermot Desmond, and he subscribed for shares to the value of £26,667.00, which investment was lodged to the company's current account on 1st August, 1990. It was Mr. Conor Haughey's recollection that, when some English subscribers for shares dropped out on the company's return to the Stock Market in 1990, he approached Mr. Desmond in this regard, and he also approached him with regard to obtaining a loan of £55,000.00 the following year. Mr. Haughey indicated that without Mr. Desmond's intervention the company would have had to return to investors all the funds that had been raised in the 1990 issue, which would probably then have resulted in the demise of the company. In Mr. Desmond's evidence, he confirmed that he had made his initial investment in Feltrim at the time of the 1990 share placing; he stated that he had had a number of discussions with Mr. Conor Haughey and with the Chairman, Mr. Bernard Cahill, and had confidence in the prospects of the company. Regarding the subsequent loan, he stated that he had received a request in this regard from the Chairman, Mr. Cahill, and that he had made the loan without agreeing any precise terms as to repayment. However, he had again felt confident that Feltrim would be able to repay the loan. As events transpired, and as will be set out, Mr. Desmond eventually recouped a considerable profit from his investment in Feltrim, which placed his involvement in an unusually favourable if not unique position.

13-10 At the time of the reverse takeover and supplemental share placing in 1990, a very serious view of the company's financial position had been taken by the auditors; on 14th March, 1990, the Board of Directors noted that the auditors had determined that there existed a financial situation requiring the convening of an Extraordinary General Meeting under section 40 of the Companies Act, 1983, and it was on foot of this that the company returned to the Stock Market to seek additional capital.

13-11 Matters did not improve, and an even greater loss was recorded for the year 1991, in the amount of £1,490,124.00. During that year, the company had entered into an agreement to extract stone from a quarry at Clonmannon, Co. Wicklow, with a view to generating additional income. In the course of carrying out the requisite works, the company encountered severe difficulties with creditors, and in particular with lorry drivers working at the Clonmannon Quarry. Large sums of money were owed to these drivers, and Mr. Watkins recalled in evidence that they had started calling to his home to seek payment. It was at this further critical phase that Mr. Desmond was induced to make the loan of £55,000.00 to discharge the amounts owed to these drivers and also some other creditors. Mr. Watkins recalled in evidence speaking to Mr. Desmond about the matter, and also calling to his office to collect a cheque.

13-12 Despite the making of some further loans by Directors to the company, to which mention will be made, the downward spiral continued. By May, 1992 the company was in dire financial straits, with no salaries being paid and costs cut back to a minimum. At that stage there was a further open offer of shares at 5p per share to generate further finance, but the offer was undersubscribed. Given the pressures from outside creditors at the time, it was proposed that some creditors would convert their debts to shares, and on foot of this accommodations were reached with virtually all internal creditors by Mr. Watkins on behalf of the company, with the exception of Mr. Mike Murphy, the Insurance Broker to the company, and a person whose involvement in Celtic Helicopters is noted elsewhere in this part of the Report, who insisted upon payment of his account in full. One of the loans that was made to the company was by Mr. Cahill in 1992, and this was then done to enable the company to maintain an interest in the gold extraction or leeching process, which was then the main asset of the company.

13-13 By March of 1993, the company was little more than a shell. Commercial activity on the part of the company was minimal, a number of the persons originally involved had resigned, and market sentiment had emphatically turned against small Irish exploration companies. At that stage, a new investor emerged from the United Kingdom who specialised in taking over such companies. Following negotiations, the company was in that year taken over, and renamed Minmet Plc, and Mr. Conor Haughey resigned as Managing Director. In the course of those negotiations, Mr. Watkins had discussions with Mr. Desmond, with a view to him subscribing for further shares. It was the evidence of Mr. Watkins that Mr. Desmond wished to have a one third interest in the reconstituted company, but the new investor was not agreeable to this, and eventually Mr. Desmond subscribed £100,000.00 for shares at 1p per share, giving him a 10% interest. The fortunes of the renamed company revived temporarily but again fell back, becoming what Mr. Desmond was able in evidence to

describe, having realised his investment at a profit, as “a penny share”. By June, 2006 the share price languished at 1c per share.

FINANCIAL CONTRIBUTIONS

13-14 Whether by the purchase of shares, loans or otherwise, a number of individuals associated with the company made financial contributions to its funds.

Mr. Conor Haughey

13-15 Mr. Haughey financed an initial purchase of 125,000 shares with a sum of £50,000.00. This amount was paid by Feltrim to a company called Geo Engineering Limited that was controlled by Mr. Haughey, in return for a report which he prepared on exploration and research activities. As Managing Director of the company, Mr. Haughey was paid a salary of approximately £25,000.00 per annum. He stated in evidence that he had acquired some additional shares in lieu of salary, and in respect of expenses paid by him for the company; these financial contributions would in the main have been furnished by payments to him by his father, Mr. Charles Haughey, and were stated by Mr. Conor Haughey not to have been large amounts.

Mr. Jack Stakelum

13-16 At the time that Mr. Stakelum acceded to the request of Messrs. Deloitte & Touche to become Finance Director of Feltrim, he was asked to subscribe £5,000.00 for shares, and did so, in return for which he was issued with 12,500 shares. In addition, in or about July, 1991, after he had resigned as Finance Director, he advanced a sum of £15,000.00 to Feltrim through his company, BEL Limited, by way of loan. Although appearing in the company's bank account, this loan does not appear to have been recorded in any Board meeting minutes. Half of that loan was converted to 150,000 shares at 5p each in March, 1992. The balance was then also converted into shares in favour of BEL Limited. Eventual disposal of the shares by Mr. Stakelum in 1997 gave rise to a net loss of £492.00. Whilst he could not recall in evidence the precise basis upon which he was asked for the loan, he agreed it was in response to one of the many crises faced by the company. It was not his recollection that he advanced the loan without realistic expectations of repayment. Mr. Stakelum also waived fees owed by Feltrim to BEL Limited in the vicinity of £2,500.00.

Mr. Charles Haughey

13-17 As stated, Mr. Conor Haughey had testified that his father had advanced to him a number of payments of limited but unspecified amounts to the use of Feltrim; it was the recollection of Mr. Charles Haughey in his evidence on Commission that, although he had had little to do with what he regarded as his son's company, he recalled advancing a sum of perhaps

£2/3,000.00 or thereabouts for shares to show family support, but felt this was at the time of the initial launch of Feltrim.

Mr. Bernard Cahill

13-18 During his period as Chairman, Mr. Cahill recalled occasions when the company was under severe pressure to pay outstanding accounts due to creditors, in consequence of which all Directors were asked to do their utmost to raise extra capital, to enable trading to continue. Mr. Cahill initially purchased 10,000 shares at the flotation and an additional 6,666 in March, 1990. He also made a loan of £6,421.00 to the company in 1992, and recalled that this was done as a matter of urgency to enable the company to maintain its interest in the patent on the environmentally friendly gold leeching process, the maintenance of which then seemed the company's best prospect of trading successfully. That loan was subsequently converted to 124,820 shares prior to later restructuring.

Mr. Mike Murphy

13-19 Mr. Murphy, the Principal of Mike Murphy Insurance Brokers Limited, had already testified in some detail at earlier public sittings of the Tribunal in relation to his involvement in Celtic Helicopters, as will be set out in the next Chapter. In regard to Feltrim, his company again acted as insurance brokers from 1988 until approximately 1992. In the course of providing a variety of insurance services for the company, an account balance of £5,167.06 accumulated as detailed in an invoice furnished. Mr. Murphy was approached by the company, and asked to take shares in lieu of payment, but declined that offer and insisted on payment, which was duly made. Mr. Conor Haughey recalled that Mr. Murphy was the only such individual who was unprepared to assist in the company's survival prospects in this manner. In evidence, when reminded of his investment involvement with Mr. Gresty in Celtic Helicopters, Mr. Murphy said that the Feltrim position was completely different: the omens for payment of his account were not good, and cancellation of some insurance cover in 1990 was noted on his invoice. Were it not for the takeover of Feltrim then being negotiated, prospects of having the account paid were poor, and he had no hesitation in seizing the opportunity for payment that the takeover presented, in preference to shares. He acknowledged that it was true that he had earlier stated in regard to Celtic Helicopters that he did not want to have the finger pointed at him as responsible for the folding of a company associated with the Taoiseach's son, but in the case of Feltrim, the company had ceased trading three years earlier.

Mr. Emmet O'Connell

13-20 Although not a Director of Feltrim, and eventually involved only in the context of registration work undertaken by one of his subsidiary companies, Mr. O'Connell stated that he had invested approximately £10,000.00 in Feltrim at the time of the flotation, and his company Texas

Continental Securities Plc invested approximately £15,000.00. He believed he disposed of his interest approximately six months after flotation. Any evidence to the effect that he had invested £100,000.00 was grossly exaggerated. In this regard, Mr. Conor Haughey stated in his evidence that he had been mistaken in his initial belief that Mr. O'Connell invested the larger amount, and accepted that only amounts in the vicinity of the lesser sums were involved. Mr. O'Connell felt that the reverse takeover and emphasis on the new leeching process had given the company greater potential, although it did not actually improve until 1993. Asked whether his own involvement had been motivated by the Company's own merits, or by the Haughey connection, he responded that it had been a business proposition like many other exploration ventures handled; that the Taoiseach's son was involved may have added some lustre to the Company, but would not have been a motivating factor from the viewpoint of himself and his Company.

Mr. James Stafford

13-21 Mr. Conor Haughey stated in his evidence that Mr. James Stafford agreed to and did contribute an initial investment of £100,000.00 in the Company at the time of its flotation. Mr. Stafford also agreed to assist with the launch of the Company, and Mr. Haughey believed that he had advanced a sum of approximately £40,000.00 in respect of the initial promotional expenses of the flotation. This latter amount was subsequently repaid by the Company. Although Mr. Stafford did not become a Director of Feltrim, or take any direct role in its management, he nonetheless advised and took much interest during its initial year of trading. Mr Stafford himself testified at a later stage of public sittings, and was somewhat vague as to the amount and nature of any financial contributions made by him. Regarding a contribution to flotation expenses, he thought it highly unlikely that he had made a loan, so it was "*funding in some other manner*", and he suspected it was "*something like a subscription*". As to any investment, he recalled that he and Mr O'Connell had said they would together invest £250,000.00; however, he stated that he personally did not invest anything, but believed certain trusts of which he was possibly a beneficiary did invest, "*and others would follow*". As to a £100,000.00 investment relative to him, he felt that "*the people following us would have subscribed in that region*".

Mr. Dermot Desmond

13-22 Certain of the matters relating to Mr. Desmond's financial involvement in Feltrim have been referred to already. After an initial Press Statement in which broad details were furnished of dealings had by Mr. Desmond with Mr. Charles Haughey, with Feltrim, and in regard to "*Celtic Mist*", Mr. Desmond furnished the Tribunal through his solicitors with more detailed statements in relation to these matters, and subsequently gave related evidence on two separate occasions.

13-23 He dealt with his involvement in Feltrim on 27th July, 2000. He confirmed that he had not invested in the Company at its initial flotation, and that his first involvement had been in the course of a further issue of shares in July, 1990, when he purchased 83,333 shares for a sum of £21,041.00. By that time he stated that he had become friendly with members of the Haughey family, including Conor, who had informed him that the prospects for Feltrim were good. He stated that he had also been informed of the default on the part of English investors in taking up shares on that occasion, but he still then had confidence in the prospects of the Company. In August, 1991 he advanced a loan of £55,000.00 to Feltrim. His recollection was that it was the chairman, Mr. Bernard Cahill, who had then requested the loan. No precise terms had been finalised as to repayment, but he stated that he had been confident that the Company could repay the loan. He had also in the course of 1991 furnished a guarantee in respect of Feltrim in ease of its borrowings, and believed that this had probably been sought from him by Mr. Conor Haughey. In April, 1992, his loan to Feltrim had been converted into 1.1 million shares in the Company. Since then, and after the takeover and renaming of the Company as Minmet, he had participated in a number of share issues to a total value of £216,881.00. Subsequent sales in respect of most of his holding had realised an aggregate sum of £1,250,928.00, giving rise to a profit of £936,705.00. As of the date of giving that evidence in July, 2000, he retained a limited balance of shares in the Company, which then were worth £3,699.00.

13-24 Mr. Desmond stated that he would not have made a loan to a company unless there was some realistic prospect of repayment, and would certainly not have advanced money to a company that was about to be liquidated. His practice was to help people out from time to time, but not by “*burning pound notes*”, which provided no solution; the whole matter of Feltrim was low down on his agenda, but probably at the top of that of Mr. Conor Haughey. He agreed that it was pure luck that he had made the profit in question, and that it had in effect been procured from a different animal from that in which he had invested. He stated that he was not putting money into the Company in order to lose it, but acknowledged that he would have wished to be supportive of Mr. Conor Haughey.

13-25 In the course of Mr. Conor Haughey’s evidence, he stated that he could not speculate on Mr. Desmond’s motives for making the initial investment in the Company in July, 1990, but he assumed that Mr. Desmond considered it a sound investment. As already referred to, Mr. Haughey acknowledged that the loan of £55,000.00 the following year by Mr. Desmond was made at a particularly crucial time for the Company, and that without it, the Company would probably not then have survived. There had been no formalities in relation to the loan arrangement, and Mr. Haughey recalled that he probably informed Mr. Desmond that, if the immediate crisis was staved off by reason of the loan, it could subsequently be converted into shares at a placing.

“CELTIC MIST”

13-26 Mr. Conor Haughey informed the Tribunal that this yacht, previously called “*La Tina of Hamble*” was purchased in or about January, 1988. As best Mr. Haughey could recall, a friend of the family, the late Mr. Liam McGonagle, Solicitor, first saw the yacht at Palma in Majorca. It was suggested to Mr. Haughey by either or both Mr. McGonagle and his father that he should examine it, following which he travelled there to inspect it, and thought it suitable for the purposes of the family. After initial negotiations with a view to purchase broke down, further discussions led to agreement, and Mr. Haughey recalled being asked by either his father or Mr. McGonagle to take possession of the yacht, which was then in Gibraltar. With the assistance of his two brothers and Mr. Brian Stafford, who had been the skipper of vessels previously owned by the Haughey family, along with some other friends, Mr. Haughey sailed the boat back to Ireland in the summer of 1988 and brought it to Kinsale. The following summer it was brought to the boatyard in Crosshaven, Co. Cork.

13-27 Mr. Haughey stated that he had had no involvement whatsoever in the negotiations leading to the purchase, but believed that the money to purchase the yacht had been arranged by his father. Otherwise he knew nothing about the source of the monies expended, but now knew the purchase price to have been Stg.£120,000.00. Mr. Haughey made available to the Tribunal certain documentation which attested that the equivalent in Irish currency had been £145,790.30, and that Valued Added Tax in the amount of £21,283.64 had been paid when the yacht entered Ireland. He stated that the yacht had been imported in the first instance in the name of Mr. Brian Stafford, and had then been transferred into the name of Larchfield Securities Limited, the Haughey family Company, by Bill of Sale, dated 19th May, 1989.

13-28 In Mr. Charles Haughey’s evidence he agreed that Mr. McGonagle had been involved in inspecting the yacht for the family when it was in Palma, and that it was then purchased later in 1988 for the sum of Stg.£120,000.00. Insofar as the cost of acquiring the yacht appeared in the accounts of Larchfield Securities Limited that had been prepared by Mr. Ryan as a liability to Mr. Charles Haughey, meaning that he provided the funds, Mr. Haughey agreed with this, stating that the funding would have been provided by Mr. Desmond Traynor. Regarding Mr. Haughey’s relationship with Larchfield Securities Limited, the yacht was put into its name and the cost price credited to Mr. Haughey, so that the Company had an asset of the boat and a debt to Mr. Haughey corresponding to it. Mr. Traynor would have arranged the money, and Mr. McGonagle would then have conducted the purchase through his office, but Mr. Haughey stated that he did not know out of which account or other source Mr. Traynor obtained the money. Put that there may have been discussions on the matter with Mr. Traynor, bearing in mind that Mr. Traynor had the previous year emphasised the need for stringency, Mr. Haughey responded that he was only peripherally involved and not in touch with the details, which would all have been arranged

between Mr. Traynor and Mr. McGonagle. As to the £21,283.64 paid by way of Valued Added Tax, Mr. Haughey again accepted that Mr. Traynor was almost certainly the source of that sum also. Tribunal Counsel indicated that the money could not be seen coming out of any of the known accounts controlled by Mr. Traynor, and asked whether there was any other source of money to which Mr. Traynor may have had access; Mr. Haughey responded in the negative, stating that Mr. Traynor had a wide range of financial operations, and he could not at that stage identify any particular source. As to previous yachts or other vessels owned by the Haughey family, Mr. Haughey recalled that one previous boat sank off Mizen Head, but he accepted his son's Conor's belief that the vessel before Celtic Mist was sold. He did not know what happened to the proceeds of such sale, and stated that the sale may have taken place through Mr. McGonagle, but it had not in any event been a very important boat, being as far as Mr. Haughey could recall a converted trawler.

The refurbishment of Celtic Mist

13-29 Mr. Conor Haughey had stated in evidence that when Celtic Mist was purchased it required to be refurbished, and this matter was discussed amongst members of the Haughey family, including Mr. Charles Haughey.

13-30 The person who enabled the required refurbishment works to Celtic Mist to be carried out was Mr. Dermot Desmond, and he brought this matter to the Tribunal's attention in the first instance in the course of a Press Statement, in which he referred to a number of dealings had with what may be termed extended Haughey interests. Regarding the refurbishment works, what was then stated on behalf of Mr. Desmond was as follows:—

"In 1990 Mr. Desmond arranged loans in consultation with Mr. Conor Haughey totalling £75,546.00 to refurbish the boat 'Celtic Mist' of which he was skipper and owner together with the other Haughey children. These loans have been settled"

13-31 A more detailed account of the matter was furnished when Mr. Desmond gave evidence in December, 1999. Mr. Desmond stated that in the course of a general conversation with him about sailing, Mr. Conor Haughey stated that he needed repairs to the yacht "Celtic Mist". Mr. Desmond responded that he would arrange an introduction to Mr. Ron Holland, the celebrated boat designer, with a view to undertaking the repairs. However, Mr. Haughey then said that he was not in a position to fund the necessary repairs, whereupon Mr. Desmond said that he would arrange a loan in that regard. On a latter occasion, when Mr. Haughey raised the matter again, Mr. Desmond sought to save himself the time and trouble of organising a loan by inviting Mr. Haughey to have the necessary works undertaken by Mr. Holland, who should then send an invoice onto Mr. Desmond.

13-32 On foot of this arrangement, works were carried out on the yacht by Mr. Holland over the course of 1990 and 1991. It proved to be the case

that the required works were more extensive and more costly than had been envisaged in the first instance, and in total six payments proved necessary, which were made by companies with which Mr. Desmond was associated, named respectively Dedeir and Freezone, to Mr. Holland. However, Mr. Desmond was emphatic that he himself was the person who was responsible for the loan to Mr. Haughey, irrespective of what vehicles were used.

The six payments made were as follows:—

- (i) 3rd April, 1990, £10,000.00 from Dedeir.
- (ii) 4th April, 1990, £10,000.00 from Dedeir.
- (iii) 24th April, 1990, £10,000.00 from Dedeir.
- (iv) 23rd May, 1990, £38,353.00 from Freezone.
- (v) 30th August, 1990, £4,606.00 from Freezone.
- (vi) 14th February, 1991, £2,587.00 from Freezone.

13-33 Mr. Desmond stated that all of these loan payments were consolidated in the accounts of Freezone (full title Freezone Investments Limited), following which the consolidated loan was taken over by Mr. Colin Probets, a Director and sole shareholder of that company, and was subsequently taken over by Mr. Desmond in an arms length transaction. No assignment documents were executed in respect of the taking over of the loan, either by Mr. Probets or by Mr. Desmond. It had been arranged with Mr. Haughey that the refurbishment invoices should be sent by Mr. Holland directly to Mr. Desmond in National City Brokers. On the instructions of Mr. Desmond, the first and third payments were made by cheques drawn on the account of Dedeir at Lombard & Ulster Bank, Mount Street, Dublin 2, in favour of Ron Holland Yacht Design. The second payment was initially made by National City Brokers on behalf of Dedeir, but the sum was made good to National City Brokers two days after the payment. The three Freezone payments were made by way of bank drafts drawn on the Company's Dublin bank account, Trustees Savings Bank, and lodged to the account of Mr. Holland in the Bank of Ireland, Carrigaline, Cork.

13-34 There was no writing in relation to his loan agreement with Mr. Haughey, and no details were discussed at the time as to the terms of the agreement. He agreed that the loans could not be enforced, either as regards principal or interest. However, he stated that it was not necessarily the case that he could never recover the sums lent, since Mr. Haughey could have used his own resources if his stake in Feltrim Plc had proved to be successful. However, he said that it was not a matter of concern to him at all as to whether or when he was going to be repaid. As to the initial reference on behalf of Mr. Desmond to the loans having been "*settled*", Mr. Desmond stated that this referred to a further verbal arrangement between himself and Mr. Conor Haughey in or about 1996, to the effect that the

money would be repaid by Mr. Haughey when funds became available to him from the sale of Celtic Mist. To date it is not apparent that any repayments whatsoever have been either sought or made.

13-35 Regarding the two companies used, Mr. Desmond stated that Dedeir was one of his investment companies; it was a multi-purpose company, holding investments in various companies, making loans, borrowing and carrying out some of his personal transactions. Freezone was also an investment company, owned by Mr. Colin Probets but chiefly managed by Mr. Desmond; he stated that he had full discretion over the management and use of the assets of Freezone, and how those assets were invested.

13-36 Mr. Kieran Ryan, Accountant, testified in relation to the treatment of the payments in the accounts of Larchfield Securities Limited. Celtic Mist itself was treated as an asset of the Company, with a corresponding liability to Mr. Charles Haughey, whilst the refurbishment costs are shown in the 1996 Company accounts as an outstanding loan from Mr. Conor Haughey giving rise to a corresponding liability to him.

13-37 Mr. Paul Carty, of Messrs. Deloitte & Touche, also gave evidence to the effect that Messrs. Deloitte & Touche had no records in relation to the payment of Valued Added Tax on 19th January, 1989 of £21,283.64. They had checked the Haughey Boland No. 3 account to ascertain whether or not any relevant entry appeared, but no such payment appeared in or about the date stated, and accordingly the accountants were unable to identify the source of the payment. Mr. Conor Haughey stated in evidence that it was understood between himself and Mr. Desmond that the loan would be backed by his shares in Feltrim Plc. He confirmed the absence of any specific terms in the agreement, whether written or oral, and said that it was a loose and informal arrangement, with no provision for interest or any time for repayment. No repayment had been made, and he proposed to settle it at some time in the future on the basis of it having been a personal commitment by him. He had initially thought that the overall refurbishment costs would be unlikely to exceed a sum in the vicinity of up to £25,000.00. Mr. Charles Haughey also referred in evidence to how the eventual cost had exceeded initial estimates, observing that this was “*a constant factor about all boats everywhere and always*“. He stated that he had not been specifically aware of the basis upon which the works had proceeded, and had been kept abreast of matters by Mr. Conor Haughey only in a very general way. Being busy in Government at the time, he could not say whether or not he was then aware that Mr. Desmond was providing funding for the works, and he left matters to his son. Regarding the companies Dedeir and Freezone, he had then known nothing about them, and had only heard of Freezone at the time Mr. Glackin carried out his investigation. He would have been aware of his son having been interviewed by Mr. Glackin at the time of the investigation as to any possible connections, but would not have been aware of any details.

13-38 Mr. Haughey agreed that he and his family had been on friendly terms with Mr. Desmond since 1987. He thought that he had met Mr. Desmond through Mr. P. J. Mara at a stage shortly before Fianna Fáil returned to Government in 1987, when Mr. Desmond had brought four leading Irish Economists to meet Mr. Haughey and members of the Fianna Fáil front bench, and conveyed the necessary measures that had to be taken to improve the then disastrous economic situation. This was done at Mr. Desmond's own expense, and Mr. Haughey stated that Mr. Desmond deserved great credit for it, in addition to his leading role in initiating the Irish Financial Services Centre. Mr. Haughey also stated that he had not at the time been aware that Mr. Traynor had approached Mr. Desmond for financial assistance for Mr. Haughey in 1987, and had only learned of this through the Tribunals.

CONCLUSIONS

13-39 In considering whether payments to companies such as Feltrim Plc, like Celtic Helicopters, a venture primarily instigated by a son of Mr. Charles Haughey, constituted indirect payments to Mr. Charles Haughey, it is important to have proper regard to the requirement for any such payment to be in some way referable to Mr. Haughey's office as Taoiseach. To interpret this as involving no more than some incidental or minor link would be oppressive and unfair. The mere fact that a person's parent might hold public office could not tenably preclude that person from launching business ventures, and it would be equally unsustainable to regard any support or assistance advanced by the office holder as being thereby tainted. What must be undertaken by the Tribunal in considering whether any payment, direct or indirect, falls within Term of Reference (a) is a balanced consideration of the individual circumstances surrounding the payment, including such matters as its expressed purpose, its timing in the context of other events, and the degree of openness or otherwise involved in its making, with a view to determining whether it could reasonably be inferred that its motive was connected with the public office held, or could have influenced the discharge of that office.

13-40 Adopting this reasoning, even before coming to matters of payments, it would be wrong and reflective of an artificially exacting standard to criticise Mr. Charles Haughey for contacting Mr. Bernard Cahill with the request to chair his son's new company, even though this does indicate a preparedness for some degree of hands-on involvement on the part of Mr. Haughey, an involvement that would be seen to have been significantly more pronounced in the case of Celtic Helicopters. Similarly, Mr. Emmet O'Connell need not be queried for saying that having the Taoiseach's son behind the new company added a little lustre to it, although he in any event testified that this would not have been the motivating factor which induced involvement on the part of himself and his Company. Weight has to be attached to a number of relatively clear grounds of distinction between the circumstances applicable to the establishment of Feltrim Plc

and those who became involved with it, when compared with Celtic Helicopters. These include the degree of openness or otherwise in the form in which investments were made, the degree of involvement on the part of Mr. Charles Haughey, the fact that there was an undoubted degree of investment sentiment in Ireland in favour of small exploration companies at the time Feltrim Plc was launched, and the differing responses of investors when a downturn was apparent in the fortunes of both companies, as exemplified in the case of the dual involvement on the part of Mr. Mike Murphy. Even though the venture was inherently speculative and hazardous, there appears in the case of Feltrim to have been a reasonable, thorough and careful process of appraisal prior to flotation on the part of persons with significant relevant experience such as Mr. O'Connell and Mr. Stafford, and a board of directors was appointed involving persons of significant experience and expertise. Those who invested in Feltrim acquired shares in a publicly quoted company, and their interest, like those who made loans, was clearly recorded and discoverable. Some witnesses who advanced funds or afforded expertise acknowledged in evidence that friendship or association with the Haughey family may have contributed to their involvement, but this does not of itself appear sufficient to justify findings of indirect payments within Term of Reference (a). Among those witnesses were Mr. Jack Stakelum, whose loss of funds invested ultimately proved marginal, and Mr. Dermot Desmond who, albeit as he himself admitted fortuitously, in fact made a handsome profit on his investment. Some aspects of what was stated by Mr. James Stafford, who also had associations with the Haughey family, occasion a degree of concern, but having reviewed his evidence in its entirety, it remains a reasonable view that, like Mr. Emmet O'Connell, he nonetheless saw some prospects of successful returns in what was one of many exploration ventures with which he became involved, and on balance, a finding within Term of Reference (a) is not in the ultimate warranted. In summary, the many frailties and shortcomings of Feltrim should not detract from the fact that, at least at its stages of preparation, flotation and initial trading, it manifested appreciably more commerciality than Celtic Helicopters.

13-41 Regarding the sum of £75,546.00 paid in respect of the refurbishment of "*Celtic Mist*", the Tribunal views the position otherwise. Although the six payments made in 1990 and 1991 for the works undertaken by Mr. Ron Holland were made by two companies with which Mr. Dermot Desmond was associated, it was acknowledged by Mr. Desmond in evidence that he was the person responsible, irrespective of the vehicles used. Even though the aggregate amount expended may have exceeded what Mr. Desmond had contemplated in the first instance, that sum was very far from being a trifling one, and it is worth noting, from figures supplied to the Tribunal by the Department of Finance, that during the period of the payments the gross salary of Mr. Haughey as Taoiseach ranged between £69,764.00 and £72,354.00. Having considered all the evidence heard in relation to these payments, and being mindful of the prior inability on the part of Mr. Desmond to respond to the approach made to

him by Mr. Traynor on Mr. Haughey's behalf, and to the fact that Mr. Haughey's eventual settlement with the Revenue Commissioners in respect of Capital Gains Tax included provision for the sums, the Tribunal rejects the evidence that these payments were in substance loans. No terms or intent at any time in the dealings between the parties provided for any real or effective basis for repayment, and insofar as any references may have been made, these can be regarded as no more than a colourable device or cosmetic designation which did not reflect the true intentions of the parties. Given all the circumstances, the Tribunal finds that the entire of the said sum of £75,546.00 constituted an indirect payment by Mr. Desmond to Mr. Charles Haughey, on a basis of enabling the discharging of money or debts due by Larchfield Securities Limited, a company with which Mr. Charles Haughey was associated.

13-42 There remains the matter of the purchase price paid for "*Celtic Mist*", and also the Value Added Tax that had been paid in respect of the transaction when the yacht entered Ireland. This had been Stg.£150,000.00 equivalent at the operative time in Irish currency to £145,790.30, and the Value Added Tax had amounted to £21,283.64, giving rise to an aggregate of £167,073.94. This was in relative terms an immense sum at a time when Mr. Haughey's salary as Taoiseach was lower than the amounts referred to in the preceding paragraph. Mr. Conor Haughey could throw no light on the source of these monies, other than that he believed that the requisite funds had been arranged by his father. Mr. Charles Haughey in evidence stated that he had only been peripherally involved in the matter, could only state that Mr. Traynor would have arranged the funds to provide both the purchase price and the Value Added Tax payment, but he was unable to say out of which account or other source Mr. Traynor obtained the money. The Tribunal has carefully examined all the known accounts controlled by Mr. Traynor, including all Amiens accounts and the Haughey Boland No. 3 account and no indication whatsoever is apparent of the money coming out of these accounts. Neither is any realistic explanation to hand in the context of Mr. Haughey's known earnings at the time, borrowings taken out, or funds realised through the disposal of any previous vessel, and Mr. Haughey's response in this regard was confined to stating that he knew of no other source of money to which Mr. Traynor may have had access, but that Mr. Traynor had a wide range of financial operations. In these circumstances, this substantial unexplained funding appears to have certain similarities to the unattributable funds deployed to discharge the part of Mr. Haughey's indebtedness to Allied Irish Banks at an earlier stage, and the Tribunal is driven to conclude that the discharge of both the purchase price of "*Celtic Mist*" and the resultant Value Added Tax payment were funded by a payment or payments made to Mr. Traynor from a source or sources that cannot be identified, and that the entire of the said amount is accordingly an indirect payment to Mr. Charles Haughey by virtue of having been used to discharge the indebtedness of Larchfield Securities Limited as a company with which Mr. Haughey was associated.

14 MR. HAUGHEY AND CELTIC HELICOPTERS LIMITED**INTRODUCTION**

14-01 Between 1985, when it was established, and 1993, Celtic Helicopters Limited (“*Celtic Helicopters*”) was a small helicopter company ostensibly under the control of its main pilots, Mr. John Barnicle and Mr. Ciaran Haughey. Mr. Ciaran Haughey is Mr. Charles Haughey’s son. At its inception in 1985, Celtic Helicopters was capitalised at £160,000.00, divided equally between equity capital and loan capital. The £80,000.00 equity capital consisted of a number of payments, most of which were solicited, as will appear below, by Mr. Desmond Traynor and Mr. Charles Haughey. Later, in the years 1991-1993, payments were made to the company in the order of approximately £540,000.00. In total, payments amounting to approximately £623,000.00 were made to Celtic Helicopters between 1985 and 1993, all of which come within the Tribunal’s Terms of Reference. These payments come within the Terms of Reference as constituting either payments, direct or indirect, to Mr. Charles Haughey or as payments to a “*connected person*”, namely Celtic Helicopters.

14-02 Although Celtic Helicopters featured in the McCracken Report, this Tribunal’s inquiries resulted in the main from two matters that came to its attention in the course of its examination of a number of bank accounts in Guinness & Mahon associated with the activities of Mr. Desmond Traynor, both in 1985 while he was Chairman of Guinness & Mahon, when he conducted the business of the Ansbacher accounts from that bank’s premises, and, at a later point, in the 1990s, when he operated the activities of the Ansbacher accounts from the offices of Cement Roadstone Holdings Plc at 42 Fitzwilliam Square. The two matters which led the Tribunal to pursue its inquiries into Celtic Helicopters were, firstly, a payment by Mr. Charles Haughey of £15,000.00 to Dr. John O’Connell in 1992, and secondly, a payment in 1992 that has come to be described in the course of the Tribunal’s proceedings as “*the Carlisle payment*”. The £15,000.00 payment from Mr. Haughey to Dr. O’Connell was funded from the Ansbacher accounts. This was what first drew the Tribunal’s attention to the payment. Upon inquiry, Dr. O’Connell informed the Tribunal that this £15,000.00 payment was related to a much earlier involvement he had with Mr. Haughey in 1985 when at Mr. Haughey’s request he made a payment of £5,000.00 in connection with the setting up Celtic Helicopters. The £5,000.00 payment prompted inquiries into the initial capitalisation of the company, and the Carlisle payment led to the Tribunal’s scrutiny of further payments to the company in 1991-1993 to enable it to deal with mounting debt problems. The Carlisle payment comprised the proceeds of a cheque drawn on an account of Carlisle Trust Limited, a company controlled by Mr. John Byrne, but not, as will appear below, representing a payment to Celtic Helicopters by Mr. Byrne. (Mr. Byrne made a separate payment to Celtic Helicopters in 1992 unrelated to the Carlisle payment).

14-03 The Tribunal’s inquiries into Celtic Helicopters evolved over a lengthy period of time and they did not take the form of a discrete set of

public hearings, but rather featured from time to time in hearings intended to deal mainly with other matters. Because these inquiries were not therefore referred to at length in any Opening Statement it is appropriate to set out in a general or schematic way the areas covered in the course of the evidence.

14-04 They can be divided into two classes — on the one hand payments to Celtic Helicopters, however classified, whether as constituting indirect payments to Charles Haughey, or as payments to Celtic Helicopters, being a connected person to Charles Haughey within the meaning of the Ethics in Public Office Act 1995, and on the other hand, the use of Celtic Helicopters and its bank accounts as a mechanism for payments made to Mr Charles Haughey which were unconnected with Celtic Helicopters. This second class of payments will be dealt with separately towards the end of this Chapter but because the “*Carlisle payment*” is so inextricably connected with payments to Celtic Helicopters in 1991/1993, it will be treated as part of the narrative dealing with those payments.

14-05 The nature of an indirect payment within the meaning of the Tribunal’s Terms of Reference is dealt with in Chapter 13. In the context of the payments under consideration in this Chapter, the concept of a “*connected person*” is of some relevance. It is dealt with in more detail toward the conclusion of this Chapter. At this point suffice to say that the concept is a highly technical one, involving a consideration not only of the Terms of Reference, but of various provisions of the Ethics in Public Office Act, 1995 and the Corporation Tax Act, 1976. Although the Tribunal has concluded that Celtic Helicopters is a connected person to Mr. Charles Haughey, this is not a prominent focus of the Report since, as will appear, most of the payments under consideration in this Chapter fall more obviously, or in a more readily understandable way, within the class of indirect payments to Mr. Haughey.

PAYMENTS TO CELTIC HELICOPTERS WHETHER CONSTITUTING INDIRECT PAYMENTS TO CHARLES HAUGHEY OR AS PAYMENTS TO CELTIC HELICOPTERS AS A CONNECTED PERSON TO CHARLES HAUGHEY

14-06 Payments made in connection with the establishment of the enterprise in 1985 and later in relation to its financial difficulties in 1991-1993 are dealt with under the following headings:—

- (i) Payments amounting to £80,000.00 in 1985 at the inception of the company.
- (ii) A payment in 1992 of approximately £99,000.00 purporting to be by way of a loan to enable Celtic Helicopters to pay its insurance premium.

- (iii) A payment in 1992 of £100,000.00 made to Celtic Helicopters purporting to be in consideration of the assignment of a cause of action.
- (iv) Two payments in 1992 of £50,000.00 and £3,868.54, respectively, purporting to be by way of payment or prepayment by Mr. Charles Haughey to Celtic Helicopters for flying hours.
- (v) Payments in 1992-1993 amounting to a sum in the order of £290,329.00 by way of a purported injection of further capital to deal with Celtic Helicopters' rising indebtedness.

Payments amounting to £80,000.00 in 1985 at the inception of the company.

14-07 These payments were made in the context of the establishment and initial capitalisation of the company. The capital, both loan capital and equity, was raised by the combined efforts of Mr. Charles Haughey and Mr. Traynor. A sum of £80,000.00 was raised by way of loan capital from Guinness & Mahon. A similar sum of £80,000.00 was raised from outside “investors”. The initial capital of the company was configured so that the £80,000.00 provided by outside “investors” apparently represented 40% of the equity, the balance of the equity being held equally by Mr. Ciaran Haughey and Mr. John Barnicle. Mr. Barnicle and Mr. Ciaran Haughey made a purely nominal cash contribution to the company, their real contribution being their expertise and experience in the flying and operation of helicopters.

14-08 Information concerning payments amounting to £80,000.00 came to light in the course of the Tribunal’s examination of transactions across a number of bank accounts operated by Mr. Traynor. In this examination, the Tribunal noted a lodgement which appeared to have been made by Dr. O’Connell to Celtic Helicopters’ account with Guinness & Mahon. This prompted further inquiries resulting in the examination of Guinness & Mahon loan documentation connected with the raising by Celtic Helicopters of its initial £80,000.00 loan capital. The loan documentation included a paper presented to the Credit Committee, or Loans Committee, of Guinness & Mahon detailing Celtic Helicopters’ proposal. The project was described as involving, in addition to the loan finance being applied for, other funding to be provided by equity investors, who were listed as including Mr. Seamus Purcell, Mr. Joseph Malone, and Mr. P.V. Doyle. Mr. Purcell and Mr. Malone subsequently gave evidence concerning their involvement in Celtic Helicopters. The Tribunal examined evidence with a view to identifying other outside “investors”, including evidence relating to Mr. P.V. Doyle. The Tribunal also heard evidence from Dr. O’Connell concerning his involvement in the company. From the evidence of Dr. O’Connell, Mr. Purcell and Mr. Malone it is possible to form an impression of Mr. Haughey’s role in the inception of the company.

14-09 From the Tribunal's examination of bank records in Guinness & Mahon, and as confirmed in evidence by Ms. Sandra Kells, as of 29th March, 1985 there were two lodgements to a Celtic Helicopters loan account with Guinness & Mahon, amounting in total to £80,000.00. One of these lodgements was for £5,000.00 and the other for £75,000.00. The source of the £5,000.00 lodgement was Dr. John O'Connell. The £75,000.00 lodgement had been transferred to the Celtic Helicopters account from another account in Guinness & Mahon, an account in the name of Amiens Securities Limited, one of a number of Amiens accounts under the control of Mr. Traynor. This particular Amiens account had been opened in January, 1985 and was closed in April of 1985 and therefore presumably was intended solely to serve the purpose of assembling funds for transfer to Celtic Helicopters. There were five major lodgements to the account as follows;—

- (i) 26th March, 1985 — £10,000.00;
- (ii) 26th March, 1985 — £15,000.00;
- (iii) 27th March, 1985 — £10,000.00;
- (iv) 27th March, 1985 — £25,000.00;
- (v) 28th March, 1985 — £10,000.00.

14-10 The Tribunal's examination of the records of the bank showed that these various lodgements were sourced as follows:—

- (i) The first lodgement represented the proceeds of a cheque for £10,000.00 drawn on an Allied Irish Banks account of J. Magnier in favour of Dr. Michael Dargan.
- (ii) The second lodgement represented the proceeds of a Foreign Exchange transaction from an Ansbacher Cayman account whereby Stg.£12,420.00 was converted to £15,000.00.
- (iii) The third lodgement represented the proceeds of a second Foreign Exchange transaction from an Ansbacher Cayman account whereby Stg.£8,200.00 was converted to £10,000.00.
- (iv) The fourth lodgement represented the proceeds of a third Foreign Exchange transaction from an Ansbacher Cayman account whereby Stg.£20,712.50 was converted to £25,000.00.
- (v) The fifth lodgement represented a transfer of funds from an account of Purcell Exports Limited, an account associated with Mr. Seamus Purcell.

These lodgements to the Amiens account accounted for £70,000.00 of the total of £75,000.00 which was credited to Celtic Helicopters account and which, when added to Dr. O'Connell's £5,000.00, brought the full amount transferred to that account to £80,000.00. The Tribunal identified Dr. John O'Connell, Mr. Seamus Purcell, Mr. Joseph Malone, Mr. Cruse Moss and

Mr. PV Doyle as having provided £49,987.00 of the total of £80,000.00 transferred.

Dr. John O'Connell TD and Celtic Helicopters

14-11 Dr. O'Connell informed the Tribunal that he was approached by Mr. Haughey around March of 1985 to make a “*contribution*” to Celtic Helicopters. At that time Dr. O'Connell had just joined the Fianna Fáil Party. He had been a Labour Party TD between 1965 and 1981 and an independent TD from 1981 to 1985. During the four years prior to 1985 he had served as Ceann Comhairle. Having become a Fianna Fáil TD in 1985 he lost his seat in 1987 although he was appointed to the Seanad as one of the Taoiseach's nominees on 25th April, 1987. He was re-elected to the Dáil in 1989 as a Fianna Fáil TD and between 1989 and 1992 was a backbencher. After Mr. Haughey resigned as Taoiseach and leader of Fianna Fáil in 1992, Dr. O'Connell became Minister for Health in Mr. Albert Reynolds' Government in March of that year.

14-12 In describing the approach made by Mr. Haughey in 1985 Dr. O'Connell stated that Mr. Haughey also inquired whether Dr. O'Connell had any friends who would make contributions to the company. Mr. Haughey informed Dr. O'Connell that he had asked a few friends for £5,000.00 each. Dr. O'Connell did not understand this to be an invitation to invest, that is, to purchase shares in the company, but saw it as a contribution to Celtic Helicopters related to his having become a member of the Fianna Fáil Party, and at a time when he presumed similar contributions were being made by other members of the Party. Apart from the fact that he understood that the company was connected with Mr. Ciaran Haughey, Mr. Charles Haughey's son, he knew nothing about Celtic Helicopters. He received no share certificate or any other indication of his having acquired shares or an interest in the company. He had no dealings with the company except in relation to the ultimate disposal of his “*shares*”.

14-13 His involvement with Celtic Helicopters did not arise again until late 1991 or early 1992 when Mr. Charles Haughey broached the subject, stating, according to Dr. O'Connell, that “*we were looking up the register of Celtic Helicopters Limited and you never got your Share Certificate, if you ever want a lift in a helicopter please let me know*”. This was the first time Dr. O'Connell realised that the £5,000.00 may have been treated as shares. Some time shortly afterwards Mr. Haughey mentioned the shares again stating “*we would like to buy them from you*”, to which Dr. O'Connell responded that he wanted the shares, not the money. After some negotiation Mr. Haughey agreed to pay £15,000.00 for the shares.

14-14 When this money was not forthcoming, Dr. O'Connell's solicitors, on 5th March, 1992 wrote to Celtic Helicopters requesting a Share Certificate. He did not write to Mr. Haughey pressing for the £15,000.00, stating in evidence that he felt that writing to Celtic Helicopters was the

best way of progressing matters. The contents of this letter when received by Celtic Helicopters came as a complete surprise to both Mr. Barnicle and Mr. Ciaran Haughey, this being the first time they had heard of any involvement of Dr. O'Connell in the company. The letter was addressed to Mr. Ciaran Haughey as Secretary of the company and it was brought by him to the attention of both Mr. Barnicle and his father, Mr. Charles Haughey. In that regard, Mr. Barnicle also gave evidence of his awareness that the matter had been brought to Mr. Charles Haughey's attention. According to Mr. Barnicle he heard nothing further of the matter from that point onwards. From the fact that Dr. O'Connell's letter came as a surprise to both Mr. Barnicle and Mr. Ciaran Haughey, it must follow that they knew nothing of Mr. Charles Haughey's contact with Dr. O'Connell in 1985 or in the latter part of 1991 or the early part of 1992.

14-15 In October of 1992 at a Fianna Fáil convention in Donnycarney, Mr. Charles Haughey, pursuant to a prior arrangement, gave Dr. O'Connell a cheque for £15,000.00. This cheque was drawn on an Irish Intercontinental Bank account with Bank of Ireland. The funds for the cheque were in fact debited to the Hamilton Ross S8 Deutschmark Ansbacher account, which was an account operated for the benefit of Mr. Charles Haughey. According to Mr. Barnicle and Mr. Ciaran Haughey, they knew nothing of these developments.

Mr. Seamus Purcell, Purcell Exports and Celtic Helicopters

14-16 Purcell Exports Limited was a company of which the late Mr. Seamus Purcell, whose family were involved in the livestock export business, had control. Mr. Purcell gave evidence that in or around 1985 he received a telephone message requesting him to meet Mr. Charles Haughey at the Berkeley Court Hotel in Dublin. The meeting took place at lunchtime, on a date which it has not been possible to establish, and lasted approximately forty minutes. During the course of the meeting Mr. Purcell and Mr. Haughey discussed the livestock industry, cattle exports and the Libyan market, at that time a topical subject. As they were leaving the bar, Mr. Haughey informed Mr. Purcell that his son, Ciaran, needed a bit of capital and that he, Mr. Haughey would appreciate it if Mr. Purcell could put up £12,000.00. Mr. Purcell agreed, and Mr. Haughey indicated to him that Mr. Traynor would make contact with him. Mr. Purcell appears to have been under the impression that investments were being sought from a number of people around the same time that he was requested to make this payment.

14-17 Some time shortly afterwards, Mr. Purcell received a telephone call from Mr. Traynor. At the time Mr. Traynor was Chief Executive of Guinness & Mahon Limited and was known to Mr. Purcell by reason of the fact that Purcell Exports had its main bank account with Guinness & Mahon. Mr. Traynor asked Mr. Purcell whether he wanted shares in Celtic Helicopters. Mr. Purcell responded that he did not want shares and indicated that the

money requested could simply be transferred from a Purcell Exports Ltd account in Guinness & Mahon to the appropriate Celtic Helicopters account. There was no paperwork involved on Mr. Purcell's part. This did not trouble Mr. Purcell, as he had the highest regard for, and complete trust in, Mr. Traynor. Although from the Tribunal's examination of the banking transactions involved in the capitalisation of Celtic Helicopters it would appear that only £10,000.00 was transferred from the Purcell Exports Ltd account, Mr. Purcell himself was under the impression at all times that the amount requested and paid was £12,000.00.

14-18 He did not regard the money as a loan or expect it to be repaid. From his evidence it appears that he did not anticipate any commercial return on this payment apart from the possibility that it might earn him some helicopter time. In fact, when subsequently he chartered a helicopter from the company to take him to the Galway Races, he was invoiced and he paid for his flight.

14-19 Mr. Purcell gave evidence that it was through his involvement in the Irish Livestock Exports Association that he came to know Mr. Haughey; that he admired his efforts to promote Irish agricultural and beef exports, in particular to the Libyan market. He had no subsequent contact with either Mr. Haughey or Mr. Traynor in relation to this matter.

14-20 Whilst Mr. Barnicle was aware that Mr. Traynor had arranged for outside investors in 1985, he was wholly unaware of Mr. Purcell's involvement. It is reasonable to assume that Mr. Ciaran Haughey was likewise unaware of Mr. Purcell's involvement.

Mr. Joseph Malone and Celtic Helicopters

14-21 By 1985 Mr. Joseph Malone had had a successful career in business in Ireland both in private enterprise and with the Irish Tourist Board. He and his family had a friendship with the Haughey family. This was apparently to a significant degree cemented by the fact that Mr. Malone's son, also Joseph, was friendly with Mr. Haughey's son, Ciaran. Mr. Malone was a political supporter of the Fianna Fáil Party and over the years had made a number of payments to politicians at election times, although in one case he made a payment to a Fine Gael candidate.

14-22 In 1984 or 1985, during a social visit to Mr. Haughey's home in Abbeville he received an approach from Mr. Haughey, who asked him whether he would become Chairman of a new helicopter company being set up by Mr. Ciaran Haughey. At the time Mr. Malone was a Director of Aer Lingus, and declined the offer on account of what he perceived to be a potential conflict of interest, related to Aer Lingus, whose subsidiary, Irish Helicopters Limited, was engaged in the same activity in which Celtic Helicopters proposed to become involved. In reaching this conclusion he had the benefit of a discussion with the then Chief Executive of Aer Lingus,

Dr. Michael Dargan, who indicated that as far as he was personally concerned he had no objection, and recommended that Mr. Malone discuss the matter with the relevant Minister with responsibility for Aer Lingus. Mr. Malone decided not to bring the matter to the Minister's attention, and instead reverted to Mr. Haughey, indicating that he was unwilling to accept the offer of the Chairmanship of the company.

14-23 Some time shortly afterwards, he was invited by Mr. Haughey to invest in the company. This invitation came in the course of another social visit to Abbeville. At the time, Mr. Malone was accompanied by Mr. P.V. Doyle. Thinking that Mr. Haughey had been offended, or at least disappointed, by his earlier refusal to become involved as Chairman, Mr. Malone felt that on this occasion he should accept the invitation to invest, but he did not give Mr. Haughey his answer there and then. In a later discussion with Mr. Doyle, the latter recommended to him that he should accept the invitation. Mr. Malone agreed to invest £15,000.00 in the company, stipulating that the investment should be in the name of his son. Mr. Malone gave evidence that the money was transmitted to the company by his financial adviser and good friend, Mr. Traynor. He indicated that his reasons for investing were to make up for his previously having declined to become involved, to make a show of friendship, to mend his fences and, by putting up some money, to get Mr. Haughey's son Ciaran off the ground in business. He stated in evidence that "*Mr. Haughey was not a person to whom many people would say no*".

14-24 Apart from his involvement with the Haughey family in 1990 facilitating the buy-back of Mr. Cruse Moss' investment (referred to in the next section) and the fact that at that time he considered suggesting that his own shares be bought back, he had no further involvement with Celtic Helicopters from the time of the initial investment up to 1992 although he believed that his son received reports (meaning presumably informal reports) concerning the company, and he himself formed the impression that the company was doing reasonably well. In or about 1991 or 1992, Mr. Haughey approached Mr. Malone and asked him if he would like "*to take some further investment*" in the company as Mr. Ciaran Haughey was restructuring it. Mr. Haughey then told Mr. Malone that if he wanted to find out about the company he should talk to Mr. Traynor. As far as Mr. Malone could recall, he did subsequently speak to Mr. Traynor about Celtic Helicopters, who recommended to him not to invest in it.

Mr. Cruse Moss and Celtic Helicopters

14-25 Around this time Mr. Malone was instrumental in introducing Mr. Cruse Moss to the Celtic Helicopters investment. Mr. Cruse Moss was known to Mr. Malone, and was at the time the owner of General Automotive Corporation, which had taken over bus building on behalf of C.I.E at Shannon in 1983. In response to inquiries from Mr. Cruse Moss as to potential investment opportunities in Ireland, Mr. Malone suggested a range

of investments from, at one end of the range, Cement Roadstone Holdings Plc, to what he called “*a high flyer*” (meaning presumably a high risk investment), namely, Celtic Helicopters Ltd at the other end. Mr. Cruse Moss offered to get involved and Mr. Malone facilitated his involvement by arranging Mr. Cruse Moss’ funds of £4,987.00 to be transferred through Mr. Traynor to the company.

14-26 In 1990, Mr. Malone was contacted, either by Mr. Ciaran Haughey or his sister, Mrs. Eimear Mulhern, who informed him that the Haughey family wished to buy back Mr. Cruse Moss’ shares. Mr. Malone acted effectively as a intermediary to arrange the buy back. The sum paid was £7,000.00 but there was no negotiation on price, the amount having been stipulated by Mr. Ciaran Haughey. At the time Mr. Malone had the impression that an offer might have been made to purchase his own shares, and indeed he considered suggesting that they might be purchased but did not in fact do so. Mr. Malone believed that Mr. Cruse Moss’ shares were bought back by a family company. The family company involved was in fact Larchfield Securities Limited, although this name was unknown to Mr. Malone.

14-27 Despite efforts to communicate with him the Tribunal has been unable to make contact with Mr. Cruse Moss.

Mr. P.V. Doyle and Celtic Helicopters

14-28 Mr. P.V. Doyle died on 6th February, 1988. In the presentation to the Credit Committee of Guinness & Mahon on Celtic Helicopters’ application in 1985 for its initial loan capital, the late Mr. Doyle was mentioned as being an investor in the company. The Tribunal heard evidence from a solicitor representing the Estate of Mr. Doyle, the late Mr. William Corrigan, who stated that he found no reference in Mr. Doyle’s papers to the ownership of any shares in Celtic Helicopters. At the same time it is significant that Mr. Malone was prompted, if not persuaded, in part, by Mr. Doyle to become involved in Celtic Helicopters. Moreover, Mr. Malone testified that while he had no certain knowledge, he understood from his conversations with Mr. Doyle that it was the latter’s intention to invest in the company. Mr. Malone also indicated that he had no knowledge as to the amount of any such possible investment, or the source of funds from which Mr. Doyle intended to make same.

14-29 In light of the strong statement made in the written presentation to the Credit Committee of Guinness & Mahon, and having regard to the fact that the contents of the paper were probably in part the work of Mr. Traynor, it seems reasonable to conclude that Mr. Doyle was an original “*investor*” in Celtic Helicopters; in other words, he made a payment or contribution toward the initial setting up of the company, and not unlike at least one, if not more, of the other original contributors, he did not seem to be recorded as a shareholder or investor. If, as appears to have been the case with

other investors, Mr. Doyle did not regard any payment towards the setting up of the company as an investment in the true commercial sense, but rather more as in the nature of a payment or contribution such as that made by Mr. Purcell or Dr. O'Connell, then this may explain why it did not feature in his Estate.

14-30 Having regard to the role played by Mr. PV Doyle in encouraging Mr. Malone to make an investment in Celtic Helicopters in 1985, and Mr. Malone's actually having paid £15,000.00 to Celtic Helicopters, it appears reasonable to conclude that Mr. Doyle's investment or contribution towards Celtic Helicopters in 1985, was likely to approximate to £15,000.00.

Dr. Michael Dargan and Celtic Helicopters

14-31 From the Tribunal's examination of the records of Guinness & Mahon, as confirmed in evidence by the testimony of Ms. Sandra Kells, the £80,000.00 representing the funds of outside "investors" in the initial capital of Celtic Helicopters included an amount of £10,000.00, representing the proceeds of a cheque drawn in favour of the late Dr. Michael Dargan, and lodged to an account of Amiens Securities, in Guinness & Mahon, an account under the control of Mr. Traynor. Dr. Dargan stated that he made no investment in, nor any payment or contribution towards, the capital of Celtic Helicopters and that he had nothing whatsoever to do with the company. Dr. Dargan gave evidence that he received a letter from the accountant at Coolmore, Castlehyde and Associated Studfarms dated 22nd March 1985 enclosing a cheque in the sum of £10,000.00 dated 19th March 1985. The letter stated that the cheque represented the total dividend paid to that date for a horse called "Thatching". The cheque itself was drawn on an account of Mr. John Magnier with Allied Irish Banks, Patrick Bridge Branch, Cork.

14-32 From the evidence it is safe to conclude that Dr. Dargan was the owner of the cheque in question. It represented monies due to him in respect of stallion nomination fees. Dr. Dargan's evidence was that he transmitted the cheque to Mr. Traynor at Guinness & Mahon for onward transmission of its proceeds to his son in New York. At the time, he and his son were in partnership in the bloodstock business.

14-33 While making it clear that he gave no instructions that this cheque was to be credited to an account of Celtic Helicopters, Dr. Dargan was unable to be certain as to whether an amount in the order of £10,000.00 had gone astray from the account into which the proceeds of the cheque were supposed to have been lodged. However, he was certain that had such an amount gone astray, and bearing in mind that it was, as he readily acknowledged, a substantial sum at the time, it would after a time have come to his notice or to the notice of his son. In this respect he pointed out that his son was a banker, inferring that he would have kept an eye on the transmission of funds between his father and himself and would have

alerted himself to any discrepancy of this order. Assuming therefore that an amount equivalent to the proceeds of the cheque was ultimately transmitted to, or credited to, an account in favour of Dr. Dargan's son, it must follow that the funds for any such credit were sourced from monies other than those represented by the proceeds of the Coolmore cheque. There must in other words have been a switching of funds, whereby the proceeds of the Coolmore cheque were transmitted to Celtic Helicopters, and in substitution, an equivalent amount was transmitted from another account, under the control of Mr. Traynor, to Dr. Dargan's son's account abroad.

14-34 It would appear that Dr. Dargan's funds on this occasion, and perhaps on other occasions, were transmitted abroad without exchange control. Dr. Dargan indicated in his evidence that he resorted to Mr. Traynor and the services of Guinness & Mahon to effect such transmissions abroad because he believed that Guinness & Mahon had some particular expertise in carrying out international banking transactions. He contended in evidence that he viewed Guinness & Mahon as being an international bank, as compared with the bank through which he normally conducted his own business, which bank he viewed as having a purely domestic function. In the course of his evidence, he agreed that he could have effected these transmissions through any bank. Having regard to the fact that he was at the time a non-Executive Director of the Bank of Ireland, and must therefore have been familiar with the services available through that bank, (and indeed through any of its retail banking competitors in the country) to transmit funds abroad, his stated reasons for using Mr. Traynor to effect such transmissions were not convincing.

14-35 It is more likely that his dealings with Mr. Traynor and, through Mr. Traynor, with Guinness & Mahon, were connected with his having, as he effectively acknowledged, an involvement with the Ansbacher accounts. He did not have a bank account with Guinness & Mahon, although that bank, under the control of Mr. Traynor, operated as a conduit for the transmission either of sums of money, or credit balances, through the Ansbacher system, either by direct transmissions of funds abroad, or through one of the switching mechanisms operated by Mr. Traynor. Dr. Dargan's involvement with the operation of the Ansbacher accounts is consistent with the findings of the Inspectors Appointed to Enquire into the Affairs of Ansbacher (Cayman) Limited 24th June 2002 that he was a client of Ansbacher. The Tribunal concludes that Dr. Dargan was part of the circle of commercial or banking intimates of Mr. Traynor to whom the facilities of the so-called Ansbacher accounts were made available. It was for this reason and not because of any special expertise of Guinness & Mahon bankers in Dublin, or any banking relationship with Guinness & Mahon bankers in Dublin (which Guinness & Mahon have denied), that he resorted to Mr. Traynor to transmit funds abroad to his son.

14-36 This conclusion would not, without more, warrant a conclusion that he was an investor, or that he had made a payment towards, or a

contribution towards the establishment of Celtic Helicopters. The Tribunal can conclude however that Mr. Traynor must have utilised the proceeds of the Coolmore cheque, transmitted to him by Dr. Dargan, for the initial capitalisation of Celtic Helicopters, but that those funds were replaced by other funds so as to enable Mr. Traynor to carry out Dr. Dargan's instructions to transmit the proceeds of the Coolmore cheque, or as must have happened, an amount equivalent to the proceeds of the Coolmore cheque, to Dr. Dargan's son. It is likely, therefore, that Dr. Dargan's funds, for which Mr. Traynor had a use in this jurisdiction, were switched with other funds kept in a sterling account either abroad or within the jurisdiction under the control of Mr. Traynor.

14-37 Whilst it is accepted that in utilising this cheque and its proceeds to credit the sum of £10,000.00 to Celtic Helicopters account, Mr. Traynor was acting without the authority of Dr. Dargan, the Tribunal assumes that he would not have had the confidence to effect such a switch and to carry through these two transactions except in the case of individuals with whom he had a relationship of trust such as the one he must have had with Dr. Dargan in this case, and with Mr. John Byrne in the case of the Carlisle payment. Whilst it would be inappropriate to conclude, as already indicated, that Dr. Dargan was a contributor to the initial capitalisation of Celtic Helicopters, it must follow that another person, whose identity the Tribunal has not been able to establish, made a contribution of at least £10,000.00 towards the initial capitalisation of the company.

HOW THE £80,000.00 PAID TOWARDS THE INITIAL CAPITALISATION OF CELTIC HELICOPTERS SHOULD BE CLASSIFIED

14-38 Mr. Haughey accepted that he had approached a number of people to invest in Celtic Helicopters, namely Dr. John O'Connell, Mr. Joseph Malone, Mr. Seamus Purcell and, effectively Mr. Cruse Moss through Mr. Joseph Malone. Through his Counsel however he made it clear that he regarded the payment of £5,000.00 by Dr. O'Connell as an investment, that is, as a payment for shares, a payment whereby Dr. O'Connell would become a shareholder in Celtic Helicopters. Whilst Dr. O'Connell was in no doubt that his payment was intended to benefit Celtic Helicopters, he laid particular emphasis on his characterisation of the payment as a "*contribution*" as distinct from an investment.

14-39 It is reasonable to infer from the evidence that it was on the prompting of Mr. Haughey, on the occasion of, and connected with, Dr. O'Connell's reception into the Fianna Fáil Party, that the payment was both sought and made. The fact that the prime movers in Celtic Helicopters, namely Mr. John Barnicle and Mr. Ciaran Haughey were unaware of Dr. O'Connell's involvement with the Company; that Dr. O'Connell was not issued with a share certificate and that for almost seven years there was no contact with him by the Company is consistent only with the essentially non-commercial character of the payment. The events of 1992 are

noteworthy in this context. On the one hand, the buying in or buying back of the shares in 1992 is all of a piece with the buying in or buying back of Mr. Cruse Moss' shares, and appears to partake of some of the character of a commercial proposition. It is however difficult to understand why at that time, when the Company was clearly in dire need of further funds to reduce its indebtedness, Mr. Haughey should have been diverting funds away from the Company. Moreover it would appear that there was a certain imperative about the buying back in that, although the Company was at that time in poor financial shape, Mr. Haughey was prepared to pay to Dr. O'Connell three times the original price paid for the shares. It will be recalled that around the same time, Mr. Cruse Moss' shares were bought in for £7,000.00, still a lot of money for a company in financial difficulties, but less than half of what was paid to Dr. O'Connell. In this sense, the cessation of Dr. O'Connell's involvement with the Company was as lacking in commercial reality as his initial involvement had been.

14-40 Dr. O'Connell's payment of £5,000.00 was both solicited by, and repaid by, Mr. Haughey in a distinctly non-commercial setting. At the time of the contribution in 1985, Mr. Haughey was a TD and Leader of the Opposition, having ceased to hold the office of Taoiseach in 1982. However, he undoubtedly had the potentiality of leadership, which he was in fact to re-assume in 1987. Having regard to all of the facts, it is appropriate to conclude that the 1985 payment was made in circumstances giving rise to a reasonable inference that the motive for making that payment was connected with the office of Taoiseach formerly held by Mr. Haughey, and which he had the real potential to hold again.

14-41 In evidence on commission, Mr. Haughey indicated that he was nearly certain that he had not approached Mr. PV Doyle and that Mr. Doyle was not involved in Celtic Helicopters. The combination of a number of items of evidence to the contrary effect is compelling, in particular, the evidence, already alluded to, that Mr. PV Doyle was mentioned in Guinness & Mahon's internal Credit Committee documentation as having been an investor, and also the evidence of Mr. Joseph Malone that Mr. Doyle may have been an investor. When it is borne in mind that it was Mr. Doyle who was responsible in part for prompting Mr. Malone's acceptance of Mr. Haughey's request to become involved, on balance it seems to the Tribunal that notwithstanding Mr. Haughey's evidence, Mr. Doyle was one of the original investors. Having regard to the amount invested by Mr. Malone, it is not unreasonable to conclude that Mr. PV Doyle as a matter of probability invested a sum which was likely to be approximately £15,000.00.

14-42 Mr. Haughey in evidence stated that he was as certain as he could be that Dr. Dargan never had anything to do with Celtic Helicopters, and that he, Mr. Haughey, had not approached him to make a contribution, and this appears to be consistent with the Tribunal's own conclusions on the point.

14-43 Taking the payments of Mr. Joseph Malone, Mr. Cruse Moss and Mr. Seamus Purcell together, it can be said with confidence that there was no real commercial character in any of their investments. No doubt admiration for Mr. Haughey in the case of Mr. Purcell, or friendship with Mr. Haughey or towards his family in the case of Mr. Malone, were factors in the making of these payments but those factors in themselves do not appear sufficient to characterise as investments the payments of what in 1985 were substantial sums of money, in comparable terms, almost on a par with the then pre-tax salary of a TD. Mr. Malone's evidence that Mr. Haughey was not a man to whom one could say "*no*" is more indicative of the true character of the payments, and is consistent with the fact that in no case did the circumstances of the payment involve any investment analysis of the opportunity. This is probably also reflected in his evidence that, when in 1990 he was involved with the Haughey family in the "*buying in*" of Mr. Cruse Moss' shares, he contemplated suggesting that his own shares (as he described them but presumably meaning the shares nominally held by his son) would also be bought in but decided not to propose such a course to the Haugheys. In Mr. Purcell's case there was no follow-through whatsoever, and he clearly did not regard the payment as being commercial in character. Nor were any of these three payments followed through by the issue of share certificates, and the configuration of the shareholdings and the disposition of share certificates was a matter that appears to have been left exclusively in the hands either of the Haughey family company, Larchfield Securities Limited, or Mr. Traynor. There may have been some remotely commercial character in Mr. Malone's payment, in as much as it appears to have been accorded a degree of separate or distinct recognition, and was the subject of some correspondence in 1992. In Mr. Cruse Moss' case, his "*shareholding*" was bought in although, as in the case of Dr. O'Connell, in circumstances in which Mr. Charles Haughey, appeared contrary to commercial sense to be paying off so-called investors at a time when the company was in fact in dire need of investors.

14-44 The overall character of the above payments, and the fact that there appears to have been no communication of any significance with the "*investors*" after the initial payment, suggests that they were more connected with Mr. Haughey's prominent political position, an inordinate degree of deference to his position, and to the potential of his continuing leadership ambitions.

14-45 In those circumstances, all of these payments, as in the case of the payments by Dr. O'Connell, were payments within term of reference (a) as payments having been made in circumstances giving rise to a reasonable inference that the motive for making the payments was connected with the office of Taoiseach which had been held by Mr. Haughey prior to that time, and which at that time he had a very real potential of assuming once again.

14-46 The Tribunal was unable to identify the sources of the balance of the payments which went to make up the £80,000.00 transferred from an

Amiens account to Celtic Helicopters' account in connection with the initial capitalisation of the Company. However, having regard to the fact that these funds were transmitted through the same Amiens account at the same time, and further the fact there seems to be no reference to them or to any identifiable source, in any of the documents made available by Celtic Helicopters or Guinness & Mahon, the Tribunal has no reason to doubt but that they were provided by unidentified individuals in circumstances similar to those pertaining to the payments made by unidentified individuals referred to above.

A PAYMENT IN 1992 OF APPROXIMATELY £99,000.00 PURPORTING TO BE BY WAY OF A LOAN TO ENABLE CELTIC HELICOPTERS TO PAY ITS INSURANCE PREMIUM.

14-47 Mike Murphy Insurance Brokers Limited (“*MMIB*”) of whom Mr. Mike Murphy was the principal, was Celtic Helicopters' insurance brokers at a time in the early 1990s when the company was experiencing financial difficulties, due to a number of factors, including debts incurred as a result of the construction of a new hangar at Dublin Airport and the related development of a helicopter maintenance business.

14-48 During this time, the company also experienced difficulties paying its aviation insurance premiums. In order to run a helicopter business this type of insurance was imperative and so presented a significant problem to the company and its directors. During the course of the Tribunal's preliminary investigations and subsequent public sittings, it appeared that Mr. Mike Murphy, through *MMIB*, had assisted Celtic Helicopters in the payment of these insurance premiums during this difficult financial period.

14-49 Celtic Helicopters borrowed the money to pay the insurance premiums from a finance company entitled Gatehouse Finance Limited. The amount was approximately £92,500.00, and it was agreed with Gatehouse that this sum would be repaid in ten monthly instalments of £9,917.00, commencing in November 1992, bringing the total amount, inclusive of interest, to be repaid over the period to £99,170.00. Mr. Murphy gave evidence to the Tribunal that *MMIB* negotiated the loan with Gatehouse. Mr. Terry Quigley, an accountant with the firm of Gorman Quigley Penrose, auditors to *MMIB* since in or about 1990, confirmed in evidence that the ten monthly instalments in question were actually paid to Celtic Helicopters by *MMIB* for onward transmission to Gatehouse Finance Ltd. It appears that one of these instalments may have been paid by another company associated with Mr. Murphy, namely M. Murphy Insurance Services Limited. Irrespective of the entity by which the payment was transmitted, it is clear that it was at the direction of Mr. Murphy that the money was paid. Mr. Quigley described how his client had treated the payments as a debt due to *MMIB*. The accounts did not show any repayment of this debt.

14-50 In his evidence, Mr. Barnicle stated that he had entered into a verbal agreement with Mr. Murphy in relation to the Gatehouse loan. Mr. Ciaran Haughey, the other director of the company, left the details of this arrangement to his co-director and, although not aware of the exact amount, he knew that the figure was somewhere in the region of £100,000.00. Mr. Barnicle was clear that the money advanced by MMIB was never suggested nor intended by either of the parties to be an investment in Celtic Helicopters, despite documentation in Deloitte & Touche which contained an indication to that effect. Mr. Barnicle could not explain how his accountants' working papers described the payments as subscriptions for share capital.

14-51 Mr. Murphy gave evidence that Celtic Helicopters repaid £50,000.00 of the £99,170.00 to MMIB, but conceded that this money was not applied to the loan and this was confirmed by the firm's then Auditor, Mr. Quigley. In fact, it appears that there were two relevant accounts on MMIB's files pertaining to dealings with Celtic Helicopters. The first account was concerned with the company's Gatehouse loan and the second account dealt with separate matters unconnected with the loan. It was into this second account that the £50,000.00 was lodged, and so was not in fact applied to reduce the borrowing (although it might be suggested that one way or another it reduced Celtic's general indebtedness to MMIB).

14-52 It was also asserted in evidence by both Mr. Barnicle and Mr. Murphy that part of the borrowing was to be repaid in the form of flying hours. In other words it was contended that the sum due by Celtic Helicopters to MMIB was reduced by the cost of flying hours used by the latter. In support of that contention, Mr. Murphy produced a reconstituted handwritten record of MMIB's flying hours with Celtic Helicopters during the period commencing 15th December 1992 and ending 4th November 1993. This record, created in March of 1999, purported to detail the amount due by MMIB to the company for flight services rendered, an amount which was to be deducted from the amount advanced by MMIB in respect of the Gatehouse loan. Other than this retrospective account, there were no invoices or other documents produced by either company to demonstrate either the existence of, or the reduction of, Celtic Helicopters' debt to MMIB. In fact Mr. Murphy did not know of any place in MMIB's accounts where deductions relating to the loan were made, and could not point to any single reduction of the aviation insurance account attributed to the flying hours in question. Mr. Barnicle suggested as a possible explanation that neither of the companies' accountants would have known about this agreement to offset flying hours because it was a verbal agreement.

14-53 Whilst he did not agree that the payment of the insurance premiums on behalf of Celtic Helicopters was just another form of gift to assist that company with its financial difficulties, Mr. Murphy did concede that he was anxious not to be the person who "*pulled the plug*" on it. He was fearful of losing customers, especially in the beef industry and indicated that he was

justified in his apprehensions having regard to what he felt was the enormous power of Mr. Haughey. There was a dearth of evidence to suggest that the sum of approximately £99,170.00 or any part of it had ever been paid back or was ever treated as having been paid back, in the books of either Celtic Helicopters or MMLB. If the arrangement had been a truly commercial one it is likely that this would have been reflected in the books of the two companies involved. It is more likely than not that the payment of this sum was motivated by the concern alluded to above, namely, the desire not to fall foul of what was perceived to be Mr. Haughey's enormous power and/or by a desire to retain the good opinion of Mr. Haughey, the latter in particular having regard to what was conceded to have been the effect that any failure to retain his good opinion might, according to Mr. Murphy, have had on his business.

14-54 The payment on the face of it was the straightforward discharge of a debt owed by a company, Celtic Helicopters, associated with Mr. Haughey. It was an indirect payment to Mr. Haughey within Term of Reference (a) of the Terms of Reference made in circumstances, as described above, giving rise to a reasonable inference that the motive for making the payment was connected with a public office formerly held by him, namely the office of Taoiseach.

PAYMENTS OF £100,000.00 AND OF £53,868.54

14-55 In 1991, Celtic Helicopters negotiated a loan of £150,000.00 from Irish Intercontinental Bank. This loan was referred to in the McCracken Report as follows:

In March 1991 Guinness & Mahon (Ireland) Limited granted a loan of £100,000.00 to Celtic Helicopters Limited. This was originally intended to be in the nature of a bridging loan to help to finance the erection of a hangar at Dublin Airport which was to be ultimately financed by Irish Permanent Building Society. The loan was secured by personal guarantees from Mr. Ciaran Haughey and Mr. John Barnicle, co-directors and shareholders of Celtic Helicopters Limited. These personal guarantees were in turn secured or backed by a deposit of £100,000.00 sterling taken from the Ansbacher Cayman Limited general account with Guinness & Mahon (Ireland) Limited and separately deposited to act as security. In evidence, Mr. Ciaran Haughey denied any knowledge of this deposit.

In May 1991 a loan of £150,000.00 was negotiated for Celtic Helicopters Limited by Mr. Desmond Traynor from Irish Intercontinental Bank. £100,000.00 of this was used to discharge the liability to Guinness & Mahon (Ireland) Limited and the balance went into the general account of Celtic Helicopters Limited. Again, Mr. Ciaran Haughey and Mr. John Barnicle signed letters of guarantee and in addition the sum of £175,000.00 sterling was transferred from the Ansbacher Cayman Limited general account with Irish Intercontinental Bank to a special deposit account in that bank to be held as security for the loan. This money was in fact taken out of the S8 account, which is a sterling memorandum account held on behalf of Mr. Charles Haughey. In mid February 1992 the loan was repaid on the instructions of Mr. Desmond Traynor out of the Ansbacher Cayman Limited general deposit with Irish Intercontinental Bank, and the monies which had been placed in the special deposit account were released back into the Ansbacher Cayman Limited general account. Again, Mr. Ciaran

Haughey in evidence has denied any knowledge of the use of the Ansbacher funds to secure or repay this loan.

The working account of Celtic Helicopters Limited was with the Dublin Airport branch of the Bank of Ireland, and by March 1992 it was overdrawn to the extent of approximately £100,000.00. The bank required security for an overdraft at this level, and Mr. Desmond Traynor arranged a guarantee from Irish Intercontinental Bank to secure the overdraft. Irish Intercontinental Bank were paid a fee of 1 % per annum in respect of the guarantee, and they also obtained counter guarantees from Mr. Ciaran Haughey and Mr. John Barnicle. Again, the sum of £100,000.00 sterling was taken from the Ansbacher general account, and in particular from the S8 memorandum account of Mr. Charles Haughey, and deposited with Irish Intercontinental Bank as security for the directors' guarantees. Subsequently this was replaced by a deposit for the same sum by Hamilton Ross Co. Limited. It is believed that this loan has recently been repaid by the company, and the monies on deposit have been released back to Hamilton Ross Co. Limited.

Mr. Ciaran Haughey has denied all knowledge of the Ansbacher Cayman Limited or Hamilton Ross Co. Limited funds or of their use to support Celtic Helicopters Limited. His evidence is that all arrangements were made on behalf of the company by Mr. Desmond Traynor, and that the backing transactions were never explained to him. In support of this, it is undoubtedly a fact that the facility letters in respect of the three bank loans make no mention of a back to back deposit to secure the loans, but simply rely on the personal guarantees of the directors as security. The Tribunal accepts that it is a possibility that Mr. Desmond Traynor made the backing arrangements without the knowledge of Mr. Ciaran Haughey, but the Tribunal cannot accept that the loan of £150,000.00 was actually paid off out of these monies without such knowledge. The Tribunal cannot accept that directors of a company would not be aware that a loan of this magnitude from a bank to the company had been discharged, not out of the funds of the company, but by a third party.

14-56 By mid-1991, the year in which the loan was negotiated, Irish Intercontinental Bank was the bank through which Mr. Traynor was operating the visible aspects of the Ansbacher accounts. It appears from both the McCracken Report and the evidence given to this Tribunal that, although Mr. Barnicle and Mr. Ciaran Haughey gave personal guarantees to secure the borrowing, these did not constitute the real security for the loan. Unknown to either of them the true or substantive security had been arranged by Mr. Traynor and constituted a deposit of £175,000.00 from Ansbacher Cayman's general account with Irish Intercontinental Bank. In other words, part of the Ansbacher funds held on deposit at Irish Intercontinental Bank was specifically appropriated as backing for the Celtic Helicopters' loan and could only be released on the repayment of the loan.

14-57 Mr. Barnicle, speaking for himself and for Mr. Ciaran Haughey, informed the Tribunal that, having considered the matter and notwithstanding the facts concerning the repayment as summarised in the McCracken Report, both he and Mr. Ciaran Haughey were justified in their assertion that they believed that their obligations to Irish Intercontinental Bank were discharged without recourse to the Ansbacher accounts. He asserted that this was because, as they believed, it had been repaid out of monies raised by them through the disposal of an asset to Mr. Traynor.

14-58 Mr. Barnicle's evidence was that in 1991 Celtic Helicopters hired a helicopter to a film company, Irish Company Incorporated, to be used in filming on the Kerry coastline. While on hire to the film company the helicopter crashed in circumstances in which Celtic Helicopters became entitled to proceed against Irish Company Incorporated for damages. Celtic Helicopters contended that its losses amounted to £200,000.00, representing the book value of the machine at in excess of £160,000.00, the balance comprising associated losses including loss of profits. Celtic Helicopters were able to recoup part of their losses from Church & General Insurance by whom the helicopter itself was insured for £100,000.00, less an excess of £5,000.00. In December, 1991 Church & General paid Celtic Helicopters £95,000.00 on foot of an insurance claim in respect of the crash. MMIB handled the claim and subsequently arranged for the entire loss, that is, £200,000.00, to be claimed against Irish Company Incorporated. Celtic Helicopters had been advised that it had a good cause of action against Irish Company Incorporated, that is, a right to recover damages. However, although Celtic Helicopters had a prospect of succeeding, to whatever degree against Irish Company Incorporated there were very real question marks about its prospect of recovery, that is, of actually enforcing an order for damages against Irish Company Incorporated. This was because Irish Company Incorporated had neither real assets nor any insurance cover, having been incorporated as a shelf company purely for the purposes of the film work.

14-59 When in 1991/1992 Celtic Helicopters were endeavouring to raise finance, it appears that Mr. Traynor suggested to Mr. Barnicle that he would purchase the company's right of action against Irish Company Incorporated for £100,000.00; that in other words he would pay Celtic £100,000.00 and take over the legal action. A sum of £100,000.00 was deemed to represent the net value of the claim on the following basis. Celtic Helicopters had suffered losses, between the loss of the helicopter it had hired out and consequential loss of profits, of £200,000.00. Celtic Helicopters had been paid £95,000.00 by its insurers, leaving a balance of £105,000.00 by way of outstanding loss. If the litigation of their cause of action against Irish Company Incorporated proved to be 100% successful on liability, if they succeeded in establishing consequential losses of £40,000.00 and, if an award could have been enforced against that company, Celtic Helicopters could have expected to recover £200,000.00 with a consequent obligation to repay their insurers £95,000.00, leaving a net balance of £105,000.00.

14-60 Having agreed to Mr. Traynor's proposal Celtic Helicopters received a cheque from him in the sum of £100,000.00. This cheque was recorded in the Company's cash book on 8th February, 1992. Together with two other cheques, one for £50,000.00, and one for £3,868.54, it was lodged to Celtic Helicopters current account at Bank of Ireland, Dublin Airport branch. This enabled Celtic Helicopters to discharge the Irish Intercontinental Bank loan by a cheque for £153,868.54 to include interest. A small additional balance of interest was some days later paid separately

by Mr. Traynor to Irish Intercontinental Bank under cover of a letter dated 17th February, 1992. From the Tribunal's examination of bank records in Irish Intercontinental Bank, what appeared on its face to be a simple payment of £153,868.54 by Celtic Helicopters to discharge a loan in fact involved a complex series of background transactions orchestrated by Mr. Traynor.

14-61 The Tribunal was informed by Mr. Barnicle and Mr. Ciaran Haughey that in addition to the £100,000.00 provided by Mr. Traynor in consideration of the assignment of Celtic Helicopters' right of action, the £53,868.54 (in two amounts, £50,000.00, and £3,868.54) referred to above was provided in the form of a payment or prepayment for flying hours by a Mr. Gary Heffernan, a coded name for Mr. Charles Haughey. It was from Mr. Barnicle that Mr. Ciaran Haughey learned of this payment, Mr. Barnicle's source of information being Mr. Traynor.

14-62 The detailed evidence in connection with these various transactions is to be found in the testimony of Mr. Tony Barnes on 2nd March 1999 of the Tribunal's public hearings. For the purpose of the Report, this evidence has been summarised as follows:—

- (i) By letter of 29th January, 1992 from Ansbacher Cayman, writing on behalf of Celtic Helicopters, to Irish Intercontinental Bank, Ms. Joan Williams, Mr. Traynor's secretary, indicated that she wished to make arrangements to clear Celtic Helicopters' facility with the Bank inclusive of interest as of Monday, 10th February following. She asked to be informed of the figure that would be required to clear the facility as of that date.
- (ii) For whatever reason the 10th February deadline could not be met and it would appear that arrangements instead were made to clear the facility by reference to the amount of the principal and interest due as of 14th February, 1992 and the figure communicated by Irish Intercontinental Bank to Mr. Traynor to clear the facility as of that date was £153,868.54.
- (iii) Between 7th February, 1992 and 14th February, 1992 Mr. Traynor contacted Irish Intercontinental Bank with instructions to make available for collection three drafts payable to the Bank of Ireland, one for £100,000.00, one for £50,000.00 and one for £3,868.54. This instruction was given by Mr. Traynor on behalf of Ansbacher Cayman on Ansbacher Cayman's notepaper from 42 Fitzwilliam Square, Dublin 2. He directed that the total sterling cost of the three drafts should be debited to Ansbacher Cayman's account no. 02/01087/81, the main Ansbacher Sterling account at Irish Intercontinental Bank.
- (iv) Pursuant to those instructions Irish Intercontinental Bank drew three cheques on its account with Allied Irish Banks, each dated 14th February, 1992 and for the amounts of £100,000.00,

£50,000.00 and £3,868.54 respectively. (Not being a retail bank, it was unable to issue bank drafts).

- (v) These three cheques were relayed to Celtic Helicopters and while Mr. Barnicle has indicated in evidence that they were received by Celtic Helicopters on 8th February, 1992 this would appear to be incorrect in as much as none of the cheques had been drawn by that date. The total cost of these cheques, namely, £143,867.08 sterling was debited, as Mr. Traynor had instructed, to the main Ansbacher Sterling account with Irish Intercontinental Bank on 14th February, 1992.
- (vi) The three Allied Irish Banks' cheques having been lodged as Mr. Barnicle indicated, to the Dublin Airport branch of Bank of Ireland on 14th February, 1992, a draft was then issued by that branch on the same date in the sum of £153,868.54.
- (vii) By letter of 14th February, 1992 from Mr. Traynor on Ansbacher notepaper the Bank of Ireland draft for £153,868.54 was forwarded to Irish Intercontinental Bank for credit to Celtic Helicopters account.

14-63 It would appear that in what was essentially a circular transaction a sum of Stg.£143,867.08 was debited from an Ansbacher account in Irish Intercontinental Bank to generate three separate Irish pound cheques, which were then relayed through Celtic Helicopters' Dublin Airport, Bank of Ireland branch account, so as to generate a single draft in the same sum of £153,868.54, (the Irish pound equivalent of the sterling sum of Stg.£143,867.08 above), which was then lodged to Irish Intercontinental Bank. This resulted in what was effectively the return to Irish Intercontinental Bank of the sum originally drawn down in the three separate amounts totalling in the aggregate £153,868.54.

Commentary on the description applied by Mr. Traynor to the £153,868.54 payment to Irish Intercontinental Bank

14-64 The funds relayed to Celtic Helicopters in order to purchase a draft for £153,868.54 to discharge its indebtedness to Irish Intercontinental Bank were represented by Mr. Traynor to Mr. Barnicle, and effectively to Mr. Ciaran Haughey, as the aggregate proceeds of three separate payments to the company; the first, as the consideration for the sale of a cause of action by Celtic Helicopters to Mr. Traynor himself, and the other two, for £50,000.00 and £3,868.54 respectively, as prepayment, or payment, for flying hours. All these cheques were in fact debited to, or sourced from, the Ansbacher Sterling account in Irish Intercontinental Bank. Having regard to the unusual circular feature of the transaction, the generation of three separate cheques, debited to the one Ansbacher account, and the labelling of each as having a specific source, the overall transaction merits further analysis. It is proposed first to consider the labelling or description of the £100,000.00 as an assignment, and secondly the description of the other

two cheques as prepayments for flying hours on behalf of Mr. Charles Haughey/Gary Heffernan. Finally, the overall payment will be reviewed in the light of this analysis.

14-65 Litigation is a notoriously uncertain activity and in the ordinary way unless liability is admitted, it is extremely difficult to predict with real precision the outcome of any litigation. It is surprising therefore that Mr. Traynor should have paid approximately 100% of the value of Celtic Helicopters' right of action against Irish Company Incorporated. As has already been pointed out, the net value of the claim at the point at which it was assigned to, or purchased by, Mr. Traynor was £105,000.00. While according to the advice received by Celtic Helicopters, the company had a good chance of winning the case, liability had not been admitted. From a commercial point of view, there was no reality in valuing a £105,000.00 action at £100,000.00. Worse still, even assuming that Celtic Helicopters succeeded in establishing the liability of Irish Company Incorporated, there was no prospect of recovering any damages, that is, any compensation from Irish Company Incorporated. This was because Irish Company Incorporated had no insurance cover in place, and as far as the solicitor handling the action was concerned, did not appear to have any assets. A technical legal defence, which could have been fatal to the action, had also been raised by the named Defendants, that is to say, as to whether the Irish Courts had any jurisdiction to entertain the claim. On this basis, as a matter of probability, the claim had no value or at least little more than nuisance value.

14-66 Had Mr. Traynor regarded the right of action as a valuable asset it is likely that he would have treated it as such in the records of his financial and business affairs. In this regard, the Tribunal heard evidence from his son, Mr. Tony Traynor who, like his father, was a Chartered Accountant. Mr. Traynor informed the Tribunal that his father had drawn up his will on 18th March, 1994. He informed his son that at least once a year he drew up a schedule of his assets and liabilities. After his death Mr. Tony Traynor retrieved the Schedule of Assets from his late father's study. It contained no reference to his having paid any money to Celtic Helicopters, nor any reference to his having acquired from Celtic Helicopters an interest in a cause of action arising out of the crashing of a helicopter. He also reviewed his late father's cheque payments, cash receipts, analysis book, reconciliations, bank statements and all of the correspondence he had retained but could find no evidence of a payment from his father to Celtic Helicopters. Mr. Tony Traynor, whose evidence the Tribunal found to be straightforward and direct, stated that he would have expected to find records of an assignment in his father's papers had such an assignment taken place.

14-67 The proceedings between Celtic Helicopters and Irish Company Incorporated were handled by Celtic Helicopters' brokers, the aforementioned MMIB. The solicitors retained were Messrs John S

O'Connor & Company until October, 1994, and thereafter, Mr. Gerald Kean of Kean & Company Solicitors. Mr. Kean informed the Tribunal that he did not become aware of the assignment of the cause of action until May of 1998, that is, four years after he took over the case. The fact that the cause of action had been assigned came as a complete surprise to him. Moreover he did not become aware of the identity of the supposed assignee, that is, Mr. Traynor until the 3rd March, 1999, which was the day on which he gave evidence to the Tribunal. Mr. Murphy, who was handling the claim, informed the Tribunal that the first notification he received of the assignment of the claim was in or about June of 1998, which appears to be consistent with Mr. Kean's information that he became aware of the assignment in or around May of 1998.

14-68 In summary therefore, it would appear that, whatever Mr. Barnicle or Mr. Ciaran Haughey may have believed, resulting from what they were told by Mr. Traynor, Mr. Murphy never viewed Mr. Traynor as the effective owner of the claim or the person entitled to any damages, until well after Mr. Traynor's death. Nor was Mr. Traynor viewed by the solicitor handling the claim as the effective Plaintiff in the action. Nor did Mr. Traynor, to judge from his own papers, ever regard himself as the assignee of the cause of action and never conducted himself in such a way as to suggest that he regarded himself as the owner of an asset worth something in the order of £100,000.00. From this it is reasonable to conclude that, while on the face of it Mr. Traynor may have represented to Mr. Barnicle and Mr. Ciaran Haughey that he had purchased their cause of action, this was merely a label or a description he applied to the transaction involving the transmission to Celtic Helicopters of the first of the three cheques which enabled it to purchase the bank draft in the sum of £153,868.54 to discharge its indebtedness to Irish Intercontinental Bank. There was no reality in describing this money as the proceeds of an assignment to Mr. Traynor, of Celtic Helicopters' cause of action against Irish Company Incorporated.

14-69 It remains to consider the two cheques for £50,000.00 and £3,868.54 described as payments for flying hours by a Mr. Gary Heffernan, which, as has already been mentioned, was a coded name for Mr. Charles Haughey. It is not entirely clear from the evidence whether both these figures were represented as prepayment for flying hours, or whether the latter smaller sum was represented as a payment for services actually rendered. On balance it seems reasonable to conclude that both were in fact represented as prepayments, but even if that is not the case, the smaller sum is not of huge significance in terms of the overall scheme of the payments arranged by Mr. Traynor. It is impossible to accept that two cheques would have been drawn on the one day, on the same account, to achieve the same purpose, when a single cheque in the sum of £53,868.54 would more conveniently have achieved that objective. It is reasonable to conclude that there was never in fact an intention to fund this payment by

a prepayment for flying hours, and that these payments did not in fact represent any such prepayment (or payment) for flying hours.

14-70 The three payments which went to make up the £153,868.54 were fictitiously represented by Mr. Desmond Traynor as having originated in an assignment of a cause of action, and in payments or prepayments for flying hours. This representation was intended to obscure the underlying reality that the entire amount stemmed from an Ansbacher account and in all likelihood originated from sources who were persuaded to contribute toward the funding of Celtic Helicopters, but who did not wish to be identified or were in a position to conceal their identities. The manner in which these payments were disguised and the lengths to which Mr. Traynor went in order to misrepresent the true character or origin of the payments are circumstances from which it is reasonable to conclude that the motive for the making of the payments was connected with the office of Taoiseach held by Mr. Haughey at the time.

PAYMENTS IN 1992/1993 AMOUNTING TO £290,329.00 BY WAY OF PURPORTED INJECTION OF FURTHER CAPITAL TO DEAL WITH CELTIC HELICOPTERS RISING INDEBTEDNESS

14-71 As has already been mentioned, Celtic Helicopters encountered serious financial difficulties in 1991, and by mid-1992 a point had been reached where it was clear that a further injection of capital would be needed if the company was to survive. This situation was due to a number of factors of which the most significant was the increasing cost of the company's investment in a new hangar and related facilities. The company was finding it difficult to sustain the borrowings made to fund this investment, and this had resulted in demands from the company's bankers that the borrowings be reduced. As at the time of the inception of the company, it was mainly to Mr. Traynor that the main Directors, Mr. Barnicle and Mr. Ciaran Haughey turned. Mr. Charles Haughey and Mr. Michael Murphy also became involved. In all some £290,329.00 was raised. This sum comprised the following amounts contributed by the individuals named below:—

- (i) Mr. Xavier McAuliffe, the sum of £50,000.00.
- (ii) Mr. Patrick Butler/Butler Engineering Limited, the sum of £25,000.00.
- (iii) Mr. Guy Snowden, the sum of £67,796.00 (\$100,000.00).
- (iv) Mr. John Byrne, the sum of £47,533.00 (Stg.£52,500.00).
- (v) Mr. Michael Murphy/Mr. David Gresty, the sum of £100,000.00

14-72 The Tribunal's inquiries which resulted in evidence concerning these payments were prompted initially by what have already been described as the Carlisle payment, which is related to the Murphy/Gresty

contribution of £100,000.00 to the £290,329.00 raised. It is more appropriate to begin with a survey of the more readily comprehensible evidence relating to the first four payments.

Mr. Xavier McAuliffe and Celtic Helicopters Ltd

14-73 Mr. Xavier McAuliffe is a Kerry businessman associated with various projects including the highly successful Spectra Photographic business and the Skellig Hotel in Dingle. He knew both the Haughey family and Mr. Ciaran Haughey in particular. The Haughey family used the grounds of the Skellig Hotel as a departure point for flights to their property at Inisvickillaune.

14-74 On 5th October, 1992 Mr. McAuliffe made a payment of Stg.£52,200.00, that is, £50,000.00 to Celtic Helicopters. Although he himself had an interest in aviation and had previously owned or part-owned helicopters, it does not appear that he was directly approached for this money by either Mr. Barnicle or Mr. Ciaran Haughey. He informed the Tribunal that over a period of time he had discussed the company with Mr. Ciaran Haughey, including the construction of the new hangar, the development of the helicopter maintenance services aspect of the business and the proposed purchase of a long range helicopter.

14-75 The approach to make the investment however came from Mr. Traynor. In September, 1992 Mr. Traynor made contact with him, saying that he understood that over the years Mr. McAuliffe had discussed the company's operations with the Haughey family. Mr. Traynor then invited Mr. McAuliffe to invest in the company, indicating that it was seeking to raise £600,000.00 and asked whether he would put up £50,000.00. He agreed to make the £50,000.00 investment and Mr. Traynor informed him that Mr. David Deasy of Deloitte & Touche would contact him with instructions as to how the funds should be transferred. Some time in early October, Mr. McAuliffe was contacted by Mr. Deasy who provided him with the payment details.

14-76 On 5th October, 1992, and following Mr. Deasy's directions, Mr. McAuliffe instructed his bankers, Allied Irish Banks, Jersey, to transfer the sterling equivalent of £50,000.00, that is, Stg.£52,500.00 to Credit Suisse London, for onward transmission to a numbered Ansbacher account with Credit Suisse, Zurich. That concluded Mr. McAuliffe's dealings with Celtic Helicopters.

14-77 Mr. McAuliffe gave evidence that, subsequent to his investment, he received no share certificate or other indicia of his entitlement to shares in the company; nor did he receive any indication that shares were being held on his behalf in an off-shore holding company or any other holding company. Nor had he any knowledge of how the money had been applied. He was not aware of the fact that it appeared to have been treated initially

as a loan in the company's books and subsequently converted into preference shares. Mr. McAuliffe frankly conceded that as a matter of probability he would not have made this payment or investment but for the Haughey connection with Celtic Helicopters.

14-78 Mr. Paul Carty of Deloitte & Touche, Chartered Accountants, informed the Tribunal that in the Summer of 1992 Mr. Traynor had asked him to meet with Mr. McAuliffe and Mr. Murphy indicating that these gentlemen were potential investors in Celtic Helicopters. Mr. Carty also gave evidence that the meeting with Mr. McAuliffe was effectively to make him aware of the financial status of the company; it was not in the nature of a presentation intended to encourage him to invest but simply the provision of information on the status of the finances of the company. This appears to be inconsistent with Mr. McAuliffe's evidence that he had received no financial information concerning Celtic Helicopters prior to his payment of Stg.£52,500.00. It is not possible conclusively to resolve this apparent inconsistency. There is no doubt but that Mr. McAuliffe must have been aware of Mr. Carty's association with either Mr. Traynor or Celtic Helicopters. This is because the notation in his secretary's diary referring to Mr. Deasy appears to describe him as connected with "*Paul Carty's office*". If Mr. McAuliffe did have such a meeting and was provided with such information then, having regard to his overall attitude to the investment, which, as he conceded, he did not approach in a fully businesslike manner, it is likely that he may not have regarded the information as being of any significance or as a determinative factor in his decision to invest, with the result that it may have slipped from his memory. It is clear that Mr. McAuliffe regarded his dealings with Mr. Deasy and in particular the provision of the instructions concerning the transfer of funds to Celtic Helicopters, as of more significance than any other dealings he may have had with Deloitte & Touche concerning the investment and this may have accounted for the prominence he afforded these dealings.

14-79 When the investment is viewed in the context of the clearly limited consideration given by Mr. McAuliffe to the business aspects of the proposal prior to his decision to commit, and the fact that the transmission of his payment was the last dealing he had with Celtic Helicopters on the matter, it is reasonable to conclude that the investment bore few of the hallmarks of a commercial transaction. Mr. McAuliffe had control of an off-shore account which facilitated the making of a payment, not directly to Celtic Helicopters itself, but via that off-shore account, and this enabled the funds to be transmitted without attracting the scrutiny of the Central Bank. This entailed an element of secrecy more consistent with the conferral of a direct benefit on Mr. Charles Haughey than with an exclusively commercial or primarily commercial venture. This is also borne out by the fact that the approach to invest came from Mr. Traynor and not from either Mr. Ciaran Haughey or Mr. Barnicle. As it seems reasonable to infer that neither Mr. McAuliffe's name (nor indeed that of any other investor) was relayed to Mr. Traynor by either Mr. Ciaran Haughey or Mr. Barnicle, Mr. Traynor's

approach to Mr. McAuliffe must therefore have been predicated on the communication of some information to him, or some direction to him, from some other member of the Haughey family, and as a matter of probability, from Mr. Charles Haughey himself. It will be recalled that Mr. Barnicle indicated in his evidence that at no time did he direct Mr. Traynor toward any one of the investors by whom payments were made in the 1992/1993 period.

14-80 As has already been mentioned in connection with the circumstances of the other payments, the Tribunal must again address whether the circumstances in this case warrant a reasonable inference that the motive for making the payments was connected with Mr. Haughey's former office as Taoiseach, for at the time of the making of the payment he had ceased to hold the office. Whilst in 1985, at a time when Mr. Haughey had also ceased to hold the office of Taoiseach, there was palpably a potential of leadership associated with his prominence in political life in this country, by 1992 while his position was still an extremely prominent one, it is unlikely that there was any further real potential of leadership. However, the absence of the lack of any truly commercial character in this transaction, and the manner in which it was viewed by Mr. Haughey and the Haughey family company, Larchfield Securities Limited, excludes any conclusion that it was an ordinary investment. The fact that off-shore accounts were involved, in particular the Ansbacher accounts, and that the payment involved an element of secrecy on balance warrants the conclusion that it was made in circumstances giving rise to a reasonable inference that the motive for the making of the payment was connected with the public office of Taoiseach formerly held by Mr. Haughey.

Mr. Patrick Butler/Butler Engineering Limited and Celtic Helicopters

14-81 The late Mr. Patrick Butler, who died in December, 1995, was a businessman associated with a family firm, Butler Engineering Limited, in Portarlington, Co. Laois. It appears from the evidence of Mr. Ciaran Haughey and Mr. Barnicle that in or about October of 1992, Mr. Traynor informed them that he had approached Mr. Butler, and that Mr. Butler was one of a number of persons who would be investing in the company. On foot of this approach Mr. Butler subsequently invested the sum of £25,000.00 by way of cheque drawn on Bank of Ireland, Thomas Street, Dublin, which was lodged to Celtic Helicopters' bank account at Bank of Ireland, Dublin Airport branch on 6th November, 1992.

14-82 Mr. Ciaran Haughey stated in evidence that when Celtic Helicopters was seeking to raise additional capital in the 1990s the construction of the hangar for the company's proposed helicopter maintenance business was one of the factors which necessitated the capitalisation. The steel for this hangar was provided by Mr. Butler's company, Butler Engineering Limited.

14-83 Although Mr. Butler was known to both Mr. Ciaran Haughey and Mr. Barnicle and was himself a helicopter enthusiast, neither discussed the

company's need for an investment with him; nor did they suggest to Mr. Traynor that Mr. Butler might be approached for funds. Mr. Ciaran Haughey presumed that Mr. Traynor approached Mr. Butler without knowing in advance whether the latter would be interested in investing.

14-84 In or about the Autumn of 1992 Mr. Traynor informed both Mr. Paul Carty of Deloitte & Touche, Celtic Helicopters' Accountants, and the directors that Mr. Butler would be investing in the company, and that a nominee company would be used for the making and holding of that investment. It was not until May or June of 1993 that Mr. Carty became aware that Mr. Butler had actually invested a sum of £25,000.00 in the company, as it was only then that the figure was made known to Mr. Carty in the company's accounts.

14-85 It seems from Mr. Carty's evidence and the evidence of Mr. Owen Binchy of Binchys Solicitors, the firm that acted for Mr. Butler, that Mr. Butler was never furnished with a set of accounts. Furthermore, Mr. Binchy gave evidence to the Tribunal that he had not come across any documentation or other evidence from his files relating to the existence of this investment by Mr. Butler in Celtic Helicopters, and there was no mention of it in the Inland Revenue Affidavit filed subsequent to Mr. Butler's death.

14-86 In endeavouring to summarise the circumstances of this payment, the absence of any secrecy in the transmission of the funds is striking. At the same time, there was no reality in the notion that this was a truly commercial investment, in particular having regard to the fact that after Mr. Butler's death there was no documentation in his Estate to indicate that he had ever treated this payment as an investment or that he regarded it, or that it was regarded by his Executors, as an asset in his Estate. It was not an investment but something approximating more to what Dr. O'Connell, with reference to his 1985 payment, called "*a contribution*" to Celtic Helicopters. In the circumstances, it was a straightforward payment of money to a company associated with Mr. Charles Haughey, mediated through the agency of Mr. Traynor, and having regard to how it was viewed by Mr. Haughey and the Haughey family company, Larchfield Securities Limited, on balance, it seems appropriate to conclude that the payment was made in circumstances giving rise to a reasonable inference that the motive for making it was connected with the public office formerly held by Mr. Charles Haughey, namely, the office of Taoiseach.

Mr. Guy Snowden and Celtic Helicopters

14-87 From a bank statement of the company's account at Bank of Ireland, Dublin Airport Branch, which was provided to the Tribunal by Celtic Helicopters, it appears that a sum of \$100,000.00 was lodged into the account on 9th February, 1993. Documents provided by Celtic Helicopters appeared to show that at least by 1996, Mr. Snowden was the holder of 7% cumulative preference shares in Celtic Helicopters. In their evidence to the

Tribunal, both Mr. Carty and Mr. Barnicle confirmed that this figure represented an investment by Mr. Guy Snowden, a businessman resident in the United States of America. Mr. Snowden was Chief Executive of G-Tech, a company that had a connection with Ireland in that it had, over a period of time, transacted business with the Irish National Lottery.

14-88 Mr. Snowden did not give evidence to the Tribunal, but the Tribunal's Solicitor was in correspondence with his American lawyer, Mr. James E Sharp, formerly of Winston & Strawn Attorneys, and latterly of Sharp & Grove LLP. In a letter dated 11th June 1999, Mr. Sharp indicated that Mr. Snowden was a helicopter enthusiast, that he had never met Mr. Charles Haughey, that he neither knew Mr. Charles Haughey nor Mr. Ciaran Haughey; and that Mr. Snowden had instructed him that the funds for Celtic Helicopters were said to be required for a hangar facility. Mr. Sharp also stated that the investment was arranged by Mr. Desmond Traynor, who offered the opportunity to Mr. Snowden to have the payment treated either as an equity investment or as a payment for helicopter services. Mr. Snowden was to decide how the investment was to be treated on his next following visit to Ireland. In fact he does not appear to have visited Ireland from the time that the investment was made, in 1993.

14-89 In a further letter dated 9th April, 2001 Mr. Sharp stated that his client, Mr. Snowden, received no benefit from Mr. Charles Haughey and that his involvement with Celtic Helicopters was strictly personal and for the purposes of obtaining value from that firm. The letter also stated that no member of Mr. Snowden's family benefited from any action of Mr. Haughey. Notwithstanding Mr. Sharp's statement that the payment was for the purposes of obtaining value, it would appear that Mr. Snowden obtained neither a share certificate, flying hours nor any other value from the company.

14-90 Mr. Snowden was not prepared, and could not be compelled, to attend to give evidence at the Tribunal's proceedings. His lawyer's statement that his involvement was "*strictly personal and for the purposes of obtaining value*" is utterly at variance with the evidence that, although he made a payment of \$100,000.00 to Celtic Helicopters, he neither applied for nor received a share certificate; nor as far as the evidence went, did he ever seek to follow up on his payment either as an investment, a payment for flying hours or so as to obtain any other value from the company. Having regard to the evidence of Mr. Carty concerning the negative state of the company's finances, the evidence of Mr. Murphy to the same effect and the fact that the company had to borrow around this time to pay its insurance premium, it is impossible to credit that Mr. Traynor, (any more than Mr. Carty), could have allowed himself to represent this investment as an attractive one; or allowed himself to represent the company as being anything other than in an extremely unhealthy financial state. In those circumstances, Mr. Snowden's investment stands out, like many of the other investments in this case, but all the more so having regard to the scale of

the funds provided, as more in the nature of a payment to Celtic Helicopters, a “*contribution*” to Celtic Helicopters as characterised by Dr. O’Connell, rather than anything savouring of an investment. In all the circumstances in which, in light of the evidence, this payment was viewed, on the one hand by Mr. Snowden and, on the other hand by Mr. Haughey and the Haughey family company, Larchfield Securities Limited, there is ample justification for the conclusion that it was made in circumstances giving rise to a reasonable inference that the motive for making it was connected with the public office of Taoiseach formerly held by Mr. Charles Haughey.

Payment of £47,533.00 By Mr. John Byrne to Celtic Helicopters

14-91 In his evidence to the Tribunal, Mr. John Byrne stated that he invested the sum of £47,533.00 in Celtic Helicopters in November of 1992. According to Mr. Byrne he was contacted by Mr. Barnicle in September or October of 1992 in connection with Celtic Helicopters’ need for investment. However, in his evidence to the Tribunal, Mr. Barnicle stated that he did not ask Mr. Byrne for an investment, but that he did tell Mr. Byrne about the company’s difficult financial position around this time, because the two would have often talked about it as they knew each other socially from attending race meetings. Mr. Byrne also gave evidence that Mr. Traynor approached him around the same time as Mr. Barnicle’s approach, that he was seeking to raise capital for Celtic Helicopters and that he persuaded Mr. Byrne to invest approximately Stg.£50,000.00 in the company.

14-92 Initially, Mr. Byrne informed Mr. Traynor that it would be “*impossible*” for him to make that type of investment as his companies were involved mainly in property investment. Mr. Traynor then asked Mr. Byrne if he could approach the Trustees of Mr. Byrne’s Family Trust, not to be confused with the Carlisle Trust, for an investment, and Mr. Byrne agreed to this. Ansbacher Cayman, of which Mr. Byrne understood that Mr. Traynor was the chairman, were the Trustees of Mr. Byrne’s Family Trust at that time. Mr. Byrne’s evidence was that he then left it to Mr. Traynor to approach the Trustees, approve the investment, and make the necessary financial arrangements. Mr. Byrne was aware, or ought to have been aware, that it would effectively be a formality to have the Trustees agree the investment given Mr. Traynor’s position. Effectively what was envisaged was the somewhat unreal situation whereby Mr. Traynor was applying to himself to make a decision to invest in Celtic Helicopters on behalf of Mr. Byrne’s Family Trust.

14-93 Mr. Byrne’s payment was routed through Ansbacher accounts in Zurich and Dublin, and was made at approximately the same time as the £100,000.00 Murphy/Gresty payment, to which reference will be made later. From information contained in a file kept by Mr. Traynor in respect of Celtic Helicopters at 42 Fitzwilliam Square, (a file which had been retained by Mr. Pdraig Collery), it would appear that the routing of the money was agreed

with Mr. John Furze, an Ansbacher associate of Mr. Traynor. Mr. Traynor arranged to debit the sum of Stg.£52,500.00 to an Ansbacher account at Irish Intercontinental Bank in Dublin to be compensated for by the lodgement of a similar amount to an Ansbacher account in Zurich. The debiting of an Ansbacher sterling account in Dublin in the amount of Stg.£52,500.00 enabled Mr. Traynor to arrange for the provision by Irish Intercontinental Bank of the Irish pounds equivalent of that sterling amount. On Mr. Traynor's instruction, a cheque in the sum of £47,532.82, made payable to Bank of Ireland, was made available by Irish Intercontinental Bank for collection by Mr. Traynor. That amount was then lodged to the Celtic Helicopters' account at Bank of Ireland, Dublin Airport Branch, as part of the larger sum of £122,532.82 which also comprised the payments of Mr. McAuliffe and Mr. Butler.

14-94 It appears that Mr. Byrne was not furnished with any written documentation in relation to Celtic Helicopters or its finances prior to making his decision to invest in the company. Mr. Byrne neither requested nor received either a receipt for, nor written acknowledgement of, his payment. He only became aware that the investment had been made some time after his original discussions with Mr. Traynor when Mr. Traynor informed him that “[he] was the proud possessor of shares”. In fact, Mr. Byrne never saw any documentation to represent this apparent shareholding, and never received any written communication in relation to it. Nor was Mr. Byrne ever informed that the Trustees of his Family Trust had received shares in Celtic Helicopters.

14-95 Mr. Byrne agreed in evidence that the investment was one which carried a risk of failure, and described it as having a 50/50 chance of success. Although Mr. Byrne never discussed the investment with any member of the Haughey Family at the time, he admitted that the decision to invest, or more particularly the decision to allow Mr. Traynor to approach the Trustees, was based on the approach by Mr. Traynor, together with the association of Celtic Helicopters with Mr. Charles Haughey.

14-96 From the evidence of Mr. Kieran Ryan, an accountant who in 1997 reviewed the affairs of Larchfield Securities Limited on behalf of the Haughey Family, it appears that the shareholding in question was not described as being held by MS Nominees Limited for the benefit of the Byrne Family Trust, but rather for the benefit of Mr. John Byrne personally. Mr. Paul Carty also gave evidence that he had a conversation with Mr. Traynor in which he was told that Mr. Byrne, as opposed to the Byrne Family Trust, would be investing in the company, and that the shareholding would be held by a nominee company, namely Overseas Nominees Ltd. Indeed in all the documents before the Tribunal, the shareholding was never described as being owned by anyone other than Mr. Byrne.

14-97 Although it has effectively been suggested by Mr. Byrne that his investment was prompted by an approach from Mr. Barnicle in which the

financial problems of Celtic Helicopters were outlined, it seems unlikely that this approach could have either been couched in terms of a request for investment or could have been perceived by Mr. Byrne in terms of a request for an investment since, in view of his initial response to Mr. Traynor, that his company could not be involved, it is unlikely that he would not have given a similar response, however politely couched, to Mr. Barnicle.

14-98 The circumstances of Mr. Byrne's investment were that it was made at the prompting or request of Mr. Traynor, known to be a financial and personal adviser to Mr. Haughey and Mr. Byrne; that it was not made at the request of Mr. Barnicle, that Mr. Traynor's involvement carried with it a certain imperative from Mr. Haughey; that it involved an element of secrecy in as much as the money was made available through an off-shore account; that whilst purporting to have been in the nature of an investment in the Company, to be reflected in the issue of shares, there was in fact no commercial reality in the investment nor any follow-through on the part of Mr. Byrne; nor as will appear below, any timely follow-up on behalf of either Celtic Helicopters or Larchfield Securities Limited. Mr. Byrne himself regarded the association with Mr. Haughey as determinative. This payment was again more in the nature of a "*contribution*" in the sense mentioned above in the case of Dr. O'Connell, and some of the other individuals by whom payments or "*investments*" were made in Celtic Helicopters. If, as Mr. Byrne suggests, it would have been impossible for him (or his company) to make this type of investment, it is difficult to credit that Mr. Traynor gave any consideration as to whether it was appropriate for a trust, the Byrne Family Trust, to make any such investment. Mr. Traynor, as much as anyone else, must have been aware of the negative financial condition of the company. Moreover, having regard to his purported role as Trustee, it is hard to believe that he would have failed to follow up on the payment, had it been regarded genuinely as a commercial investment. The Tribunal is justified in concluding that these circumstances are such as to give rise to a reasonable inference that the motive for making the payment was connected with the public office formerly held by Mr. Haughey, namely, the office of Taoiseach.

Mr. Michael Murphy and Mr. David Gresty and a £100,000.00 payment to Celtic Helicopters

14-99 Mr. Mike Murphy had a relationship with Celtic Helicopters through its involvement with MMIB. Mr. Barnicle informed the Tribunal that when, in the period 1991/1992, the need for an injection of capital into Celtic Helicopters became critical, in addition to going to Mr. Traynor, he also broached the matter with Mr. Murphy. As has been mentioned earlier, Mr. Murphy was the principal of MMIB, Celtic Helicopters' Insurance Brokers. MMIB, as well as dealing in insurance services, also provided, on a limited basis, more general financial services. Mr. Barnicle did not approach Mr. Murphy with a view to attracting a direct investment from Mr. Murphy himself. Rather, he approached Mr. Murphy in the knowledge that his

company provided general financial services, on the basis that he might use his skills and contacts to procure investment funds for the company from other parties. In November of 1992, Mr. Barnicle was informed by Mr. Traynor that the funds he had raised for Celtic Helicopters included £100,000.00 from Mr. Murphy.

14-100 The Tribunal's examination of the circumstances in which £100,000.00, apparently attributed to Mr. Murphy, were raised for Celtic Helicopters were prompted in the main by inquiries concerning what has come to be known as the Carlisle payment. This payment involved a cheque for £100,000.00 drawn on an account of Carlisle Trust Limited, a Company associated with Mr. John Byrne. The proceeds of this cheque were lodged to Celtic Helicopters' account at Bank of Ireland, Dublin Airport Branch.

14-101 The Tribunal encountered particular difficulty in endeavouring to establish the identities of the individuals ultimately shown to be associated with this payment. Once the Tribunal had established that this £100,000.00 did not in fact represent a payment of Carlisle Trust intended for Celtic Helicopters, significant delay was encountered in establishing who was involved, and these delays persisted even when the name of Mr. Murphy came into focus. The Tribunal encountered particular difficulty in seeking to ascertain from Celtic Helicopters the details of the identity of Mr. Murphy in order to enable the Tribunal to make contact with him. This was probably not intentional, nor from a design to conceal Mr. Murphy's identity, but the fact remains that considerable time was lost before the Tribunal could take the matter up with Mr. Murphy and his associated corporate entity.

14-102 From the evidence heard in connection with this £100,000.00 payment it would appear that, following an approach by Mr. Barnicle, Mr. Murphy made inquiries and an individual with whom he had a trading relationship, Mr. David Gresty of DB Agencies, SA Palace Des Moulins, Monaco, agreed to make an investment of £100,000.00. Whilst as will appear, this investment appears to have been made using money provided by Mr. Gresty, Mr. Murphy continued to have an involvement in the investment to the extent of partly or wholly guaranteeing it.

14-103 There were a number of unusual features of the several associated transactions whereby this payment of £100,000.00 was made. They relate firstly to the Carlisle element, secondly to the Exchange Control implications of the dealings between Mr. Gresty and Mr. Murphy and thirdly, to the fixing of the time at which Mr. Gresty apparently agreed to make the investment.

The Carlisle element

14-104 As has already been mentioned, Mr. Murphy's involvement either in investing in, or procuring an investment in Celtic Helicopters in 1992/1993, occurred as a result of direct approaches from Mr. Barnicle,

and not as a result of any approach from Mr. Traynor. While Mr. Murphy does not appear to have met Mr. Traynor or had any direct dealings with him, Mr. Traynor at some point became aware that Mr. Murphy intended to make an investment. Whilst not involved in procuring that investment, Mr. Traynor was involved in devising and implementing the mechanism by which the investment was ultimately made. What follows is an outline of the main features of this investment.

14-105 A payment of £100,000.00 whether representing Mr. Murphy's investment or Mr. David Gresty's investment or a combination of both of them, whilst intended for Celtic Helicopters, was diverted for ultimate crediting to an account for the benefit of Mr. Haughey. The £100,000.00 intended by Mr. Murphy/Mr. Gresty for Celtic Helicopters was replaced with a Carlisle Trust cheque in the sum of £100,000.00, representing part of a sum of £180,000.00 being transmitted by Mr. Ben Dunne to Mr. Haughey. The circumstances in which this sum of £180,000.00 was transmitted by Mr. Dunne to Mr. Haughey have been referred to at length in Chapter 11.

14-106 From the Tribunal's inquiries outlined in Chapter 11 it will be recalled that three cheques, made out to cash, for randomly disparate sums, but amounting in total to a clear £180,000.00 were drawn, on the instructions of Mr. Ben Dunne, on the Dunnes Stores No. 6 Grocery account at Bank of Ireland, College Green, Dublin. The manner in which these cheques were drawn and the fictitious transactions to which they were attributed, were primitive aspects of a scheme which eventually evolved into an elaborate mechanism for transmitting £180,000.00 to the Ansbacher accounts to the credit of Mr. Charles Haughey. Mr. Dunne's three cheques, dated respectively the 20th November, 1992, 23rd November, 1992 and 27th November, 1992 were converted into two cheques, one for £80,000.00 and another for £100,000.00, dated respectively, the 24th November, 1992 and the 30th November, 1992, and were both drawn on an account of Carlisle Trust Limited at the Rotunda Branch of the Bank of Ireland.

14-107 In or around the 1st December 1992, the Carlisle Trust cheque for £80,000.00 was lodged to an account of Kentford Securities in the Bank of Ireland branch at St. Stephens Green, an account under the control of Mr. Traynor. At or around the same time, using a switching mechanism, Mr. Traynor arranged for the credit to Mr. Haughey's Ansbacher memorandum account of an equal amount. The Carlisle cheque for £100,000.00 was then made payable to Celtic Helicopters and eventually found its way to the Celtic Helicopters' account at the Bank of Ireland, Dublin Airport. The Murphy/Gresty £100,000.00 cheque was transmitted to the Manager of Credit Suisse Bank, London, with instructions that it should be credited to the account of Credit Suisse, Zurich, in London, for ultimate credit to an account of Ansbacher Cayman with Credit Suisse, Zurich. Under an arrangement operated between Mr. Traynor and Mr. Furze, a sum equivalent to the £100,000.00 credited to Ansbacher Cayman's account with Credit Suisse Zurich, was debited to another Ansbacher Cayman

account in Irish Intercontinental Bank and was lodged to the Hamilton Ross principal sterling account with the same bank. A corresponding credit of that sterling amount was made to the S8 memorandum account.

14-108 In this way, Mr. Murphy's cheque, which, for reasons which will be explained below, could be credited to a foreign account without attracting foreign exchange scrutiny, was used to arrange for the crediting to an account held for the benefit of Mr. Haughey of £100,000.00. In that way the entirety of the £180,000.00 intended by Mr. Dunne for Mr. Haughey's benefit was transmitted to accounts under Mr. Traynor's control, but for the credit of Mr. Haughey. The sum of £100,000.00 intended by Mr. Murphy/Mr. Gresty to be paid to Celtic Helicopters was replaced with the Carlisle cheque for £100,000.00, which was transmitted to an account for the credit of Celtic Helicopters.

14-109 Neither Mr. Murphy nor Mr. Gresty appears to have been aware of the fact or the purpose of these intricate financial manoeuvres.

Exchange Control in relation to dealings between Mr. Murphy and Mr. Gresty and the timing of the transaction

14-110 Returning to the dealings between Mr. Murphy and Mr. Gresty, this was not the first time that Mr. Murphy had recommended investments to Mr. Gresty. Prior to 1992, relying on his advice, Mr. Gresty had made a number of investments which generally realised profits. He informed the Tribunal that in or around early August, 1992 he was contacted by Mr. Murphy regarding an investment in Celtic Helicopters. He was informed that there were only two helicopter companies in Ireland, Irish Helicopters Limited (a subsidiary of Aer Lingus) and Celtic Helicopters, and that there were two important directors of Celtic Helicopters, which he understood to mean that it was a firm that was going to "go places". Mr. Gresty was told that Deloitte & Touche, Accountants, which he knew to be a respected firm, were Accountants to the company. Mr. Murphy also informed him that a substantial shareholding could be bought for £100,000.00.

14-111 Mr. Gresty was anxious to diversify his own interests, and in particular into the fishing industry, in which he believed the use of helicopters would be an advantage. He had an interest in helicopters and this stimulated his interest in the opportunity to invest. He sought further information from Mr. Murphy in mid- August of 1992, and from his own inquiries felt that there was a possibility that the company might be taken over by Aer Lingus/Irish Helicopters Limited. It was in late August or early September that he agreed to make the investment. In addition to the aspects of the investment mentioned above as having attracted him, he was also impressed by a commitment given to him by Mr. Murphy that he, Mr. Murphy, would stand over the investment, that is, that he would share any losses with him. He was unsure whether this meant that Mr. Murphy would reimburse him in total, or that he would share the losses on a 50/50

basis. Mr. Murphy acknowledged that he had agreed to stand behind the investment, but on what precise basis is not clear from the evidence.

14-112 In mid-September, after he had agreed to make the investment, Mr. Gresty discussed with Mr. Murphy how it would be funded. He wished to fund the investment from monies held by Mr. Murphy that were due to him on various trading accounts between them. He directed that the investment be held in trust for DB Agencies, but that neither he nor his company would be identified with it.

14-113 At that time Mr. Murphy and Mr. Gresty were in negotiations with regard to balances on a number of outstanding accounts. Toward the end of September they agreed the balances due on two of these accounts. According to both Mr. Murphy and Mr. Gresty, the total payment due on the two accounts was agreed at £116,624.26. It was envisaged that £100,000.00 of this money would be utilised to fund Mr. Gresty's investment. A meeting was arranged for the Commodore Hotel in Paris for 30th September, 1992 to complete the arrangements. Mr. Murphy gave evidence that, presumably in anticipation of the meeting, he had arranged for two cheques to be drawn to discharge the indebtedness. As the cheques drawn on Mr. Murphy's company account were, on the face of it, to be used to discharge an indebtedness due to Mr. Gresty's company then, as in the case of all such payments at that time, they would require to be approved for Exchange Control purposes. The cheques in question were made available to the Tribunal and both were stamped "*approved for external payment*", that is, both contained Bank of Ireland stamps signifying that the conditions for Exchange Control approval had been satisfied. In order to obtain Exchange Control approval for a payment abroad, whether for goods or services, the drawer of the cheque would present the cheque, completed in every material respect, that is, date, amount, payee and drawer's signature together with evidence, usually in the form of an invoice or some similar document, sufficient to demonstrate to the bank that the amount for which the cheque was made out was due on foot of a contract for goods or services.

14-114 The Exchange Control system, operative then and until Ireland entered the European Monetary System, regulated the transmission of funds out of the State. In general terms monies could not be transmitted abroad, either to fund investments or to avail of commercial opportunities or to pay monies due on commercial contracts, without foreign exchange control approval. In principle foreign exchange control approval could only be granted by the Central Bank. By 1992 however, in ease of the day-to-day requirements of individuals in the conduct of international business, the main banks were authorised by the Central Bank to signify approval for cheques intended to be used to pay for transactions abroad, for example, in payment for goods or services, where the documents evidencing the transaction, usually invoices, were produced to the bank with the cheque to be used for payment.

14-115 Mr. Murphy's evidence was that he had two cheques with him at the Paris meeting, one of which was blank except for the amount of £16,624.26 and the other, intended to be for £100,000.00 was blank in every respect except for his signature. Mr. Gresty's evidence was that the cheque for £100,000.00 was blank except for the amount and the signature of the drawer; that in other words the only critical element absent was the name of the payee. While there were some differences between the evidence of Mr. Gresty and Mr. Murphy as to the completeness or otherwise of the cheques at the Paris meeting, it is clear that, whatever condition the cheques were in at that meeting, they were, on the face of it, insufficient to justify the application by a bank of an Exchange Control stamp.

14-116 Mr. Murphy, when queried on the point, indicated that it was not unusual in his business practice to obtain from his usual bankers, either the Bank of Ireland branches of Dundrum or College Green, blank cheques stamped with an Exchange approval for external payment. Although he indicated that such a stamp would not be forthcoming unless a cheque were accompanied by proof of a degree of indebtedness, he could not explain satisfactorily what proof he might have produced at the material time to obtain Exchange Control approval for those two cheques.

14-117 While Bank of Ireland was unable to throw any light on the actual transaction, and although insisting that no Bank Official would have countenanced the stamping of a blank cheque as approved for Exchange Control purposes, it seems clear that Mr. Murphy, by whatever means and however he represented the purpose for which the cheques were required, in fact secured the necessary stamps.

14-118 These aspects of the transaction relating to Exchange Control pertain to the timing of the transaction, and to the instructions given to Mr. Murphy concerning the manner in which payment was to be made for the investment Mr. Gresty had agreed to make in Celtic Helicopters. From the evidence of both Mr. Murphy and Mr. Gresty it appears that a conclusive decision to invest was made at their Paris meeting in September of 1992, at which the cheque which was ultimately drawn for £100,000.00 was handed to Mr. Gresty. According to Mr. Murphy, the cheque was then handed back to him.

14-119 However, Mr. Murphy also informed the Tribunal he had a number of meetings and at least one telephone conversation, if not two, with Mr. Paul Carty of Deloitte & Touche in connection with the investment. He met Mr. Carty on 21st October, 1992, and again on 2nd November, 1992 and had a telephone conversation with him on 4th November, 1992. He produced to the Tribunal a document containing notes made on Deloitte & Touche notepaper at one of these meetings, which included references to Celtic Helicopters and what might be described as the possible terms of a proposed investment. If this document did not come into existence until 2nd November, 1992, or even until 21st October, 1992, it would appear to be

inconsistent with the fact that, according to Mr. Gresty and Mr. Murphy, a decision had been made by Mr. Gresty to invest as of the Paris meeting of 30th September, 1992. It has also been suggested in the course of the evidence of Mr. Paul Carty that Mr. Murphy and Mr. Gresty must have relied on this information in making the decision to invest, but this is inconsistent with the evidence of both Mr. Gresty and Mr. Murphy that the decision to invest had been made in late September.

14-120 The document also is of interest from the point of view of one of the other unusual features of the investment, namely the manner in which the funds for the investment were transmitted. This relates to a reference in the notes to Mr. Traynor. Mr. Traynor was unknown to Mr. Murphy. The reference to Mr. Traynor appeared to be related to a reference in the same notes to information enabling Mr. Murphy to insert the name of a payee on the cheque for £100,000.00, together with details as to how the funds were to be transferred to Credit Suisse Bank in London for onward transmission to Credit Suisse Zurich for the credit of an Ansbacher account. It would appear that as part of the mechanism mentioned above, and in accordance with the instructions contained in these notes, Mr. Murphy, by letter of 4th November, 1992, wrote to the Manager of Credit Suisse, London enclosing the cheque for £100,000.00 to be credited to a specific numbered Ansbacher account. As directed by Mr. Carty, according to the notes made by Mr. Murphy, Mr. Murphy also requested an acknowledgement of receipt of the cheque. This he received from Credit Suisse by a fax communication of 5th November, 1992 and he wrote to Mr. Carty on that day enclosing a copy of the fax, something he had also been requested to do by Mr. Carty in the course of their various contacts.

14-121 These detailed instructions concerning the transfer of the funds, the request for a receipt and acknowledgment from Credit Suisse, together with the direction that this information be communicated to Deloitte & Touche, were features of the transaction to which detailed reference has already been made in Chapter 11, and which have been mentioned to in outline in this Chapter. They pertained to the switching device intended to transmit funds to the credit of Mr. Haughey, rather than to any aspect of the capitalisation of Celtic Helicopters. Mr. Murphy's cheque stamped "*approved for credit to an external account*" was a vital part of the mechanism for transmitting funds to the credit of Mr. Haughey. Had a cheque for £100,000.00, dated and signed in the ordinary way and made payable to Credit Suisse for the credit of an Ansbacher account, been presented to a bank in Ireland for Exchange Control approval, it would have required to be supported by documentation showing that the amount for which the cheque was drawn was due on foot of an appropriate invoice, together with evidence to show that the sum due was properly creditable to the account in question, or that the cheque was otherwise supported by documentation enabling a Foreign Exchange transaction to be carried out.

14-122 Exchange Control in simple terms was in the nature of a passport for the transmission of funds abroad. Without such a passport, it would not have been possible readily to transmit the £100,000.00 to an Ansbacher account in Credit Suisse Zurich for onward transmission to the credit of Mr. Haughey. The passport, namely the Exchange Control stamp in this case, was used to facilitate the transmission of money abroad for a purpose never disclosed to the bank by whom the Exchange Control stamp had been applied and for a purpose that in all the circumstances could probably not have been disclosed to the bank. In the case of anyone in possession of the full facts, this involved a blatant transgression of the Exchange Control regulations. Whether anyone involved in this transaction, other than Mr. Traynor, was fully aware of all of the material facts is impossible to say. Mr. Carty in evidence stated that he assumed that the foreign account related to Overseas Nominees, through whom the shareholding was to be held, though even in that case Exchange Control approval would have been required. This would not necessarily have been a matter for Mr. Carty, but rather for the individuals transmitting the funds abroad. Mr. Murphy and Mr. Gresty indicated that they assumed that the Credit Suisse account was the account to which it was appropriate to send funds for Celtic Helicopters.

The circumstances of the £100,000.00 payment and Term of Reference (a)

14-123 At the time of his agreement with Mr. Gresty to invest £100,000.00 in Celtic Helicopters, Mr. Murphy was well aware of the precarious state of the company's finances. He was aware that there was a very real risk that the company might fail. But for his intervention during the same period, the company would not have been able to fly, by reason of its inability to pay its aviation insurance.

14-124 Mr. Murphy had a view that under no circumstances did he wish to be the person responsible for the demise of a company with very close connections to Mr. Charles Haughey. He also believed that, having regard to the precarious state of the company, had it failed, its failure would have affected his own business. He laid considerable emphasis on the value that his own business and that of Mr. Gresty derived from the Celtic Helicopters connection, a connection which had resulted in substantial aviation insurance business for both of them. With the risk to the business which both Mr. Murphy and Mr. Gresty had derived from this valuable connection, Mr. Murphy would not have wanted to have made an enemy of the son of the most powerful man in the State as how he saw it. The connection with Mr. Haughey, and the risk to which his own business might be exposed in the event of Mr. Haughey's son's business failing, was a key factor in his promoting the investment to Mr. Gresty. He gave evidence that in recommending the investment, he emphasised that he was happy that the company could trade out of its difficulties and, due to its contacts with the Haughey family, could hope to obtain air/sea rescue contracts and potentially other State contracts. He was clear however, and he repeated it at several points and in several different ways in the course of his evidence,

that he had made what he called a commercial decision that under no circumstances did he want to be known as the person responsible for the collapse of Celtic Helicopters, due to its obvious association with Mr. Charles Haughey.

14-125 Mr. Gresty informed the Tribunal that in the course of the years following the investment he mentioned it to Mr. Murphy about once a year, and was told not to worry and that the “*airline [was] still flying*”. He acknowledged that on the face of it, the investment appeared to be disastrous. According to his own evidence, he was unaware of the parlous state of the company’s finances; he had not been informed of Mr. Murphy’s perception of the risk that, in failing to support the business, he would be identified as the person pulling the plug on the business. Nor was it mentioned to him by Mr. Murphy that the company had to borrow from Mr. Murphy to pay its insurance premium in or around the same period that the £100,000.00 investment was recommended.

14-126 Mr. Gresty’s understanding was that he was purchasing equity, a degree of control or a possibility of control, or a say in the running of the company. According to his evidence the only reason the name of the payee had not been inserted on the £100,000.00 cheque was the absence of instructions from Deloitte & Touche or Celtic Helicopters as to the name of the appropriate payee. In due course when he learned in November or December of 1992 that the cheque had gone to a Swiss bank account he assumed that to be an account of Celtic Helicopters.

14-127 The £100,000.00 was provided by Mr. Gresty but on the prompting of Mr. Murphy. Moreover, it was supported, or guaranteed, by Mr. Murphy, although to what extent precisely is unclear; whether on the basis of a 100% guarantee or on the basis that any losses would be shared equally between the two men or their associated companies. The making of the investment embroiled Mr. Murphy in a complex financial intrigue, whereby £100,000.00 was transmitted to Mr. Haughey, with the funds for the Celtic Helicopter’s investment being supplied instead by using Mr. Dunne’s money, after it had been processed through the Carlisle account. There is no evidence that either Mr. Murphy or Mr. Gresty was aware either of the ultimate destination of the funds or of the overall mechanism whereby they were transmitted offshore, while being replaced by other onshore funds. However, since Mr. Murphy was unable to explain how the cheque for £100,000.00, while more or less blank and without any satisfactory supporting documentation, came to be stamped approved for exchange control purposes, it is reasonable to infer that, as an experienced businessman with specific knowledge of Celtic Helicopter’s affairs, he ought to have known that the manner in which the payment was being made was at least potentially irregular. Regard must be also had to the rather involved instructions received by Mr. Murphy from Mr. Carty.

14-128 As with many of the payments to Celtic Helicopters under review in this Chapter, there was a distinct lack of commerciality about this transaction, both from Mr. Murphy's standpoint and, although to a lesser extent, from Mr. Gresty's standpoint. Both Mr. Murphy and Mr. Gresty were satisfied that the decision to invest was taken in September and well in advance of any of the meetings Mr. Murphy had with Mr. Carty, at which some financial information concerning the company was relayed. Mr. Murphy was in any case in no doubt concerning the company's financial frailty at that time, having regard to the fact that not more than a short while earlier he had paid £100,000.00 in order to discharge the company's insurance premium for its aviation insurance. Indeed, as he himself pointed out repeatedly, he did not wish to be the person seen to have pulled the plug on this company. Mr. Murphy had applied that perception both to the discharge of the company's insurance premium and his prompting of the investment and, perhaps more importantly, his guaranteeing of it.

14-129 The Tribunal is in no doubt that Mr. Murphy's guarantee of the investment constitutes a payment within the meaning of the Tribunal's Terms of Reference both on a stand alone basis and on the basis that the guarantee signifies participation by Mr. Murphy in the provision of the money by Mr. Gresty. The term "*payment*" is defined in the Tribunal's Terms of Reference in a non-exclusive way, and it would be inconceivable that it did not embrace a guarantee or the provision of any other form of security whereby money was paid to Mr. Haughey directly or indirectly.

14-130 That the payment was connected with Mr. Haughey's prominent political position, and in particular the office he had formerly held as Taoiseach, could not have been made clearer than it was by Mr. Murphy in the course of his evidence. In Mr. Gresty's case, the involvement of the Haughey family and in particular Mr. Ciaran Haughey, and further, the associations of the company with Mr. Charles Haughey and the likelihood that this might prove to be of assistance in obtaining Government contracts were undoubtedly factors in his decision to invest. Standing alone this might not be sufficient, in Mr. Gresty's case to warrant a finding that the payment came within Term of Reference (a). However, when it is allied to the total lack of any real analysis of the investment prior to the paying of the money, it is reasonable to infer in Mr. Gresty's case, though with less confidence than in Mr. Murphy's case, that the payment was made in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the office of Taoiseach formerly held by Mr. Charles Haughey. In support of this, reference should also be made to the manner in which the investment was viewed, following its making, both by Mr. Murphy and Mr. Gresty. Although some attempt was made to distinguish this payment from other payments made to Celtic Helicopters at that time, there appears to have been no significant follow-up on the part of either Mr. Murphy or Mr. Gresty with a view to ascertaining how the investment was faring. Nor of course, from the Celtic Helicopter's side was the

investment viewed in a truly commercial sense, as will appear later in a separate section dealing with the manner in which Mr. Haughey and the Haughey Family company, Larchfield Securities Limited, viewed the investment.

MR. PAUL CARTY'S EVIDENCE IN RELATION TO CELTIC HELICOPTERS

14-131 Mr. Paul Carty, of Deloitte & Touche, gave evidence to the Tribunal concerning his dealings with Mr. Murphy and also with Mr. McAuliffe in connection with their proposed investments in Celtic Helicopters in 1992. Mr. Murphy told him that he and a French colleague intended to invest £100,000.00 and Mr. Murphy inquired as to who the funds should be transferred to. Mr. Traynor gave him the Credit Suisse bank account number, which he assumed to be the Overseas Nominees' account. As far as he was concerned, in dealing with Mr. Murphy and in providing the information noted by Mr. Murphy at either the meeting of the 21st October or the 2nd November, 1992, he saw himself as a provider of information rather than as a promoter of an investment opportunity. He did not see himself as a seller of an investment opportunity or as encouraging Mr. Murphy to invest, and saw his role purely as that of supplying information in relation to the current finances of the company. He had provided similar information to Mr. McAuliffe.

14-132 From his discussions with both Mr. McAuliffe and Mr. Murphy, Mr. Carty was satisfied that they were aware of the company's financial difficulties. He believed that Mr. Murphy was still considering his decision whether to invest up until after the meeting of 2nd November, 1992. This however appears to be inconsistent with Mr. Murphy's own evidence, and with Mr. Gresty's evidence, that they had made the decision to invest no later than the 30th September, 1992 and that thereafter, as far as both of them were concerned, they were merely awaiting instructions as to how funds would be transferred.

INVOLVEMENT OF MR. BEN DUNNE IN A PAYMENT TO CELTIC HELICOPTERS?

14-133 When queried as to whether there was a connection between the Dunnes Stores Grocery Account cheques and either Celtic Helicopters or Mr. Charles Haughey, Mr. Dunne stated in evidence that he had a very vague recollection that Mr. John Barnicle had approached him for financial assistance for Celtic Helicopters, and that in response to that request he had given Mr. Barnicle three cheques. According to Mr. Dunne, this payment was not in the nature of an investment and he could not remember if it was a loan. He agreed that it did not have any commerciality in the ordinary sense, but felt that he could have been keeping the company in business if it had a financial difficulty and if, in his opinion, it was in the interests of Dunnes Stores to keep the company afloat, so that it could

provide or continue to provide services to Dunnes Stores. He made it clear that he had no satisfactory memory of these matters, and that in putting forward these explanations he was effectively advancing a theory merely, as to why or how he might have transmitted the money. Mr. Barnicle rejected the notion that he had either asked for or received this money or any part of it from Mr. Ben Dunne.

14-134 Mr. Dunne's theory does not bear any analysis in the light of what emerged either from his own evidence or from other evidence at the Tribunal's public sittings. The three Dunnes Stores cheques were not of course made out to Celtic Helicopters. The debits to the Grocery Account were not attributed to a loan or to any other non-specific form of financial support for Celtic Helicopters. Even if it had been desired to conceal the support to Celtic Helicopters by removing any trace of the cheques likely to identify support for Celtic Helicopters (although that would have been inconsistent with Mr. Dunne's own theory); the fact remains that the amount credited at the time in the accounts of Celtic Helicopters was £100,000.00 and not £180,000.00. In other words £180,000.00 did not reach Celtic Helicopters. Nor was any sum of money in an amount equal to one of the randomly disparate amounts, of any one of the cheques, or even the aggregate of any two of the cheques, credited to any account of Celtic Helicopters.

14-135 In relation to this aspect of the its inquiries, the Tribunal found the evidence of Mr. Barnicle and Mr. Ciaran Haughey to be straightforward and credible. Recognising that, as Mr. Dunne freely conceded, his own explanation was more in the nature of a theory than any form of any reliable recollection, combined with all the other evidence on the point, it would be impossible to accept that this was a payment by Mr. Dunne either intended for or actually received, either in whole or in part, by Celtic Helicopters.

LARCHFIELD SECURITIES LIMITED AND THE SHAREHOLDING STRUCTURE OF CELTIC HELICOPTERS

14-136 The manner in which shareholder's funds were held in and recorded in Celtic Helicopters was referred to in the evidence of a number of witnesses but mainly that of Mr. Kieran Ryan, Mr. Paul Carty and Mr. Ralph MacDarby. This evidence, when viewed together with the testimony of individuals from whom payments were sourced, provides a perspective on the circumstances in which those payments, whether recorded as shareholdings of one kind or another or not, were made.

14-137 Whilst Mr. Ciaran Haughey and Mr. Barnicle were the controlling shareholders in the company, and the central figures in the operation of its day to day business, they knew little or nothing of the identity of those individuals by whom most of its capital had been provided. In those circumstances, it is not surprising that they neither recorded nor even acknowledged the financial contributions of most of those individuals. It is

of significance that one of the first of those individuals, namely Dr. John O’Connell, was a person of whose existence they did not become aware until 1992, that is, seven years after he had provided funds to capitalise the inception of the company. Of equal significance is that the buying back, or buying in, of Mr. O’Connell’s shares, in 1992, in response to his request for a share certificate was handled and concluded by Mr. Charles Haughey, without any reference either to Mr. Ciaran Haughey or Mr. Barnicle. From the evidence, it is reasonable to conclude that none of the identified individuals by whom the 1985 payments were made was aware that, as was the fact, shares had been issued to a nominee company or, that from 1992 those shares ceased to be held by that nominee company and that from that date they had been transferred to another company entitled MS Nominees and that, according to the company’s accountants, Deloitte & Touche, they were at that time beneficially held by Larchfield Securities Limited, a Haughey Family company.

14-138 According to Mr. Kieran Ryan, the accountant who had conducted an examination of the affairs of Larchfield Securities Limited on behalf of the Haughey Family in 1997, when he queried Mr. Charles Haughey as to the funding of this 1985 shareholding held by Larchfield Securities Limited, he responded that Mr. Ryan should “*put that down to me*”. This, it can be concluded was in recognition both of his role, jointly with Mr. Traynor, in soliciting the 1985 funds, and of the true nature of the 1985 payments as direct or indirect payments to Mr. Haughey. That these shares, the Larchfield Securities Limited shares, were treated by Mr. Haughey and subsequently by members of the Haughey Family, as beneficially owned by their family company is consistent with the essentially non commercial context in which the 1985 funds were provided.

14-139 The sum of £290,329.00 provided by Mr. McAuliffe, Mr. Butler, Mr. Byrne, Mr. Snowden and Mr. Murphy/Mr. Gresty in 1992/1993, and recorded in the accounts of Celtic Helicopters as a loan from Larchfield Securities Limited, was between 1993 and 1996, treated in the affairs of both Celtic Helicopters and Larchfield Securities Limited in an imprecise and distinctly informal or casual manner. In a letter from Larchfield Securities Limited to Celtic Helicopters of 14th February, 1996, the sum was described as a loan from Larchfield Securities Limited advanced to Celtic Helicopters in 1991. In fact there was no such loan. What is more, the £290,329.00 had not been paid to the company in 1991. It was paid in the years 1992-1993. In the letter in question Larchfield Securities Limited purports to give the Directors of Celtic Helicopters an “*irrevocable instruction that the loan be converted into preference share capital*”. Mr. Kieran Ryan was of the opinion, from conversations both with the Directors and Mr. Charles Haughey, that these shares were not beneficially owned by Larchfield Securities Limited and that they were held in trust by Larchfield Securities Limited for the above five named individuals. At the same time, the Tribunal could find no documentation in the company’s records indicating that any of the five individuals had consented to this transaction.

It seems that there was no communication whatsoever with any of those five individuals (Mr. Butler was deceased) concerning the matter. Not only was there no communication with any of the supposed beneficial owners of the shares (that is, the providers of the funds) concerning the fact of the conversion to preference shares, neither was there a communication to any of them concerning any of the detailed terms upon which the preference shares were to be issued.

14-140 Mr. Paul Carty, who was at one time a Director of the company and at all times a member of the firm Deloitte & Touche, the company's accountants, stated that in the autumn of 1992 Mr. Traynor informed him that Mr. McAuliffe, Mr. Butler and Mr. Byrne would be investing in the company; that he would be using a nominee company for the making and holding of the investment; that the company would probably be Overseas Nominees, a company whose affairs were dealt with by Mr. Traynor's former Guinness & Mahon Guernsey colleagues at Credit Suisse Guernsey (Guinness Mahon Guernsey had been taken over by Credit Suisse). Mr. Carty indicated that by early 1994 however (by which time the whole of the £290,329.00 had been paid to Celtic Helicopters) Mr. Traynor informed him that, having regard to the further losses sustained by the company he felt that by way of a measure of protection for the new investors, shares should be issued on a 7% preferential basis, and that when issued they should be held in trust by Larchfield Securities Limited. He was to revert to Mr. Carty when he had finalised the position. Mr. Carty heard nothing further prior to Mr. Traynor's death in May, 1994.

14-141 Mr. Carty raised the question of the terms on which the £290,329.00 were held with the Directors of Celtic Helicopters in July, 1995 and was informed that the matter would be finalised before the end of March, 1996. However in early 1996 there was a supervening event, in that when seeking to raise further loan finance, the bank that had been approached by Celtic Helicopters was apparently not prepared to deal with the company as long as the amount of £290,329.00 was described as a loan on the company's books. This led to a formal instruction from Larchfield Securities Limited to Celtic Helicopters, that is, the letter of 14th February, 1996 which stated:—

"Dear Sirs,

We refer to a loan in the amount of IR£290,329.00 which we advanced to the company in 1991. We now give irrevocable instruction that the loan be converted into preference share capital as soon as possible.

*Yours faithfully,
for and on behalf of Larchfield Securities,*

*Conor Haughey,
Director."*

14-142 This letter contained nothing by way of detail to enable the instruction to be carried out. Most significantly, the number of shares to be

issued was not mentioned; nor the coupon or premium at which they were to be issued. This letter was followed a day later by a letter from Celtic Helicopters to Deloitte & Touche with a request that the necessary documentation be prepared to convert what was described as an existing loan to non-cumulative preference shares of £1.00 each. Whilst this letter contained more detail than that of 14th February, 1996, it was still insufficient to arm the company's advisers with the information they required to prepare the necessary documentation to achieve the result desired. Eventually the relevant documents were prepared, and the relevant meetings held, and the appropriate resolutions passed, under the direction of Deloitte & Touche.

14-143 The purely secretarial or formal steps required to be taken to implement the proposal to issue 7% non-cumulative preference shares were handled by Mr. Ralph MacDarby, the partner in Deloitte & Touche responsible for the legal secretarial division of the firm. His instructions came, it would appear, from a combination of Mr. Paul Carty and the Directors of both companies (that is, Mr. Barnicle and members of the Haughey family). The conversion of the so-called loan into preference shares was instituted on foot of the letters of 14th and 15th February, 1996 respectively. The Haughey family members who gave evidence maintained that they had acted in accordance with the guidance and directions of Deloitte & Touche. According to their evidence, the letters of the 14th and 15th February, 1996 were produced to them by Deloitte & Touche for signature. While the general role of Deloitte & Touche was acknowledged by the Deloitte & Touche witnesses, the suggestion that the letters of 14th and 15th February, 1996 were produced by Deloitte & Touche, and laid before the directors of Larchfield Securities Limited for signature was disputed by Mr. Carty. Whilst acknowledging that these letters initiated the procedure to convert what was described in the accounts as a loan into preference shares, Mr. MacDarby convincingly made the point that the technical imprecision, and rather loose drafting of the letters, was inconsistent with their having been prepared by his division, or indeed by any person having the relevant legal/company secretarial expertise.

14-144 It could not be disputed but that, in relation to the technical company secretarial steps required to implement the issue of the 7% non-cumulative preference shares the Haughey family and Mr. Barnicle merely followed the no doubt precise procedures with regard to meetings, resolutions, documents and so forth prescribed by Mr. Mac Darby. While understandably they may have associated the specific guidance and overall advice received by Deloitte & Touche with the letters of 15th and 16th February, 1996 respectively, to the point where they believed that those documents had been actually drafted by Deloitte & Touche, it is more likely, as Mr. MacDarby in part seemed to accept, that Deloitte & Touche had at most indicated that before they could have taken any steps to formalise the position, they would have required formal instructions. In those circumstances, they may have indicated the general form of those instructions in outline terms similar to the contents of the letters in question; accordingly, these letters were prepared by Celtic Helicopters and

Larchfield Securities Limited in response to an indication from Deloitte & Touche that instructions would be required along these lines.

14-145 What is clear is that Deloitte & Touche was aware, at least in the persons of Mr. Carty and his staff, that the contents of the letters were inaccurate in that there had been no loan, in 1991, or at all, and that the sum of £290,329.00 actually paid had been transmitted in 1992/1993. Mr. Carty was also aware that the language used in the accounts was inaccurate; that to paraphrase his evidence, it could have been improved. He was also aware both from his dealings with Mr. Traynor, and his limited dealings with two of the individuals by whom the funds were provided, Mr. McAuliffe and Mr. Murphy, that this sum of £290,329.00 represented funds provided by five named individuals.

14-146 In recounting his knowledge of the matters mentioned above, Mr. Carty informed the Tribunal that his dealings with Mr. Traynor, concerning the manner in which these funds would be held, resulted in his preparing a paper proposing to Mr. Traynor a particular share configuration (not the one actually adopted). Mr. Carty had never discussed any of the matters canvassed in his paper with any of the individuals by whom the £290,329.00 had been provided. From his dealings with Mr. Traynor around this time and right up to Mr. Traynor's death, the impression he had was that it was Mr. Traynor who would make the final decision as to how the capital represented by these funds would be configured. He had no dealings with the Directors of either Celtic Helicopters or Larchfield Securities Limited concerning these matters prior to Mr. Traynor's death. In Mr. Carty's words, Mr. Traynor was the person "*driving*" the process, both in relation to the recruiting of the shareholders in the first place, and in determining how the funds provided would be configured. Prior to his death, Mr. Traynor had informed Mr. Carty that the shares would be held by Larchfield Securities Limited. In those circumstances, while one might have expected an accountant in the ordinary way to canvass the views of the five individuals, it was probably excusable, or at least understandable, that Mr. Carty should have regarded Larchfield Securities Limited as standing in the shoes of those shareholders or, if not, the shoes of Mr. Traynor, in driving the process of recording or acknowledging, or in some way accounting for, the interest represented by the providers of those funds.

14-147 The directors of Larchfield Securities Limited of course had to be aware that at least on the face of it the company had made no loan to Celtic Helicopters, either in 1991 or at any time, and either in the sum of £290,329.00 or any amount. Likewise Larchfield Securities Limited, if holding these shares (or the funds represented by the shares) in trust for the five so-called investors, must have been aware that none of the investors were alive to any of these proposals; and had not been contacted in relation to the matter, either to alert them to the proposal or to seek their consent. One of the so-called investors or beneficial owners of the interest represented by the funds had already died, although this fact is nowhere acknowledged in any of the documentation connected with this matter. The

actions of Celtic Helicopters and Larchfield Securities Limited, both in describing the £290,329.00 as a loan, and subsequently in purporting to convert such a loan into preference shares on very specific terms, occurred without any reference to the people from whom, in the ordinary way, one would have required an input — both in negotiating the terms of any share issue, and consenting to the configuration ultimately adopted. It has to be assumed that both the directors of Celtic Helicopters and the directors and shareholders of Larchfield Securities Limited, were aware that none of these individuals had consented.

14-148 It would be wrong however to suggest that Larchfield Securities Limited, its directors or shareholders, or Celtic Helicopters, or its directors, had set out consciously to ignore these individuals, or to ignore what any person, whether technically trained or not, must have regarded as their entitlement to be consulted and to grant or withhold consent. The true explanation for these actions (or omissions) is probably to be found in the conduct of the providers of those funds, and the relationship between those individuals on the one hand, and Mr. Haughey and the directors of both companies on the other hand.

14-149 It is a reasonable conclusion that none of these individuals ever really treated these payments as “*investments*”, that is, as something for which Celtic or Mr. Haughey would be truly accountable in the ordinary commercial sense. Whilst in perhaps one case, that of the Murphy/Gresty payment, there may have been some remote commercial expectation, this was far from being the primary factor prompting that payment. This attitude on the part of the five individuals by whom the payments were made is mirrored in the manner in which Larchfield Securities Limited conducted itself as, if not the owners of those funds, at least as persons having control over the funds amounting almost to ownership, (albeit possibly with a certain undefined residual obligation to the funders). This obligation, if it exists, is hard to define, but it is impossible to conceive that it embraces anything in the nature of a legal duty.

14-150 From the fact that nothing had been done to regularise the position from 1992, when the first of the payments making up the £290,329.00 was made, up to 1996 (and even then only on the prompting of a bank requested to provide loan finance) the inescapable conclusion is that these funds were being dealt with by Mr. Traynor, by Larchfield Securities Limited and by Celtic Helicopters in a rather informal, if not casual manner. That Larchfield Securities Limited gave instructions regarding the configuration of the shares, notwithstanding the absence of any contact with the shareholders, is probably testament to the extent to which the company directors believed they had virtually total dominion over the shares, subject to the residual obligation (if any) mentioned above.

14-151 This in all the other circumstances outlined above is most likely what accounted for the perhaps rather imprecise language used by Deloitte & Touche in the accounts of Celtic Helicopters, and in the rather

informal manner in which Larchfield Securities Limited (with the knowledge of Deloitte & Touche) proceeded to convert the so-called loan into non-cumulative 7% preference shares. Mr. MacDarby agreed that this probably accounted for the somewhat informal approach to the procedure.

THE CONCEPT OF CONNECTED PERSONS

14-152 The Terms of Reference on this point can be construed only with difficulty. Term of Reference (a) embraces payments made indirectly to Mr. Charles Haughey and, apart from the general class of indirect payments (within which all payments involving Mr. Charles Haughey already fall) specifically includes payments “*used to discharge monies or debts due by . . . any connected person to Mr. Charles Haughey within the meaning of the Ethics in Public Office Act, 1995*”. The relevant provisions of the 1995 Act are contained in Section 2(2)(a) and (b) as follows:—

“(2)(a) Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person):

(i) a person is connected with an individual if that person is a relative of the individual,

(ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,

(iii) a person is connected with any person with whom he or she is in partnership,

(iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,

(v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(b) In paragraph (a) “control” has the meaning assigned to it by section 157 of the Corporation Tax Act, 1976, and any cognate words shall be construed accordingly”.

The relevant provisions of the Corporation Tax Act, 1976, section 157, are contained in sub-sections (6) and (8) as follows: —

“(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(8) In this section—

“control” shall be construed in accordance with section 102 (meaning of “associated company” and “control”),

“relative” means brother, sister, ancestor or lineal descendant”.

The relevant provisions of the Corporation Tax Act, 1976 Section 102 are contained in sub-section (2) which is as follows:—

- “(2) For the purposes of this Part a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company’s affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—*
- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or*
 - (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or*
 - (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.”*

14-153 From the foregoing it will be obvious that the distinction, provided for in section 102, between the actual exercise of control or the ability to exercise control on the one hand, and on the other hand the entitlement to exercise control, is pivotal. The Tribunal does not propose to consider whether having regard to the share configuration, or the Articles of Association of Celtic Helicopters (or Larchfield Securities Limited) Mr. Haughey had an entitlement, under company law, to exercise control. However in the circumstances itemised below it appears to the Tribunal that he enjoyed actual control over the Company at least during the periods in which the payments referred to in this Chapter were made. The itemised matters relied on are as follows:—

- (i) In 1985, jointly with Mr. Traynor, Mr. Charles Haughey engaged in an exercise to solicit funds, both equity and loan capital, for the company. It would be inappropriate to conclude that a father had control over a company in which his son was involved where, as any father naturally would, he merely assisted in soliciting funds for the company. However, the fact remains that in this case, the entire funding of the company was organised and arranged by Mr. Traynor and Mr. Charles Haughey with as little reference to Mr. Ciaran Haughey and Mr. Barnicle, who did not even know the identities of most of the contributors to the company’s capital, as if they were mere employees and not prime movers in the operation of the Company.
- (ii) On 11th February, 1992, the buying in of Dr. John O’Connell’s shares was carried through without any offer to any other shareholder, and again without reference to either Mr. Ciaran Haughey or Mr. Barnicle, who but for the fact that a letter was sent to Mr. Ciaran Haughey as Secretary of the Company, would probably have been

totally unaware either of Mr. O’Connell’s initial involvement or of the termination of his involvement with the Company.

- (iii) In the period 1991-1993 Mr. Traynor was involved in raising further funds for the Company, again with no real reference to either Mr. Ciaran Haughey or Mr. John Barnicle (except in the case of the Murphy/Gresty payment). It is reasonable to assume that, having regard to the evidence set forth in this Chapter, Mr. Haughey was involved at least in identifying individuals to be targeted by Mr. Traynor with a view to raising funds. It is also reasonable to assume that he was involved in and alive to the representation made by Mr. Traynor to Mr. Barnicle and Mr. Ciaran Haughey that their indebtedness to Irish Intercontinental Bank had been disposed of without reference to Ansbacher funds, that is, on the basis of an assignment generating £100,000.00, and the payment/pre-payment for flying hours generating £53,868.54.

14-154 When, to this degree of critical involvement, in some cases almost unilateral involvement, by Mr. Haughey and/or by Mr. Haughey and Mr. Traynor, in the funding of the Company, is added the uses to which both Mr. Haughey and Mr. Traynor put the Company in connection with the Carlisle payments and the other payments referred to below, it is reasonable to conclude that Mr. Haughey exercised control over the lifelines of the Company; that he acted unilaterally in relation to the Company; that he used the Company as a vehicle for his own purposes, with limited or no knowledge on the part of the individuals involved in, and with the most important vested interest in the day-to-day operations of the business.

MR. HAUGHEY’S USE OF CELTIC HELICOPTERS AS A VEHICLE FOR THE TRANSMISSION OF OTHER FUNDS

14-155 Mr. Haughey used Celtic Helicopters as a vehicle for the transmission of other funds, in themselves unrelated to Celtic Helicopters, so as to enable them to be applied to his own use, while removing traces of the identity of the providers of the funds. This occurred in 1989/1990 in the case of three cheques, amounting in all to £40,000.00, from Dr. Edmund Farrell of Irish Permanent Building Society. The circumstances in which these cheques were paid to Mr. Haughey have been outlined in detail in Chapter 7, entitled “*The Party Leader’s Allowance Account*”. In this Chapter they will be referred to in outline only.

14-156 The first two cheques were transmitted to Mr. Haughey in June of 1989 by Dr. Edmund Farrell, then Chief Executive of Irish Permanent Building Society. One was for £10,000.00 and the other for £20,000.00. Both were drawn on the Society’s account. The cheques had been personally solicited by Mr. Haughey, in the case of the £10,000.00 cheque ostensibly for his personal electoral campaign fund, and in the case of the £20,000.00 cheque, as a contribution to the fund set up to defray the medical expenses of the late Mr. Brian Lenihan, who was at that time seriously ill.

14-157 On 13th June, 1989, the two cheques, in the aggregate for £30,000.00, were lodged to Celtic Helicopter's account number 66559536 at the Bank of Ireland, Dublin Airport Branch. On the same day, a cheque for £30,000.00 payable to cash was drawn on that account. This cheque was signed by Mr. Barnicle and Mr. Ciaran Haughey. The cheque was cashed at Allied Irish Banks, Baggot Street Branch, as a matter of probability, by Ms Eileen Foy on the instructions of Mr. Charles Haughey, and the cash was thereafter transmitted to Mr. Haughey. As has already been noted, the Celtic Helicopters cheque was not lodged to the Leaders Allowance Account but rather negotiated for cash, across the counter.

14-158 By lodging the two cheques to the Celtic Helicopters, Bank of Ireland, Dublin Airport Branch account, and arranging for the drawing of a single cheque for £30,000.00 on that account payable to cash, the latter cheque could be used to obtain funds, while removing any trace of Irish Permanent Building Society as the source of the £30,000.00, and further by suggesting that the source of the funds was a company well known to be associated with Mr. Haughey, namely, Celtic Helicopters.

14-159 The third cheque was dated the 19th October, 1990, in the sum of £10,000.00, payable to Mr. Charles Haughey and was also drawn on an account of the Society and was lodged to Celtic Helicopters' account number 66559536, Bank of Ireland, Dublin Airport Branch on the 22nd of October, 1990. On the 7th of November, a cheque for £10,000.00 was drawn on the same account of Celtic Helicopters and made payable to cash. This cheque, having been endorsed by Mrs. Maureen Haughey, was lodged to an account in her name with the EBS Building Society on the 9th of November, 1990.

14-160 As in the case of the 1989 cheque payments, this 1990 cheque was once again passed through an account of Celtic Helicopters, in such a way as to remove the traces of the identity of Irish Permanent Building Society as the drawer of the cheque or as the provider of the funds.

14-161 Whilst there is no evidence that Mr. Ciaran Haughey or Mr. Barnicle were privy to the true nature of these transactions, the fact that Mr. Charles Haughey had the facility of using Celtic Helicopters' bank account in this way so as to screen the transmission of the three cheques is consistent with his having a substantive degree of influence and control over the company and the individuals who were effectively its Executive Directors.

14-162 Of course whilst it was Mr. Traynor, or at least primarily Mr. Traynor who was involved with the transmission of the £100,000.00 Murphy/Gresty payment to Celtic Helicopters, this was again the use of Celtic Helicopters as a vehicle for the transmission of other funds, inasmuch as it was used as part of a mechanism to transmit funds abroad for ultimate crediting to an account for the benefit of Mr. Haughey in the Ansbacher accounts.

15 OTHER HOLDERS OF PUBLIC OFFICE WITHIN TERMS OF REFERENCE

INTRODUCTION

15-01 This Chapter deals with the Tribunal's inquiries into three entirely separate individuals, former TD Mr. Denis Foley, the late Mr. Hugh Coveney and Mr. Peter Sutherland, each of whom at separate times held positions of public office, whose financial affairs in differing ways brought them within the Terms of Reference, as interpreted by the Tribunal.

15-02 Whilst the circumstances relating to each were entirely separate, as will be set forth, two matters were common to each of the three. Firstly, in none of the three cases was there any question of money being paid by way of gift, loan or otherwise to any of them, either whilst holding public office, or at any other time. In regard to Mr. Foley and Mr. Coveney, what was inquired into were the circumstances in which monies which each had earned were held and transacted within particular bank accounts, and in regard to Mr. Sutherland, the essence of the inquiry was into the circumstances whereby a banking loan facility extended to him for a house purchase was secured. Accordingly, no question at all arises in relation to any of these office holders of potentially corrupt payments being made out of the Ansbacher accounts, or any other clandestine sources. Secondly, no material connection whatsoever existed between any of the three and Mr. Charles Haughey, whose role and involvement is central to so many of the other Chapters in this Part of the Report. Mr. Coveney and Mr. Sutherland at different times held their positions of public office as members of the Fine Gael Party, and Mr. Foley, whilst elected as a Fianna Fáil TD during much of the period that Mr. Haughey led that Party, stated in evidence that he had neither supported nor voted for Mr. Haughey on any occasion of internal leadership divisions, an aspect that the Tribunal has no reason to doubt.

15-03 The manner in which each of the three individuals came to the attention of the Tribunal, and the basis upon which each was found to come within the Terms of Reference, will be set forth in the sections dealing with each. In general, it may be said by way of introduction that the potential involvement of both Mr. Coveney and Mr. Sutherland came to light on foot of the responses to Tribunal queries addressed to Irish Life and Permanent Plc, who had acquired the Guinness & Mahon Bank; those inquiries and responses did not elicit any potential involvement of Mr. Foley, and his position emerged only at a significantly later stage, and in a more dramatic fashion. In that regard, whilst this Chapter's concern is set forth as being with the banking arrangements of the three office holders, the section dealing with Mr. Foley will necessarily also address the significant part undertaken by Mr. Pádraig Collery, noted both in the McCracken Report and elsewhere in this Part of the Report as a close associate of Mr. Desmond Traynor.

15-04 Subsequent to the discovery of Mr. Foley's involvement, and the Tribunal's decision to proceed to public hearing in that regard, Mr. Foley afforded cooperation with relevant inquiries to the Tribunal, and such cooperation was at all stages furnished by and on behalf of both Mr. Coveney (prior to his untimely death) and Mr. Sutherland. Accordingly, the differing nature and degree of involvement on the part of each of the three individuals required to be examined separately.

MR. DENIS FOLEY

15-05 Mr. Denis Foley was elected to Dáil Éireann in 1981 and, apart from one break between 1989 and 1992, when he was appointed to the Senate, he served continually as a TD representing the constituency of Kerry North until his retirement from politics in 2002. During those years, he also held office as Chairman and Vice-Chairman of the Public Accounts Committee, from which he resigned in early January, 2000.

15-06 Mr. Foley's connection with the Tribunal's work arose from paragraph (c) of the Tribunal's Terms of Reference which provides as follows:—

“(c) Whether any payment was made from money held in any of the accounts referred to at (b) to any person who holds or has held public office.”

The Tribunal interpreted Term of Reference (c) as encompassing payments from the “*Ansbacher accounts*” (as referred to in paragraph (b) of the Terms of Reference) to any person who held “*public office*” which included a person, such as Mr. Foley, who held office as both a TD and as Chairman and Vice-Chairman of the Public Accounts Committee.

15-07 There were two aspects of Mr. Foley's affairs which featured in evidence heard by the Tribunal at public sittings. Firstly, his involvement with the Ansbacher accounts as a recipient of payments from those accounts, and secondly, his further involvement as a director of Central Tourist Holdings Limited, a Company which had borrowings from Guinness & Mahon which were secured by a backing deposit over an Ansbacher account.

Recipient of funds from Ansbacher Accounts

15-08 Unlike the other two former holders of public office referred to later in this Chapter, Mr. Foley did not come to the attention of the Tribunal as a result of documentation produced to the Tribunal by Guinness & Mahon or Irish Intercontinental Bank on foot of Orders made by the Tribunal, or as a result of evidence from persons connected with the operation of the Ansbacher accounts, including Mr. Pádraig Collery, at sittings of the Tribunal from which the public was excluded. It was at an advanced stage of those aspects of the Tribunal's inquiries which pertained to the Ansbacher accounts that the Tribunal became aware of Mr. Foley's

potential involvement. This was as a result of documents produced to the Tribunal by Ms. Margaret Keogh, on foot of an Order for Production made by the Tribunal on 22nd October, 1999. Ms. Keogh was a former secretary of Mr. Pdraig Collery, when he had been employed in Guinness & Mahon. On foot of that Order for Production, Ms. Keogh produced a number of bundles of documents to the Tribunal, which had been deposited with her in October, 1999 by Mr. Collery for safe-keeping until he could remove them elsewhere. The documents related to funds held by Hamilton Ross, a Cayman registered company founded by Mr. Desmond Traynor and Mr. John Furze as an off-shoot of Ansbacher Cayman, and which was, at that time, operated by Mr. Barry Benjamin. It will be recalled that in September, 1992, when the Ansbacher accounts were held in Irish Intercontinental Bank, funds held to the credit of those accounts were withdrawn, and were re-deposited in newly opened accounts in the name of Hamilton Ross.

15-09 The documents produced by Ms. Keogh included copy accounts in coded form which had been made up to July, 1998, and a list identifying the persons to whom the codes applied. Mr. Foley was identified as the person to whom the account coded A/A40 related. The documents further recorded that Mr. Foley was entitled to a credit balance of Stg.£133,535.51. They also recorded that certain sums had been debited from each of the coded account balances to meet legal costs incurred by Hamilton Ross and Mr. Furze, in resisting proceedings issued in the Cayman Islands in 1997 by the McCracken Tribunal, in which access to documents of Hamilton Ross and Ansbacher Cayman was sought. The amount of the costs apportioned in the case of Mr. Foley's coded account, A/A40 was Stg.£5,000.00.

Opening of account and accumulation of funds

15-10 In the 1960s, Mr. Foley was appointed a Rates Collector for the town of Tralee. He remained in that position until he was elected to Dáil Éireann in 1981. In 1965, following an approach made to him by one of the directors of the Mount Brandon Hotel in Tralee, he became involved in the business of booking bands to play at the hotel ballroom, and arranging publicity for those events. He also provided a similar service to another ballroom in Ballybunion. The business was successful, and Mr. Foley prospered from commissions which he earned. Mr. Traynor was then an accountant with Haughey Boland & Company, who were auditors to Princes Investments Limited, the Company which owned the Mount Brandon Hotel. Mr. Foley recalled that Mr. Traynor visited the Hotel once or twice a year, and it was in that context that they became acquainted. In the course of a conversation in 1975 or 1976, by which time Mr. Traynor had been appointed as an executive to Guinness & Mahon, he indicated to Mr. Foley that if, at any time, he wished to make an investment, Mr. Traynor would be able to offer him a good rate of return through Guinness & Mahon.

15-11 In October, 1979, Mr. Foley had accumulated a sum of £50,000.00 which he wished to invest. This was made up as follows:—

- (i) In the region of £30,000.00, which he had saved since 1965 from commission payments which he had earned in connection with his business. Mr. Foley believed that he had retained these funds in bank drafts which he renewed from time to time during the period.
- (ii) In the region of £20,000.00, which he had received as contributions towards his election expenses when he had run as an unsuccessful candidate in the General Election in 1977. Of this £20,000.00, approximately £14,000.00 had been received from family members, and the balance of £6,000.00 had been received from other persons. It was also Mr. Foley's belief that he had retained those funds in bank drafts from 1977, which he had again renewed from time to time.

15-12 Mr. Foley, recalling his conversation with Mr. Traynor some years earlier, decided to invest the £50,000.00 with Guinness & Mahon, and he travelled to Dublin and met Mr. Traynor at the latter's office in Guinness & Mahon, and furnished him with bank drafts amounting to that sum. Mr. Foley testified that he was not asked to sign any documents in connection with the making of his investment; he did not find that surprising, as he had not expected to be asked to sign documentation. Mr. Traynor furnished Mr. Foley with two lodgement receipts, one for £30,000.00 and one for £20,000.00, which Mr. Foley retained, and which he produced to the Tribunal. The dockets recorded Mr. Foley's name and the amounts which he had provided, but did not record any account number, or any other information identifying the investment which had been made. Ms. Sandra Kells, in her evidence to the Tribunal, testified that Mr. Foley had no account with Guinness & Mahon as of the date of the lodgement dockets in any of those amounts, or in the aggregate of those amounts. Nor was Guinness & Mahon able to trace the lodgements to any account in the Bank, such as bank suspense accounts, into which sums might have been lodged pending their ultimate allocation to some other nominal account in the Bank.

15-13 Mr. Foley testified that, when making those arrangements, he was informed by Mr. Traynor that his monies would be invested in a fund entitled "*Klic Investments*", and that he would be furnished with statements on a periodic basis. Whatever Mr. Foley may have been informed by Mr. Traynor, or whatever his understanding may have been, the Tribunal is satisfied that the £50,000.00 that he provided for investment to Mr. Traynor in October, 1979, was deposited in an off-shore Ansbacher account, and from the banking documents which were available to the Tribunal, and which will be referred to in greater detail, it is clear that the £50,000.00 was reflected as a credit to a Memorandum Account coded A/A40.

15-14 Further funds were introduced to Mr. Foley's account in December, 1990. These arose following the closure of a deposit account which had been held by Mr. Foley with Guinness & Mahon in his own name. The circumstances surrounding the closure of the account, and the crediting of

the funds to Mr. Foley's off-shore deposit were highly unusual and were shrouded in secrecy.

15-15 The account in Guinness & Mahon in Mr. Foley's name, A/C No. 10583009, was initially opened on 19th December, 1986 with a lodgement of £3,342.05. Two further lodgements were made to the account of £4,885.27 on 11th August, 1987, and £12,180.54 on 1st March, 1988. The total sum therefore lodged to the account was £20,407.86, and the Tribunal is satisfied that all of the funds lodged to the account represented Mr. Foley's own monies.

15-16 During the operation of the account, two changes were made to the terms under which it was held. In December, 1987, some twelve months after it opened, the registered address of the account was altered from 6 Day Place, Tralee, Mr. Foley's own address, to "*C/o D.P.Collery*". This meant that from December, 1987, account statements and other correspondence would not have been posted to Mr. Foley, but would have been retained for collection by Mr. Collery. After Mr. Collery left Guinness & Mahon in December, 1989, statements and correspondence would have been forwarded to him on behalf of Mr. Foley. The second change occurred in May, 1988 when Mr. Foley instructed Mr. Pat O'Dwyer, the then Accounts Manager of Guinness & Mahon, that he wished to transfer the account from his sole name into the joint names of himself and his daughter, Ms. Margaret Foley.

15-17 Mr. Foley testified that it was Mr. Traynor who proposed that his deposit account with Guinness & Mahon should be closed, and the balance transferred to his investment account. Mr. Foley agreed with Mr. Traynor's suggestion, and assumed that the funds held to the credit of his deposit account were transferred to the Klic Investments Account. Mr. Traynor did not inform Mr. Foley of how the account would be closed, and he had no knowledge of the manner in which the proceeds would be applied.

15-18 The account was in fact closed on 15th November, 1990 on the instructions of Mr. Collery. The net credit balance, after the deduction of Retention Tax, amounting to £24,005.95, was drawn down by means of a bank draft issued by Guinness & Mahon, payable to Mr. D. Foley and Ms. M. Foley. In the course of its private investigative work, the Tribunal endeavoured to trace the proceeds of this draft which had been provided to Mr. Collery. That exercise, which was confirmed by the documents led and evidence heard at public sittings, established that the proceeds of the draft were applied as follows. On 29th November, 1990, the draft was lodged to an account of Management Investment Services with Bank of Ireland, Talbot Street. Management Investment Services, as will be recalled, is a Company controlled by Mr. Sam Field-Corbett, which provided secretarial services to a number of clients, including clients of Mr. Traynor. It will be recalled that the Company provided secretarial services to companies controlled by Mr. John Byrne, of which Mr. Traynor was a

Director, and that cheques issued by Mr. Ben Dunne, and intended as payments to Mr. Haughey had been channelled by Management Investment Services, on Mr. Traynor's instructions, through an account of Carlisle Trust Limited.

15-19 A cheque for precisely the same sum of £24,005.95 was drawn on the account of Management Investment Services on 6th December, 1990, payable to Kentford Securities Limited. That cheque was signed by Mr. Sam Field-Corbett. Neither Mr. Field-Corbett nor Mr. Patrick McCann, his associate, recalled either of these transactions, but they believed that in lodging the Guinness & Mahon draft and drawing an equivalent cheque payable to Kentford Securities, they would have been acting on the instructions of Mr. Traynor.

15-20 The Tribunal in turn traced that cheque dated 6th December, 1990, and payable to Kentford Securities Limited back to Guinness & Mahon, where it was lodged to the Kentford Securities Limited No. 2 Account on 10th December, 1990. It will be recalled that there were a number of accounts in Guinness & Mahon in the name of Kentford Securities which operated from 1989 to 1992, and were controlled by Mr. Traynor. They were used for a number of purposes, including as an adjunct to the Ansbacher accounts in facilitating the lodgement of Irish funds by customers of Ansbacher to their Sterling off-shore deposits.

15-21 The Tribunal is satisfied that this is exactly what occurred in this instance. The lodgement of the Management Investment Services cheque, which represented the proceeds of the Guinness & Mahon draft, to the Kentford Securities account was reflected in an equivalent sterling credit to the Memorandum Account coded A/A49, which was the code used to identify the holdings of Mr. Denis Foley.

15-22 It appears to the Tribunal that the primary purpose served by routing Mr. Foley's funds through the account of Management Investment Services was to conceal from the staff of Guinness & Mahon, and from any other person having access to the records of Guinness & Mahon, that Mr. Foley was the beneficiary of the funds lodged to the Kentford account. The manner in which these funds were dealt with, namely, by lodging them to an Irish currency account, and by crediting an equivalent sterling sum to Mr. Foley's off-shore holdings, also enabled Mr. Foley to circumvent the requirements of exchange control.

15-23 From Memorandum Account statements which were available to the Tribunal dating back to September, 1992, it appears that Mr. Foley's earlier Ansbacher deposit, arising from his investment in October 1979, was reflected in a Memorandum Account which was coded A/A40. The further funds which were deposited in December, 1990, were initially recorded in a separate Memorandum Account coded A/A49. Subsequently, the funds held to the credit of the A/A49 account were amalgamated with the funds

held to the credit of the A/A40 account, producing a single Memorandum Account coded A/A40, which was the account for which statements were included within the documents produced by Ms. Margaret Keogh.

Mr. Foley's dealings with Mr. Traynor

15-24 Following his election to Dáil Éireann in 1981, Mr. Foley's evidence was that his contacts with Mr. Traynor were very rare. He telephoned Mr. Traynor on a number of occasions, and met Mr. Traynor on two occasions at the office of Cement Roadstone Holdings at 42, Fitzwilliam Square, to discuss how his investment was progressing.

15-25 Mr. Foley understood from his discussions with Mr. Traynor at the time when he made his initial investment that he would receive periodic statements. As matters transpired, he received no statements until some years later, and then only after he had specifically requested their provision from Mr. Traynor. The statement with which he was furnished was for a sixteen month period from 19th August, 1981 to 20th December, 1982, and was retained by Mr. Foley and made available by him to the Tribunal. The form of the statement was highly unusual, in that the banner or letter-head from the top of the statement, identifying the bank or financial institution with which the account was held, had been removed. Mr. Foley testified that this was the form in which he had received the statement, and he accepted that the only logical purpose of removing the letter-head was to maintain secrecy regarding the whereabouts of his investment.

15-26 At the time that he received the statement, Mr. Foley made two handwritten notes on it for his own assistance. He added a further note which he believed he would have made some time prior to 1990. The handwritten notes recorded the following:—

(i) *"£50,000.00 lodged to Guinness & Mahon in October, 1979"*

(ii) *Klic Investments Limited*

Martin Keane

Guinness Mahon Limited

£50,000.00"

(iii) *"Martin Keane now left to see Pdraig Collery".*

Mr. Foley also furnished the Tribunal with a slip of paper on which he had noted *"Klic — £42,893.00 Stg"*. It appears that all of these annotations recorded information which had been provided to Mr. Foley by Mr. Traynor.

15-27 Mr. Foley recalled that he also made inquiries of Mr. Martin Keane concerning the level of his investment some time in 1988, and was informed by Mr. Keane that the balance on his investment stood at Stg.£82,688.00. Mr. Traynor had introduced Mr. Keane, an official of Guinness & Mahon, to

Mr. Foley as a person who he should contact for information regarding his investment if Mr. Traynor was unavailable.

15-28 Mr. Foley maintained in evidence that as far as he was concerned his investment was with Guinness & Mahon in a fund known as Klic Investments. He testified that he was not informed that his funds had been invested, or were otherwise held by any other entity such as Ansbacher Cayman or Hamilton Ross, but he accepted that, having regard to the fact that the statements which he received showed sterling balances, that he was aware that his funds were held in off-shore holdings.

15-29 Mr. Foley also had dealings with Mr. Traynor in connection with two withdrawals which he made from his funds, the first of £20,000.00 on 13th April, 1989, and the second of £10,000.00 in June, 1993. The proceeds of the first withdrawal were furnished to him in the form of a bank draft drawn on Guinness & Mahon at its branch in South Mall, Cork, while the second withdrawal was provided to him in cash.

Mr. Foley's dealings with Mr. Pdraig Collery

15-30 Following Mr. Traynor's death in May, 1994, Mr. Foley became concerned about his investment. He had not received any statements since those furnished to him in the early 1980s. He was encountering difficulties in making contact with Mr. Pdraig Collery, to whom he finally succeeded in speaking in August, 1995. Mr. Foley testified that he informed Mr. Collery that he wished to withdraw £50,000.00 from his investment, and he also wished to obtain account statements. Mr. Collery advised him that his investment was then being handled by Mr. John Furze, who Mr. Foley had not heard of before, and had never dealt with, and that it would take some time for Mr. Collery to arrange for the withdrawal of funds.

15-31 In early September, 1995, Mr. Foley met Mr. Collery in Jury's Hotel in Dublin, so that Mr. Collery could transmit to him the funds that he wished to withdraw. They had not previously met in person, and Mr. Collery provided Mr. Foley with a description of himself so that Mr. Foley would recognise him. Mr. Collery provided Mr. Foley with the proceeds of his withdrawal, that is, with £50,000.00 in cash. Mr. Foley applied those cash funds in purchasing two bank drafts from Bank of Ireland, Tralee. He testified that he was conscious of his tax liabilities in connection with his off-shore deposits, that he retained the two bank drafts in his possession with a view to paying the Revenue Commissioners, and that the proceeds were in due course used by him towards paying his outstanding tax liabilities in December, 1999. The Tribunal considers that Mr. Foley's evidence in that regard was incredible. While the Tribunal accepts that the proceeds of the drafts were ultimately applied towards the discharge of tax liabilities by Mr. Foley in December, 1999, that course was not taken over the preceding four years when the drafts were, on Mr. Foley's evidence, in

his possession and was taken only following the Tribunal making contact with Mr. Foley on foot of the documents produced by Ms. Keogh.

15-32 In order to obtain the £50,000.00 in cash to meet Mr. Foley's withdrawal, Mr. Collery had to take a number of steps. Firstly, he issued instructions on Hamilton Ross notepaper to Irish Intercontinental Bank to debit the sterling equivalent of £50,000.00 from the Hamilton Ross principal Sterling Deposit Account No. 02/01354/81, and to provide him with a bank draft in that sum payable to Bank of Ireland. He then converted that bank draft into cash, and transmitted it to Mr. Foley. Finally, he had to adjust the Memorandum Accounts which he maintained, by making a corresponding debit to Mr. Foley's balance on account A/A40, and he had to generate a hard copy statement in Dublin, and send it to Hamilton Ross in the Cayman Islands.

15-33 Whilst Mr. Foley made no further withdrawals from his off-shore holdings, he did meet Mr. Collery in person on a later occasion. This was on 18th August, 1998, at the Dublin Airport Hotel, and was subsequent to the publication of the Report of the McCracken Tribunal, and the establishment of this Tribunal. That meeting also took place after Mr. Collery had visited the Cayman Islands in the Summer of 1998, to carry out work on behalf of Mr. Barry Benjamin, who was then managing the affairs of Hamilton Ross, and to which further reference will be made at a later point in this Chapter. Mr. Foley testified that he had asked Mr. Collery to meet him so that he could obtain account statements for the purposes of submitting them to his accountants, with a view to regularising his taxation affairs. According to Mr. Foley, he had arranged an appointment with his accountants for the afternoon of the same day, but as he had received no statements from Mr. Collery, he cancelled that appointment and rearranged it for some time in September, 1998. As he had still not received statements by then, he did not proceed with the rescheduled meeting with his accountants, or take any further steps to address his tax affairs, until December, 1999, after his involvement with the Ansbacher accounts had been raised with him by the Tribunal.

15-34 Mr. Collery's recollection of the meeting was somewhat fuller than that of Mr. Foley. Whilst he confirmed that Mr. Foley had indeed requested the provision of updated statements, he further recalled that their discussion extended to Mr. Collery's visit to the Cayman Islands in the Summer of 1998, and the documentation which he had seen in the offices of Hamilton Ross. According to Mr. Collery, he informed Mr. Foley that those documents included references to Mr. Foley's association with the account coded A/A40.

15-35 The final dealings between Mr. Collery and Mr. Foley were in May or June, 1999, when Mr. Collery sent copy Ansbacher Cayman bank statements to Mr. Foley. The statements were historic, covering the period between January, 1983 and April, 1987. No covering letter accompanied

the statements; they did not contain the name of Mr. Foley or his daughter, Ms. Margaret Foley. The statements referred to the accounts in coded form, namely A/A40 and A/A49.

15-36 Having regard to the evidence which the Tribunal heard and all of the attendant circumstances, the Tribunal is of the view that the primary purpose of the meeting in August, 1998 was to enable Mr. Foley to ascertain from Mr. Collery what documentary information existed in the Cayman Islands connecting him with the Ansbacher Cayman/Hamilton Ross accounts. The Tribunal is satisfied that the matter of statements was not the main focus of the meeting, and it is clear that Mr. Foley took no steps whatsoever to contact Mr. Collery subsequently in order to obtain statements for the purpose of furnishing that information to his accountants or to anyone else. The true position is that Mr. Foley never furnished statements to his accountants and only furnished them to the Tribunal when information about his connection with the Ansbacher accounts came to light from the contents of the documents deposited by Mr. Collery with Ms. Keogh.

Mr. Foley's knowledge of the Ansbacher account held for his benefit

15-37 Mr. Foley's evidence to the Tribunal was that, while he knew that the funds which he had invested through Mr. Traynor were held in off-shore deposits, he was not aware that he held an Ansbacher account. The Tribunal cannot accept that this was the true position.

15-38 The McCracken Tribunal reported on 25th August, 1997. Dáil Éireann convened on 10th September, 1997, to consider the Report. There resulted from this a unanimous Resolution of both Houses of the Oireachtas, which caused the establishment of this Tribunal by the Taoiseach. When the McCracken Tribunal Report was debated, and when the Resolution which resolved that it was expedient that this Tribunal be established was passed, Mr. Foley was a member of Dáil Éireann. Mr. Foley was aware from the McCracken Report that the following were features of Ansbacher accounts;

- (i) They were characterised as being off-shore accounts.
- (ii) Mr. Desmond Traynor of Guinness & Mahon (Ireland) Limited acted on behalf of a number of Irish persons who wished to deposit their monies off-shore, and this money was deposited in Ansbacher Cayman Limited by Mr. Traynor on their behalf.
- (iii) Mr. Traynor provided banking services to these clients from the offices of Guinness & Mahon (Ireland) Limited and, after he left the Bank, from the Chairman's Office of Cement Roadstone Holdings Limited.
- (iv) In September, 1992, an account was opened on the instructions of Mr. Traynor in Irish Intercontinental Bank, in the name of a Company called Hamilton Ross Company Limited.

- (v) Hamilton Ross Company Limited was a company registered in the Cayman Islands, which was under the control of Mr. John Furze.
- (vi) Some of the money in the Ansbacher Cayman Limited Account was transferred into the account in the name of Hamilton Ross Company Limited.
- (vii) After the death of Mr. Desmond Traynor in 1994 these accounts, both when they were in the name of Ansbacher Cayman Limited, and when they were transferred into the name of Hamilton Ross Company Limited, continued to be operated by Mr. Pdraig Collery.

15-39 In the course of his evidence to the Tribunal, Mr. Foley accepted that he had invested his funds with Mr. Traynor; that he knew that his funds were held in a sterling off-shore investment; that his dealings with Mr. Traynor were initially at Guinness & Mahon, and subsequently at the offices of Cement Roadstone Holdings Limited; that after Mr. Traynor's death his dealings in connection with his off-shore investment were with Mr. Collery; and that Mr. Collery had informed him that his off-shore investment was being handled by Mr. John Furze. Having regard to all of these matters, the Tribunal is satisfied that Mr. Foley was aware from, at latest, August, 1997, of his involvement with the Ansbacher accounts.

Mr. Pdraig Collery's dealings with the Tribunal in connection with the affairs of Hamilton Ross and the affairs of Mr. Foley

Mr. Collery's evidence to the Tribunal on 5th November, 1998

15-40 The Memorandum Accounts were coded accounts in which the funds attributable to individual customers of Ansbacher Cayman in the pooled sterling accounts, maintained by Ansbacher Cayman in Guinness & Mahon in Dublin, and subsequently in Irish Intercontinental Bank, were kept. The Memorandum Account statements mirrored what would have been orthodox account statements kept by Ansbacher Cayman in the Cayman Islands (although generated in Dublin) for each individual customer.

15-41 As is known from the Report of the McCracken Tribunal, it was Mr. Pdraig Collery who maintained the Memorandum Accounts, which had been opened some years before he joined Guinness & Mahon in 1974. He took over responsibility for keeping the records of the accounts in the late 1970s. During Mr. Traynor's years as an executive of Guinness & Mahon, he furnished instructions directly to Mr. Collery, and on foot of those instructions, Mr. Collery made the necessary adjustments to the accounts. This arrangement continued after Mr. Traynor left Guinness & Mahon in 1985, except that Mr. Collery received his instructions from Mr. Traynor, initially from Mr. Traynor's office at Trinity Street, and subsequently from his office in Fitzwilliam Square. The transactions posted to the accounts reflected withdrawals from the accounts, lodgements to the accounts, and

interest applied to the account balances, and mirrored lodgements and withdrawals made to the Amiens/Kentford accounts, and to the pooled sterling accounts.

15-42 The Memorandum Accounts were maintained on a bureau system which shared the same software as, but was totally independent of, the system operated by Guinness & Mahon. The bureau system was controlled solely by Mr. Collery and a password was devised by him which was unknown to other staff members of Guinness & Mahon, and consequently the system could only be accessed by Mr. Collery or, presumably, by Mr. Traynor. When Mr. Collery left Guinness & Mahon in 1990, he continued to maintain the Memorandum Accounts on a computer system installed in Mr. Traynor's office at Cement Roadstone Holdings at 42 Fitzwilliam Square. After Mr. Traynor died in 1994, Mr. Collery agreed with Mr. Furze that he would continue to operate the Memorandum Accounts, and that he would deal with the Irish customers of Hamilton Ross. The computer system which had been installed in Fitzwilliam Square was relocated to the premises of Management and Investment Services, at Wine Tavern Street, Dublin 8.

15-43 At the time of the establishment of the McCracken Tribunal, Mr. Collery had documents in his possession to which that Tribunal had obtained access. Those documents were also produced to this Tribunal. The documents primarily comprised copies of the coded Memorandum Account statements dating from September, 1992, and copies of certain customer files which were in Mr. Collery's possession. Mr. Collery gave evidence to the Tribunal from time to time for the purposes of commenting on the documents which he had produced to the Tribunal, and on documents which the Tribunal had obtained from other sources. In the main, his evidence confirmed that the work carried out by the Tribunal in tracing transactions across various accounts was accurate.

15-44 On 5th November, 1998 the Tribunal held public sittings from which the public was excluded, pursuant to S.2 of the Tribunals of Inquiry (Evidence) Act, 1921, as amended, as the Tribunal was satisfied that it was in the public interest expedient to do so for reasons connected with the subject matter of the Inquiry and the nature of the evidence to be given. Mr. Collery was called to give evidence on that date, to identify the persons or the entities represented by the codes printed on the Memorandum Account statements. This information was sought in order to enable the Tribunal to comply with the procedures for the making of Orders for production of documents, which had been prescribed by the Supreme Court in the case of *Haughey v. Moriarty* [1999] 3 IR. In particular the Tribunal sought the names of these persons and entities for the purposes of serving them with notice of its intention to make Orders for Production of documents relating to the Ansbacher and Hamilton Ross accounts.

15-45 Prior to giving his evidence, by letter dated 15th October, 1998, the Tribunal informed Mr. Collery of the information which it wished to seek from

him under oath. A Schedule was appended to that letter, listing the various lettered and numbered codes which the Tribunal wished him to identify. These had been assembled by the Tribunal in the course of its preliminary investigative work from a scrutiny of the documents in its possession. Mr. Collery wrote the names of individuals and entities beside certain of the codes in the Schedule which had been attached to the Tribunal's letter to him of 15th October, 1998. On 5th November, 1998, Mr. Collery put this document into evidence under oath and in the course of the evidence which he gave, he expanded on the written information. He also undertook to the Tribunal that, if any other name occurred to him, he would bring that name to the attention of the Tribunal. The name which he wrote on the Schedule as being the beneficiary of the coded account A/A40 and, which he confirmed in evidence under oath, was Mr. John Furze.

15-46 On 1st February, 2000 when Mr. Collery gave evidence in the course of Tribunal public sittings in connection with the affairs of Mr. Denis Foley, he replied to questions by Tribunal Counsel as follows;

“248Q. *Now, I want to move on, if I may then for the moment, and inquire of you in respect of the query raised at paragraph 15 by the Tribunal and that is you were asked for full details of all the circumstances in which you informed the Tribunal in November, 1998 that the money in the A/A40 was held for the benefit of Mr. J. A. Furze and not, as you were aware, for the benefit of Mr. Foley. You responded and in fact I want to clarify a certain matter here with you, because we have examined the transcript of the private sittings from which the public were excluded whereby you gave sworn evidence. You also furnished the Tribunal, I think, with a document which had been prepared by the Tribunal showing the various codes, isn't that correct, and you had written opposite it some of these codes whom you believed or said were the clients, is that correct?*

A. *That is correct.*

Q249. *And I think that have said that at a private sitting of the Tribunal in November, 1998, 'I delivered a schedule of names cross referenced to a confidential account number in relation to A/A40. I had cross referenced the account with the name Mr. John Furze and indicated that Mr. John Furze controlled the account.' I think that is the document which the Tribunal have prepared indicating various codes and you had written opposite A/A40, John Furze, isn't that correct?*

A. *There were a number of documents — I will accept that, yes.*

250Q. *You now say in the statement 'I was unclear then as to who was the true beneficial. ...' — sorry, I should just halt there for a moment and say that you also in evidence indicated that it may be referable to another account holder, I don't want to mention the name here in public.*

A. *I can't recall.*

251Q. *But that's neither here nor there. You never informed the Tribunal either in the schedule or in the witness box that it was Mr. Foley, isn't that correct?*

A. *That is correct.*

252Q. *But you say in this statement or this memorandum ‘That I was unclear then as to who was the true beneficial owner of these funds, although I now accept they either belonged to Mr. Foley or his daughter and I should have advised the Tribunal accordingly. My hesitancy in naming Mr. Foley or his daughter were due to a worry about not being 100 percent sure of the matter rather than any desire or reason to be unhelpful to the Tribunal’ Now, do you want to correct or clarify anything in respect of that now?*

A. *I wish to apologise, Mr. Chairman, in omitting this information and I regret it. There are certain doubts about this. There was a series of events that gave rise to some hesitancy in my understanding of that and I would have been better advised to advise the Tribunal of that hesitancy rather than taking my other course of action.*

253Q. *Well let’s be clear about this. The decision was yours not to inform the Tribunal?*

A. *My hesitancy — my decision was mine and mine alone, yes.*

254Q. *And there can be no doubt about it, that you had no reason for believing that the account A/A40 was Mr. Furze’s or the other person who is an account holder whose name I do not want to mention now.*

A. *That is correct.*

255Q. *And you had no hesitancy in attributing it to Mr. Furze or to the other person, isn’t that correct?*

A. *I attributed it to Mr. Furze because of my hesitancy and that was incorrect and I, as I say, I do apologise for that” . . .*

“541Q. *But what is hugely significant, isn’t it, whatever about wishing to have documents to defend yourself, you had informed the Tribunal when you knew that a member of the Oireachtas was an Ansbacher Account holder, if I could use it in its broadest sense of the word, and you knew that there was a Tribunal of Inquiry carrying out inquiries in relation to this matter and this was relevant to its inquiries, isn’t that right?*

A. *That is correct.*

542Q. *And you consciously took the decision to give the Tribunal the wrong name attributable to the account, isn’t that correct?*

A. *That is correct.”*

15-47 The Tribunal is satisfied that Mr. Padraig Collery lied under Oath at this Tribunal on 5th November, 1998 when he cross-referenced or attributed the account coded A/A40 to Mr. John Furze.

Mr. Collery’s work in the Cayman Islands in 1998

15-48 As already indicated, after Mr. Traynor’s death, Mr. Collery maintained the Memorandum Accounts on behalf of Hamilton Ross, from the premises of Management Investment Services at Wine Tavern Street, Dublin 8. Following the establishment of the McCracken Tribunal, and the consequent public exposure of the accounts, the funds in the Dublin accounts of Hamilton Ross were transferred, on the instructions of Mr. Furze, to the Cayman Islands in May, 1997. Irish Intercontinental Bank

required that certain of the funds which had been made available as security for loans made to customers of Hamilton Ross should remain on deposit for the period pledged. Mr. Collery testified that, following the transfer of funds, there was no further necessity for him to post transactions across the Memorandum Accounts, as the funds were no longer held in Dublin. As far as Mr. Collery was concerned, from that time on, customers of Hamilton Ross had to deal with Mr. Furze directly, and Mr. Furze had to make the necessary arrangements to facilitate them from the Cayman Islands.

15-49 In July, 1997, when Mr. Furze died, Mr. Barry Benjamin assumed overall responsibility for the affairs of Hamilton Ross. Mr. Benjamin had had no prior involvement with the funds which had been held in Irish Intercontinental Bank. In early 1998, he contacted Mr. Collery to inquire whether Mr. Collery would assist him in reconciling the balances in the Cayman records with the closing balances on the Memorandum Accounts as of May, 1997. Mr. Collery testified that he became concerned that, if Mr. Benjamin was unable to give appropriate information to clients of Hamilton Ross, he, Mr. Collery, might be perceived as being culpable, and this might impact adversely on his reputation. It was for this reason, he stated, that he agreed that he would devote one week of his holidays to assisting Mr. Benjamin in reconciling the balances on the Memorandum Accounts with the bank balances in the Cayman Islands. This he did by compiling manual records in the Cayman Islands for the period from March, 1997, which was the closing date of the Memorandum Accounts, to 31st July, 1998. He conducted this exercise in the offices of Mr. Benjamin in the Cayman Islands, and he stated that, for his own protection, he took back with him to Ireland copies of the reconciliation and account details. It was these documents which he then deposited with Ms. Margaret Keogh, and which were ultimately produced to the Tribunal.

15-50 In the course of the exercise undertaken by Mr. Collery, Mr. Benjamin directed that debits should be made to each of the Memorandum Accounts in respect of legal fees incurred by Hamilton Ross. Mr. Collery did not know whether these fees arose in the context in the McCracken Tribunal, or this Tribunal, or both. Mr. Benjamin apportioned the total of the fees between the remaining Memorandum Accounts, and instructed Mr. Collery to debit those apportioned fees to each of the accounts. In the case of Mr. Foley's account, a sum of Stg.£5,000.00 was apportioned, and was debited to his Memorandum Account coded A/A40.

15-51 Mr. Foley testified that he gave no authority to any person to debit Stg.£5,000.00 from his funds in respect of legal fees incurred by Mr. Furze or Hamilton Ross. Nor was Mr. Collery aware of any authority from any other person or entity authorising Hamilton Ross to make deductions from their funds by way of recoupment of legal fees. It appears to the Tribunal that the deduction of monies from clients' funds by a bank or financial institution

without authority is a serious matter, and one which the regulatory authorities in the Cayman Islands may have to consider.

15-52 Mr. Collery did not inform the Tribunal of his visit to the Cayman Islands in August, 1998, on his return, although he was under a continuing obligation to inform the Tribunal of the identity of names of persons or entities which he remembered or which he discovered as being connected with the Ansbacher accounts. He brought to Ireland with him documents which contained the up-to-date balances on the Memorandum Accounts, and the names of certain persons and entities who were beneficiaries of Ansbacher accounts. In evidence, Mr. Collery accepted that the documentation that he brought back from the Cayman Islands was totally relevant to the inquiries then being conducted by the Tribunal. He did not disclose these documents, or furnish them to the Tribunal, but instead deposited them with Ms. Keogh for what he described as safe-keeping. Mr. Collery claimed that he required these documents to protect himself in the event that it was suggested that he was in any way responsible for the mishandling of clients' accounts. Whilst the Tribunal fully appreciates that Mr. Collery may have had some concerns regarding his own potential culpability, the Tribunal cannot accept that the production of these documents to the Tribunal, and the furnishing of information about the work that he had undertaken in the Cayman Islands in August, 1998, would have interfered with him making use of the documents or information, in the event that it was suggested that he was in any way responsible for the mishandling of clients' accounts or funds.

15-53 The Tribunal is satisfied that on 5th November, 1998, when Mr. Collery attributed or cross-referenced account code A/A40 to Mr. John Furze, he wilfully gave evidence to the Tribunal which was material to the Tribunal's inquiries and which he knew to be false or did not believe to be true. The Tribunal is further satisfied that, by omitting to inform the Tribunal of the information concerning the identity of persons or entities connected with the Ansbacher accounts, which he obtained on his visit to the Cayman Islands in August, 1998, Mr. Collery obstructed or hindered the Tribunal in the performance of its functions. The Tribunal is also satisfied that by the act of placing the documentation he brought back from the Cayman Islands in August, 1998, beyond the reach of the Tribunal, and into the custody of Ms. Keogh, Mr. Collery obstructed or hindered the Tribunal in the performance of its functions.

Payments received by Mr. Collery

15-54 From the late 1970s to 1986, Mr. Collery's work on the Memorandum Accounts formed part of the duties of his employment with Guinness & Mahon. After Mr. Traynor left Guinness & Mahon, Mr. Collery continued to operate the Memorandum Accounts on behalf of Mr. Traynor from within Guinness & Mahon, and was separately remunerated for this by Mr. Traynor/Ansbacher. Following Mr. Traynor's death in May, 1994, Mr.

Collery's role expanded and, in addition to keeping the Memorandum Accounts in respect of Hamilton Ross, he became the contact point in Ireland for customers of Hamilton Ross, and he was also available to deal with one account holder of Ansbacher if required.

15-55 Mr. Collery received his remuneration from 1986 by payments into an off-shore Memorandum Account coded A/A30. As of July, 1998, the balance standing to the credit of that account was approximately Stg.£363,000.00. During the currency of the account, a sum in the region of Stg.£400,000.00 had been lodged to it, and the net balance was accounted for by interest applications and withdrawals. With Mr. Collery's expanded role after Mr. Traynor's death, receipts to the account were substantially greater than they had previously been. In particular, on 28th February, 1995, Stg.£176,101.67 was lodged to the account. That lodgement was made following an apportionment and allocation made by Mr. Furze of profits of Hamilton Ross which had been held in a suspense account. In his evidence, Mr. Collery recounted that Mr. Furze had determined that the fairest way of applying the balance was to split it between Mr. Collery, and funds held for Mr. Traynor in the Poinciana Fund. According to Mr. Collery, the proceeds which were distributed by lodgement to his account were in recognition of the assistance which he had provided to Mr. Traynor and to Mr. Furze over the years. It appears to the Tribunal that in dealing with the distribution of profits which had accumulated in the suspense account, Mr. Furze effectively treated Mr. Collery and the late Mr. Traynor as equal partners.

15-56 Apart from his involvement in the Hamilton Ross accounts, Mr. Collery continued to act as an agent for Ansbacher Cayman after Mr. Furze had left that bank. Mr. Collery was paid a flat fee of Stg.£1,000.00 per month up to the commencement of the McCracken Tribunal. His sole function was to deal with the affairs of a single client of Ansbacher Cayman in this country, which had by far the largest deposits with the bank.

Central Tourist Holdings Limited

15-57 Mr. Foley also came to the attention of the Tribunal in his capacity as a director and shareholder of Central Tourist Holdings Limited, which was a Company of which Mr. John Byrne, Mr. William Clifford and the late Mr. Thomas Clifford were fellow directors and shareholders. Mr. Byrne and the Cliffords were also directors of Princes Investments Limited, which is referred to elsewhere in this part of the Report, and it will be recalled was the source of a lodgement of £260,000.00 to an Amiens account on 23rd July, 1987.

15-58 Central Tourist Holdings acquired and developed the Central Hotel and Ballroom in Ballybunion in 1972. The business did not prosper, and ultimately the premises was sold in 1986. There were insufficient funds to discharge the Company's debts, and it was Mr. Foley's understanding that

the Company Solicitor and the Accountants, Haughey Boland & Company, reached a settlement of the Company's liabilities with the Revenue Commissioners, and with Guinness & Mahon, who were the Company's bankers. The settlement was partially funded by the directors, including Mr. Foley, who contributed £5,000.00 each towards the payment of the Company's trade creditors, and £2,787.38 towards the Company's liabilities to the Revenue Commissioners.

15-59 It was the Company's borrowings from Guinness & Mahon that were the focus of the Tribunal's inquiries. In June, 1972, the Company borrowed Stg.£70,000.00 from Guinness & Mahon, which was drawn down in two tranches of Stg.£50,000.00 on 27th July, 1972, and Stg.£20,000.00 on 17th October, 1972. The initial facility letter for Stg.£75,000.00 was issued by Guinness & Mahon on 1st June, 1972, and was signed by Mr. John Byrne to signify the Company's acceptance of its terms. The loan was advanced in sterling but was converted into Irish pounds in February, 1979, following this Country's entry into the European Monetary Union and break with sterling. Interest was serviced on the loan in the early years, but from 1982, interest payments ceased to be made, interest was rolled-over, and the facility was increased each year to cover accrued interest. The loan was discharged on 4th September, 1985, when the debit balance stood at £135,510.68. There were three unusual aspects to the arrangements surrounding the loan.

15-60 From Guinness & Mahon's loan file, it is clear that at least four of the loan decision memoranda of the Bank's credit committee, which recorded its approval of the facility, described the loan as "*suitably secured*" or "*adequately secured*". The relevant loan decision memoranda were as follows:—

- (i) Memorandum dated 6th December, 1976 in which the loan was described as "*suitably secured*".
- (ii) Memorandum dated 14th December, 1977 in which the loan was also described as "*suitably secured*".
- (iii) Memorandum of December, 1983 in which it was observed that the loan was "*considered adequate as to security*".
- (iv) Memorandum of December, 1984 in which it was observed that "*the security may be taken as adequate*".

15-61 These descriptions of the security for the loan were formulae used by Mr. Traynor, and other officials of the Bank to signify that the loans were secured by backing deposits held in Guinness & Mahon in the name of Ansbacher Cayman and other off-shore subsidiaries. The Tribunal is satisfied from the evidence of Ms. Kells that, in addition to the security which the Bank held in the form of personal guarantees, the Bank had the benefit of a further security in the form of a lien over an off-shore deposit held by the Bank.

15-62 The loan was discharged on 4th September, 1985 with funds debited to an off-shore account designated Guinness Mahon Cayman Trust/College. The Tribunal traced the repayment of the loan to a debit of Stg.£106,836.62 from that off-shore account, the conversion of that sum to £133,579.32, and the lodgement of that sum, together with a smaller sum of £1,931.16 debited to Amiens account 08116008, to the Central Tourist Holdings loan account on 4th September, 1985. The accuracy of the tracing exercise undertaken by the Tribunal was confirmed by Ms. Kells in her evidence. It will be recalled that the Princes Investments loan was also discharged on the same day, 4th September, 1985, with sterling funds debited to the same off-shore account in Guinness & Mahon.

15-63 In common with the Princes Investments loan, fictitious loan account statements were manually generated by personnel in Guinness & Mahon after the Central Tourist Holdings loan was repaid, and Certificate of Account Balances were issued by Guinness & Mahon to Haughey Boland & Company over the signature of Mr. Pdraig Collery. Account statements were generated in October, 1985, November, 1985 and October, 1986: the latter account statement purported to record that Central Tourist Holdings was indebted to Guinness & Mahon in the sum of £149,605.18.

15-64 Mr. Foley testified that he became involved as a shareholder and director of Central Tourist Holdings following an approach made to him by the late Mr. William Clifford. He invested £5,000.00 in the business in 1972, and understood that each of the other three shareholders made an equivalent investment. Mr. Foley was not, on his evidence, involved in the purchase or financing of the hotel premises, but was aware that the acquisition costs were funded through borrowings from Guinness & Mahon. Whilst he knew that the Guinness & Mahon loan had been secured by personal guarantees, he maintained that he was entirely unaware that further backing security had been provided over an off-shore account. Mr. Foley observed, and the Tribunal accepts, that the loan was advanced and backing security put in place some years prior to the opening of Mr. Foley's own off-shore account in October, 1979.

15-65 Mr. Foley stated that he had no knowledge of the repayment of the loan from an off-shore deposit held in Guinness & Mahon in September, 1985, and that no monies had been applied to that transaction from his off-shore holdings. It was his understanding that the loan was dealt with in the course of the settlement of the Company's liabilities in 1986. Apart from the contribution which he made from his own resources of £7,787.58 towards the Company's debts, he had not been involved in the realisation of the Company's assets or the payment of its creditors, including Guinness & Mahon.

15-66 The Tribunal also heard evidence from Mr. John Byrne. He largely confirmed Mr. Foley's evidence regarding the structuring of the shareholding, the financing of the business and the manner in which the

affairs of the Company were wound-up. He recalled that the Company's borrowings had been arranged with Guinness & Mahon through Mr. Traynor who, at that time, was still a partner in Haughey Boland, the Company's auditors. Mr. Byrne recalled that the borrowing had been subject to personal guarantees, but he did not recall any arrangement being put in place for a backing deposit from Ansbacher Cayman (or Guinness Mahon Cayman Trust as it then was).

15-67 Mr. Byrne observed that, from the documentation provided to him by the Tribunal, he could find no evidence of a backing deposit being put in place in 1972, and that the first reference to the loan being “*suitably secured*” appeared in a Guinness & Mahon document dating from 1976. Mr. Byrne accepted that it appeared from the documents with which he had been furnished that the Company's loan had been discharged in September, 1985, from funds transferred from an off-shore account in Guinness & Mahon. However, he testified that he had no recollection of requesting or arranging that the Company's debt should be repaid by Ansbacher Cayman, but he assumed that Mr. Traynor, who had been a director of both Guinness & Mahon and Ansbacher Cayman, must have made those arrangements. Mr. Byrne nonetheless accepted that it was possible that the loan had been discharged from funds held by the Cayman Trust which he had set up in 1972.

15-68 In an effort to establish whether this was the position, Mr. Byrne had arranged for his Solicitors to make inquiries of the trustees of his Cayman Trust, who had informed his Solicitor that no deductions had been made out of those trust funds to meet the repayment of the Company's loan. The trustees also informed Mr. Byrne's Solicitor that the account in Guinness & Mahon from which the funds had been debited, which was designated Guinness Mahon Cayman Trust/College, signified that the funds held to the credit of that account were funds held by Guinness Mahon Cayman Trust on behalf of College Trustees, which was a Channel Islands subsidiary of Guinness & Mahon. Mr. Byrne had no knowledge whatsoever of College Trustees, and had had no dealings with that Company. In all of the circumstances, the clearing of the loan of £135,000.00 was declared by Mr. Byrne to be a “*mystery*” to him. Whatever view the trustees of Mr. Byrne's Cayman Trust may have had regarding this matter, the fact remains that the loan was discharged on 4th October, 1985, with funds debited to an Ansbacher account and the Tribunal is of the view that the probability is that the ultimate source of those funds was connected with the Cayman Trust established by Mr. Byrne.

15-69 The Tribunal also heard evidence from Mr. Paul Carty, then managing partner of Deloitte & Touche, Chartered Accountants. Mr. Carty had been the partner in Haughey Boland responsible for the preparation of accounts for the Company, and of a document, which he described as an approximate statement of affairs, on the winding-up of the Company's

business in 1986/1987. The last certified accounts for the Company were drawn up for the year ending 30th September, 1982.

15-70 Mr. Carty confirmed that by 1985/1986, the Company was in serious financial difficulties. He recalled that the directors were anxious to establish the extent of the Company's liabilities, and an approximate Statement of Affairs was prepared. Mr. Carty explained that this document, which contained a statement of the assets and liabilities of the Company, was based on information provided by the Directors. As the information was not verified by Haughey Boland, the document was described as an approximate Statement of Affairs, and was not certified by them as Auditors. In both October, 1985 and October, 1986, audit information was sought by Haughey Boland from Guinness & Mahon in relation to the Company's liabilities. On both occasions, even though there was no outstanding liability, Certificates of Balances were provided, certifying that the Company was indebted to Guinness & Mahon. The Certificates, which were issued over Mr. Collery's signature, certified that as of November, 1985, the Company was indebted to Guinness & Mahon in the sum of £135,510.00, and that as of October, 1986, the indebtedness was £149,665.00. Mr. Carty agreed that in reliance on the Certificates, the approximate Statement of Affairs would have included provision for liabilities to Guinness & Mahon amounting to £149,665.00.

15-71 Mr. Collery was the Accounts Manager in Guinness & Mahon in both 1985 and 1986. His evidence, which was confirmed by Ms. Kells, was that Guinness & Mahon received thousands of requests annually for confirmation of account balances. Certificates were issued on a standard printed form, and were prepared by an Accounts Clerk from information on the Bank's system. The fictitious loan account statements for the Company, which had been manually generated for October and November, 1985 and for October 1986, were within the Bank's system so that the Accounts Clerk, handling the requests, would have issued certificates in the ordinary course. It was the manual generation of the fictitious account statements which led to the issuing of the false certificates. The Tribunal considers it probable that the fictitious statements were generated on Mr. Traynor's instructions from within the Bank in 1985, and on his instructions, in all probability transmitted to Mr. Collery, from outside the Bank in 1986.

15-72 One of the purposes for which the approximate Statement of Affairs was drawn up was for a submission to the Revenue Commissioners in connection with the settlement of the Company's tax liabilities. By conveying an erroneous impression as to the extent to the Company's liabilities, based on a non-existent debt of £149,665.00 to Guinness & Mahon, it is probable that a more favourable settlement with the Revenue Commissioners was achieved.

Conclusions

15-73 Mr. Denis Foley by reason of having been a T.D and at various times either Chairman or Vice Chairman of the Public Accounts Committee, was a holder of Public Office. He therefore came within the ambit of the Tribunal's inquiries in accordance with Term of Reference (c).

15-74 Payments were made from money held in the Ansbacher Accounts referred to at paragraph (b) of the Tribunal's Terms of Reference to Mr. Foley as follows:—

- (i) £20,000.00 on 13th April, 1989.
- (ii) £10,000.00 on 16th June, 1993.
- (iii) £50,000.00 in September, 1995.
- (iv) £135,000.00 to discharge borrowings of Central Tourist Holdings Limited to Guinness & Mahon, for which Mr. Foley was liable on foot of a personal guarantee.

15-75 The Tribunal accepts the evidence of Mr. Foley that the source of the £50,000.00, which he initially gave to Mr. Traynor to invest off-shore was made up of £30,000.00, which he had accumulated since 1965 from commission payments for bands booked by him in the Mount Brandon Hotel and the Central Ballroom, and £20,000.00, which he had received by way of contributions towards his election expenses for the General Election of 1977, of which approximately £14,000.00 was received from members of his own family.

15-76 The Tribunal accepts the evidence of Mr. Foley that the source of the further £24,005.95 which was added to his off-shore investment represented funds which Mr. Foley had also accumulated from his personal resources.

15-77 The Tribunal is satisfied that Mr. Foley was an Ansbacher account holder and was the beneficiary of accounts A/A40 and A/A49, which were ultimately consolidated in a single account A/A40.

15-78 The Tribunal is further satisfied that Mr. Foley was aware, from at least August, 1997, when the Report of the McCracken Tribunal was published, that he was an Ansbacher account holder.

15-79 The Tribunal is of the view that it is likely that the ultimate source of the funds which were drawn from an Ansbacher account in Guinness & Mahon, and used to discharge the borrowings of Central Tourist Holdings Limited on 4th September, 1985, was connected with the Cayman Trust set up by Mr. John Byrne. The repayment of the loan represented a benefit conferred on Mr. Foley, namely, the discharge of borrowings for which he had a secondary liability on foot of his personal guarantee, and accordingly

constituted a payment to Mr. Foley by Mr. Byrne within the meaning of paragraph (c) of the Tribunal's Terms of Reference. Whether Mr. Foley was aware of this or not, there is no evidence that he did any act in the course of his public office to confer any benefit on Mr. Byrne, or was directed by Mr. Byrne to do any such act.

15-80 Mr. Padraig Collery lied under Oath at a hearing of the Tribunal on 5th November, 1998 when he cross-referenced or attributed the account coded A/A40 to John Furze.

15-81 On 5th November, 1998, when Mr. Padraig Collery attributed or cross-referenced account code A/A40 to John Furze, he wilfully gave evidence to the Tribunal which was material to the inquiry which the Tribunal was making, and which he knew to be false or did not believe to be true.

15-82 By omitting to inform the Tribunal of the information concerning the identity of entities or names connected with the Ansbacher Accounts, which he obtained on his visit to the Cayman Islands in August, 1998, Mr. Padraig Collery obstructed or hindered the Tribunal in the performance of its functions, namely inquiring into the overall operation of the Ansbacher accounts, and in particular with respect to whether any payment was made from the Ansbacher accounts to any holder of public office.

15-83 By the act of placing the documentation which he brought back from the Cayman Islands in August, 1998 beyond the reach of the Tribunal, and into the custody of Ms. Margaret Keogh, Mr. Padraig Collery further obstructed or hindered the Tribunal in the performance of its functions, namely inquiring into the overall operation of the Ansbacher accounts, with particular regard to whether any payment was made from the Ansbacher accounts to any holder of public office.

15-84 The records of Guinness & Mahon Limited were falsified in October/November, 1995 and October/November, 1996 to give the impression that a loan made by Guinness & Mahon to Central Tourist Holdings Limited continued to be outstanding, notwithstanding that it had been discharged in full on 4th September, 1995. Mr. Padraig Collery had a role in creating this impression.

15-85 In making available to the Tribunal the documents furnished to her by Mr. Padraig Collery, Ms. Margaret Keogh acted in a manner that was correct and courageous, and instrumental in enabling the Tribunal to obtain material evidence that otherwise would, in all probability, never have become available. Whilst it could be stated that, having taken personal and legal advice, Ms. Keogh was under a duty in this regard, it is noted elsewhere in this part of the Report that many persons in possession of material information elected to remain silent until confronted with evidence that otherwise became available to the Tribunal; in this context, and having

regard to all the circumstances of her involvement, Ms. Keogh's actions are worthy of commendation.

MR. HUGH COVENEY

15-86 Mr. Hugh Coveney also came to the attention of the Tribunal by reason of the response of Irish Permanent Plc, as the entity that had acquired Guinness & Mahon, to Tribunal queries. In the case of Mr. Coveney, the relevant Term of Reference was (b), which required the Tribunal to inquire into the source of any money held in the Ansbacher accounts for the benefit of any person who holds or has held Ministerial office.

15-87 Mr. Coveney's involvement in politics, and in particular his holding of Ministerial office, came comparatively late in his professional career as a highly successful Quantity Surveyor. Following successful participation in Cork Local Elections in 1979, he became Lord Mayor of Cork in 1982, and was first elected to Dáil Éireann in June, 1981. He was appointed Minister for Defence in 1994, some years subsequent to the latter of his two periods of involvement with the Ansbacher accounts. Prior to his tragic and untimely death on 15th March, 1998, Mr. Coveney had afforded a considerable measure of cooperation to the Tribunal's inquiries in the course of its private investigations, and that cooperation was thereafter also afforded by his Solicitor, Mr. Frank O'Flynn, who sought relevant information from members of the Coveney family and associates of Mr. Coveney, in addition to procuring and examining a considerable volume of documentation. Mr. O'Flynn gave evidence at public sittings in relation to the substance of Mr. Coveney's dealings, as also did Ms. Sandra Kells.

15-88 Mr. Coveney's involvement may be divided into two parts, firstly his involvement with Guinness Mahon off-shore operations in the Channel Islands and Cayman Islands in the 1970s, and secondly, after an interval of some years, his dealings with the Ansbacher Cayman operation in the 1980s in connection with a commercial venture based in the United States.

15-89 Regarding the former, although Mr. Coveney had furnished the Tribunal with quite extensive details of the American venture in the 1980s, the position with regard to his earlier involvement with the Ansbacher accounts in the 1980s proved more difficult to detail. Through the efforts of Mr. O'Flynn, other members of the Coveney family, Ms. Kells and the Irish Life & Permanent Plc Group Chief Legal Officer, a broad picture of what had transpired emerged, which has proved sufficient for Tribunal purposes.

15-90 Mr. O'Flynn made clear that his inquiries had been hampered by a shortage of detailed documentation, and that on some matters of detail he had had to depend on informed guesswork from family members. He had written on a number of occasions to Mr. Pádraig Collery, eventually eliciting only a response from Mr. Collery's Solicitors to the effect that such

documents as were held by Mr. Coltery were held not in his own capacity, but on behalf of Ansbacher Cayman Bank, so that these therefore could not be disclosed, and matters should if desired be taken up directly with the Bank at Georgetown, Grand Cayman. Two letters to the Bank from Mr. O'Flynn were written, making clear his capacity and instructions, and seeking relevant information. A response was received on 12th January, 2000 from Mr. Bryan Bothwell, Managing Director, to the effect that “*the Bank is not in a position to provide you with any information unless required to do so by Order of the Cayman Islands’ Court*”. This Mr. O'Flynn understandably viewed as an extraordinary response on the part of the Bank from whom information had been sought on behalf of a customer.

15-91 What seems clear is that a United States Dollar Deposit Account was held by Mr. Coveney in the coded form of “*Guinness Mahon Cayman Trust Limited HC*” between 1976 and late December, 1979. There had been an earlier record referring to a small investment of £100.00 on 9th July, 1973 to an account entitled Guinness & Mahon Jersey Coveney Trust which was then withdrawn on 18th September, 1973. Mr. O'Flynn took the view that this may have been intended as an initial trust fund for a trust in respect of which it was then decided not to proceed, and he had ascertained that no member of the Coveney family ever received any benefit from any such trust, and that neither in the Bank records, family recollections nor knowledge of their professional advisers was there any reference or indication in relation to an actual trust. However, although the Group Chief Legal Officer of Irish Life & Permanent Plc acknowledged in correspondence to Mr. O'Flynn that some entries initially thought referable to Mr. Coveney in fact related to another customer, Ms. Kells did testify and produce documentation in relation to a number of entries pertaining to Mr. Coveney being passed across general accounts within the Guinness & Mahon aegis in both the Channel Islands and the Cayman Islands on occasions prior to the opening of the US Dollar Deposit Account. These accounts included the Guinness Mahon Jersey Trust general special account, the Guinness & Mahon Jersey Trust Limited Contra Account, the Guinness & Mahon Channel Islands Limited Sundry Sub-Company Account and the Guinness Mahon Cayman Trust Limited Sundry Sub-Company Account. These transactions occurred over the years subsequent to 1973, but prior to the opening of the US Dollar Deposit Account, and involved relatively substantial amounts.

15-92 Regarding the US Dollar Account, Mr. O'Flynn informed the Tribunal that whilst there had nominally been two separate such accounts involved, what had happened was that one was closed in April 1978, and the other then almost immediately opened with the same sum of money, which was \$198,308.03. During the relevant period Guinness Mahon Cayman Trust was engaged on Mr. Coveney's behalf in trading in Irish Government gilts, and the sum of \$198,308.03 transferred between Mr. Coveney's two accounts represented the proceeds from the final disposal of such Irish Government gilts then held for the account of Mr. Coveney. As to the

sources of the lodgements made, Mr. O'Flynn confirmed that Mr. Coveney would then have been in receipt of substantial income as a successful Quantity Surveyor, apart from his trading in Government Securities. He had also been a renowned international yachtsman during the period, and a substantial amount of funds to his credit off-shore related to the sale of a racing yacht, "*Silver Apple*", which was sold by Mr. Coveney in Newport, USA, in 1975. It was believed by the Coveney family that the sale price had been \$125,000.00. It also appeared that the closure of Mr. Coveney's US Dollar Deposit Account coincided with it being debited with two large payments to Quay Worlds Limited, of Southampton, England, which were referable to the chartering of a further racing yacht "*Golden Apple of the Sun*" by Mr. Coveney. This was approximately two years prior to Mr. Coveney's first emergence in national politics, and no further involvement in off-shore accounts on his part was apparent.

15-93 The second relevant involvement on the part of Mr. Coveney arose in 1980, when he and two friends became involved in a large mobile home park property investment near Phoenix, Arizona, USA. Eventually a group of businessmen, many of whom were associated with Guinness & Mahon, became involved; it was intended to adopt a tax strategy whereby three American investors would subscribe 50% of the investment, with the balance being provided by non-Americans operating from an off-shore location. Under the intended structure, an entity known as the Lynbrett Trust was to be established, with Guinness Mahon Cayman Trust becoming trustees, and the beneficiaries being five Cayman Islands companies; Mr. Coveney was to be entitled to acquire one of these companies, Eclipse Holdings Limited. The venture was to be financed by Allied Irish Banks of New York lending \$2.775 million to Lynbrett Trust, which in turn was to loan this sum to the American resort company which was responsible for carrying out the development.

15-94 As security for the Allied Irish Banks loan, joint and several guarantees were required to be entered into by the five Irish participants, and Mr. Coveney executed his guarantee on 23rd June, 1981 at the Allied Irish Banks' office at 66 South Mall, Cork. As additional finance towards the initial costs of the Development, the Lynbrett Trust was also required to provide a further \$950,000.00 and the share of this to be borne by Mr. Coveney amounted to \$212,500.00. Mr. Coveney negotiated a venture capital arrangement with Mr. Desmond Traynor on behalf of Ansbacher Cayman in this regard, and the finance was provided by a further loan facility from Ansbacher Cayman to Eclipse Holdings Limited. Mr. Coveney's option to acquire all the shares in this company was provided in exchange for a personal guarantee in the sum of Stg.£50,000.00 of that company's borrowings. This option did not become exercisable until Eclipse Holdings Limited had recouped all of its borrowings out of its share of the profits of the Arizona venture.

15-95 Far from the substantial profits expected, the entire venture proved to be a financial disaster, and in consequence Mr. Coveney sustained very considerable losses. Ansbacher Cayman called upon him for payment of his guarantee, by letter of Mr. J. Furze dated 14th August, 1987, following which Mr. Coveney paid Stg.£52,699.71 in full settlement, including incidental costs. Allied Irish Banks in New York also called in its guarantee: litigation ensued, which was eventually compromised, and the ultimate payment by Mr. Coveney to the Bank was heightened by the inability of one of the Irish partners to pay his share, resulting in pro rata increases for Mr. Coveney and the others. Accordingly, an initial settlement liability of approximately \$400,000.00 became ultimately almost \$500,000.00.

15-96 In the course of settling his liability to Ansbacher Cayman, Mr. Coveney was required to sell 50,000 shares in Arran Energy. On receiving the net proceeds cheque in Irish pounds from stockbrokers Goodbody James Capel, Mr. Coveney endorsed this and sent it to Mr. Desmond Traynor, along with a covering letter, for transmission to Ansbacher Cayman. In the course of such transmission, the cheque was lodged to an Amiens Securities Limited Account, Number 10407006. Throughout the period of this American venture, Mr. Coveney's involvement with Ansbacher Cayman was an entirely commercial one, involving a loan account rather than a deposit account, and it appears to have concluded in 1987.

15-97 Regarding both periods of involvement, it seems unnecessary to detail all the documentation that was produced by Ms. Kells and Mr. O'Flynn. Whilst it is the case that his latter involvement in the American venture involved a loan rather than a deposit account in the Cayman Islands, what emerges is plainly the holding of substantial investment funds off-shore at a period where an Irish resident, such as Mr. Coveney, would have required exchange control approval from the Central Bank to conduct the dealings that were undertaken. In such matters as the coded account designations, the passing of account entries across general accounts of off-shore subsidiaries of Guinness & Mahon, and the nature of the related communications between Mr. Ru Leonard at the Dublin end and Mr. John Furze in Grand Cayman, what took place was broadly characteristic of the services accorded to other clients of the Bank with related transactions both in Dublin and off-shore.

Conclusions

15-98 The evidence establishes that Mr. Coveney was personally the holder of Ansbacher accounts in the instances referred to, and that the sources of the funds there held on deposit were portions of his professional earnings, the proceeds of trading in securities, and the proceeds of the disposal of a racing yacht. It is acknowledged that Mr. Coveney's involvement with Ansbacher Cayman commenced prior to his involvement in national politics in Ireland, and many years before he attained Ministerial Office; it is further acknowledged that both in his own lifetime, and thereafter

through his solicitors and family, he afforded co-operation and assistance with Tribunal inquiries, which was helpful to the Tribunal in addressing the relevant banking operations in more general terms. The response of the Bank in Cayman to the request for information properly made by Mr. O'Flynn on behalf of the Coveney family was entirely consistent with its level of cooperation with the Tribunal, as noted elsewhere in this Part of the Report.

MR. PETER SUTHERLAND

15-99 Mr. Peter Sutherland's involvement with the Tribunal arose in the context of the comparatively narrow focus established by Term of Reference (c), which for purposes of any possible connection on his part required the Tribunal to inquire whether any payment was made from the Ansbacher accounts to any person who has held public office.

15-100 In the course of Mr. Sutherland's legal career, prior to his later appointments with international agencies and multinational corporations, he held the position of Attorney General in successive coalition Governments headed by Dr. Garrett Fitzgerald in different periods between 1982 and 1984 inclusive. The position of the Attorney General under the Irish Constitution as legal adviser to the Government self-evidently constitutes its incumbents as holders of public office.

15-101 The concept of "*payment*" in Term of Reference (c) has been interpreted by the Tribunal as incorporating a benefit in kind in addition to payment of money, with a benefit in kind including the provision of a banking security, where that security consists of an off-shore deposit of funds connected with the Ansbacher accounts. Accordingly, Term of Reference (c) does not countenance or address situations in which public office holders are sources or holders of Ansbacher accounts, but is concerned only with whether or not any such individuals actually derived payments in the extended interpretation of that word from such accounts. Nonetheless, from all the information available to the Tribunal, including what was conveyed by his Solicitor in the course of submissions, it would appear to the Tribunal that Mr. Sutherland was not such a source or holder of an Ansbacher account.

15-102 The evidence heard in relation to Mr. Sutherland's possible involvement was quite brief but, having regard both to the incomplete and inconclusive nature of available documentation, and to material witnesses being either deceased or uncertain in some matters of memory of events going back to 1976, it is desirable that what transpired be summarised with some reasonable measure of detail.

15-103 In or about June, 1976, Mr. Sutherland found himself in need of bridging finance in the course of moving house in Dublin from Foxrock to Blackrock. Having just purchased his new home for £37,000.00, and

expecting to realise approximately £20,000.00 for his previous one, he indicated his requirement to Mr. Ru Leonard (since deceased), Head of the Accounts Department of Guinness & Mahon, with whom he had become acquainted in the course of acting as a Barrister in litigation on behalf of the Bank. This was not the type of lending that was normally undertaken by Guinness & Mahon as a Merchant Bank, and Mr. Leonard was not in a position to grant the request himself, but he conveyed to Mr. Sutherland that he thought it likely that the Bank would accommodate him. Mr. Leonard then contacted Mr. Maurice O'Kelly, one of the Joint Managing Directors of the Bank, on this basis, indicating that the immediate request was for £5,000.00 in respect of the deposit on the newly purchased home. Matters then moved very quickly over the next few days: a loan decision memorandum was prepared, alluding to the intended security consisting of undertakings by Mr. Sutherland's Solicitors to hold the deeds of the new premises to the Bank's order on completion, and to lodge the proceeds of sale of the old premises in due course; the Solicitors, Messrs Patrick J Kevans & Company, confirmed the former of the undertakings by letter, and the Bank, by a facility letter dated 14th June, 1976, confirmed agreement to advance £37,000.00 for the required purpose, noting the undertaking in relation to the new premises, and requiring that the further undertaking in regard to the old premises be provided. Whilst the funds advanced were expressed to be repayable on demand, the letter stated that repayment was to be effected not later than 11th December, 1976.

15-104 As to the sequence of events in regard to the loan, the proceeds of sale of the Foxrock house were duly transferred to the Bank in reduction of the loan. However, the intended course on the part of Mr. Sutherland of making repayment in accordance with the facility letter in December, 1976, and substituting long-term mortgage finance from the Irish Permanent Building Society in respect of the outstanding balance, did not come about, which Mr. Sutherland in evidence attributed to having been less than attentive to his financial affairs. Accordingly, it became necessary to extend the term of the facility on a number of occasions, finally restructuring it as a personal loan rather than as the bridging arrangement initially agreed, until it was repaid in June, 1980, and the Solicitors' undertaking confirmed as discharged. None of the correspondence between the Bank and Mr. Sutherland's Solicitors referred to any security being held by the Bank other than the undertakings referred to.

15-105 The circumstances in which the loan arrangement came to the attention of the Tribunal were as a result of its request to Irish Life & Permanent Plc, who had acquired the entity formerly known as Guinness & Mahon, for any documentation connected with any form of back to back borrowing. Part of the responses was to make the Tribunal aware of Mr. Sutherland's loan file which, apart from the facility letter, statements of account and the like, also contained a measure of additional and internal documentation suggesting that, over and above the Solicitors undertakings

referred to, the Bank appeared to have derived additional comfort or security from funds separately held on deposit with it.

15-106 The earliest in time of such documents on the loan file was a single page statement of a Call Deposit Account with Guinness & Mahon in the name of Guinness Mahon Channel Islands “P3” with an address given as that of Guinness Mahon Channel Islands, at St Peter Port, Guernsey, Channel Islands, opened on 31st March, 1976. This appeared to record the opening of that account with a lodgement of £8,396.81 plus some entries for additional lodgements, interest and a withdrawal, giving rise to a credit balance of £12,298.71 on 31st December, 1976.

15-107 Next in time was a memorandum sent by Mr. Leonard to Mr. O’Kelly at the time of Mr. Sutherland’s initial approach on 10th June, 1976. After indicating the facility sought, some details of the houses involved, the likely undertakings required, and the intention that longer term mortgage financing would be sought, Mr. Leonard went on to state that he had indicated to Mr. Sutherland the likelihood of a favourable response, “*particularly in the knowledge of his other assets with us which he referred to briefly*”.

15-108 When the initial term of the bridging loan had passed without repayment, Mr. Pat O’Dwyer, the Bank’s Loan Officer, pointed this out in a memorandum to Mr. Leonard, and sought instructions as to any extension that might be required, and also for confirmation that the position was “*suitably secured*”. Mr. Leonard replied on the same page, stating that there was approximately £12,000.00 on deposit account then, but that he thought Mr. O’Dwyer would find that he had a Solicitors’ undertaking, as this was a normal bridging situation. This memorandum was dated 7th January, 1977, and handwritten in what would seem to have been Mr. Leonard’s writing over the half of the document used by him was a circled reference to the designation “P3”.

15-109 Later that month, on 27th January, 1977, Mr. Leonard wrote to Mr. Sutherland, referring to his recent visit, and indicating that it would be important for him to call to see Mr. Leonard to discuss his financial affairs. He also stated that perhaps Mr. Sutherland could arrange to see Mr. Don Reid beforehand, and that he Mr. Leonard would be happy to accompany Mr. Sutherland to that meeting if he so wished.

15-110 On the same date, Mr. Leonard sent a note to Mr. O’Dwyer referring to the latter’s recent memorandum, and furnishing a copy of his letter to Mr. Sutherland. He stated that there was a deposit of £12,000.00 odd, and depending on the outcome of the proposed meeting with Mr. Reid, the deposit would be increased to cover the borrowings, or alternatively long-term finance would be taken up elsewhere instead. The note concluded with another reference to the Solicitors’ undertaking, and

the observation that “*in any event, this client is undoubted for the present exposure*”. Presumably on foot of this, in the schedule of loans falling due in or about December, 1976, the reference to Mr. Sutherland was to the effect that a “*suitably secured situation will exist within the next day or so. I propose to extend for a period of one year when this happens*”.

15-111 The next material document on the loan file was a further letter from Mr. Leonard to Mr. Sutherland, dated 12th April, 1977, advising that £2,897.10 was the amount involved in their discussion the previous Thursday, referring to his understanding that Mr. Sutherland was then arranging to replace the bridging loan with long term finance, and stating that the balance owed as of the end of the previous month was £19,543.25. Again, Mr. Leonard sent Mr. O’Dwyer a copy of that letter on the same day, which he described in a short memorandum as self-explanatory, stating that he expected the account to be cleared in the next few weeks. He noted in conclusion that “*hypothecated funds at present total in excess of £15,000.00*”.

15-112 Matters did not apparently resolve as envisaged, since Mr. O’Dwyer sought instructions on 7th June, 1977 from Mr. Leonard as to whether he should take any action in relation to obtaining repayment, in response to which Mr. Leonard informed him that he had contacted Mr. Sutherland with a view to seeing him urgently to regularise the position, to which Mr. Sutherland had confirmed he would contact Mr. Reid and revert to Mr. Leonard.

15-113 Following further discussion with Mr. Leonard, Mr. O’Dwyer noted that it had been agreed to extend the facility on a “*suitably secured*” basis to mature on 30th June, 1978. Further extensions were then granted, with the facility now being designated as a personal loan, and further references to “*suitably secured*” from Mr. O’Dwyer’s perspective, in addition to a reference to “*stock exchange securities being lodged if requested*”, until the loan was repaid and the undertaking discharged in 1980.

15-114 The foregoing documents and some others were produced in evidence by Ms. Sandra Kells, whose invaluable assistance to the Tribunal arising out of her financial role with Guinness & Mahon and latterly Irish Life & Permanent Plc has already been noted. In the course of her evidence, she stated that, having regard to the reference to “*his other assets with us*”, she had examined the bank files and there was no record of any deposit account in the name of Mr. Sutherland with the Bank in 1976, nor any record of the Bank holding any other assets in Mr. Sutherland’s name. She also confirmed earlier evidence from herself and other witnesses that the basis of usage of the term “*suitably secured*” was to describe a situation in which borrowing from the Bank was secured or backed by an off-shore deposit, and that in the generality of such instances there would

be no other physical documentation on the Bank's file indicating the existence or nature of the backing deposit.

15-115 At the time of Mr. Sutherland's bridging loan, Mr. Leonard fulfilled the role subsequently undertaken by Mr. Padraig Collery in relation to the administration and recording of entries on off-shore accounts, but Mr. O'Dwyer would have had no involvement in these matters. From the handwritten reference to "P3" on the memorandum of 7th January, 1977 between Mr. O'Dwyer and Mr. Leonard, Ms.. Kells agreed that this seemed to be a cross-reference to the Channel Islands deposit account bearing that reference, the first page of which was also on the loan file; the balance there set forth in turn appeared consistent with Mr. Leonard's response to Mr. O'Dwyer that there was approximately £12,000.00 on deposit.

15-116 Ms.. Kells also agreed that, whilst references were made to "*suitably secured*" by Mr. O'Dwyer, who had no direct involvement with off-shore deposits, the specific reference by Mr. Leonard to "*hypothecated funds at present total in excess of £15,000.00*" was one that was quite open, employed no coding, and that such a course was not at all characteristic of the manner in which the Bank addressed "*suitably secured*" cases. In earlier evidence, she had referred to situations in which borrowing was secured openly and properly by a cash-backed security, in which case an explicit reference in Bank documentation would be expected.

15-117 In his evidence, Mr. Peter Sutherland confirmed that he had cooperated with the Tribunal by directing the Bank to make all documentation available, and by having his Solicitor undertake extensive inquiries and travel to procure further documentation. He recalled having approached Mr. Leonard for bridging finance in June, 1976, having come to know him in the course of the previous two years through acting as Barrister for the Bank, but stated that after the considerable lapse of time he could not recall all the details of what transpired then between them. Having recently been furnished by the Tribunal with a copy of Mr. Leonard's memorandum to Mr. O'Kelly of 10th June, 1976, with its reference to other assets held by him with the Bank, he stated that he had no knowledge of any such assets then held by him, and understood that searches conducted by the Bank confirmed that there were no records of accounts in his name, or assets held on his behalf.

15-118 Confirming the terms of the loan facility, he recalled his Solicitor telling him at the time that the security provided by the undertakings on the two properties was more than sufficient to cover the loan, and in that context he found the whole matter of additional security surprising. The overall loan was promptly reduced to approximately £19,000.00, by applying the proceeds of sale of his Foxrock home, and the balance due remained in that approximate vicinity until further reductions and repayment in 1980.

Throughout the entire period, it was Mr. Sutherland's understanding that his Solicitors' undertaking was the full extent of the security held, and if the Bank was relying on any other security, he was unaware of it and had no knowledge of it until the Tribunal brought the internal Guinness & Mahon documentation to his attention. This applied also to all documentary references to "*suitably secured*", and Mr. Sutherland said he was utterly unfamiliar with how the Bank managed its affairs, or designated its different accounts.

15-119 As to the page from the Guinness & Mahon Channel Islands "P3" account, and the handwritten reference to "P3" on the memorandum between Mr. Leonard and Mr. O'Dwyer, Mr. Sutherland stated that he had no knowledge of that account, or how it came to be associated with his bridging loan. He could only speculate that it must have been connected with funds held in a trust established by his elderly Spanish father-in-law, who had in the mid-1970s discussed with him the possibility of establishing a trust for members of his family. Mr. Sutherland then mentioned this to Mr. Leonard, who indicated that the Bank might be of assistance, and on foot of this it appeared the Bank consulted Mr. Don Reid, then the Tax Partner in Messrs Stokes Kennedy Crowley. This resulted in the relevant papers being sent by Guinness & Mahon to his father-in-law Mr. Cabria, who executed and returned them. A letter of wishes in English was also signed by Mr. Cabria, and Mr. Sutherland distinctly recalled seeing a copy of that letter in the presence of Mr. Reid, but could not recall seeing or dealing in any way with other trust documentation. Mr. Reid was familiar with these matters.

15-120 It was Mr. Sutherland's understanding that this trust was established in the Channel Islands, and in an effort to assist Tribunal inquiries, he had requested Mr. Cabria's Spanish lawyers to make available any relevant documentation, as a result of which the Tribunal had been furnished with a copy of a discretionary settlement dated 8th January, 1980, between John Andrew Furze and Guinness Mahon Cayman Trust Limited, and a letter of wishes from Mr. Furze dated 8th November, 1982. This was not the letter of wishes signed by Mr. Cabria in the mid-1970s, but Mr. Sutherland believed it contained similar requirements.

15-121 Mr. Sutherland had also initiated inquiries through his Solicitor Mr. Bryan Strahan to locate any documentation that might have survived relating to the original trust from the Channel Islands, but Mr. Strahan had been informed by a former Director of the Bank's operation in Guernsey that all such records or documents relating to trusts or accounts established in the mid-1970s had been destroyed a considerable time previously.

15-122 As to the correspondence from Mr. Leonard to him that had been produced, Mr. Sutherland said that he did not recall the circumstances in which these letters had been written. Neither did he recall meeting Mr. Reid

during the period of the loan, and would have had no reason to do so, since Mr. Reid had not at that time been his financial adviser, and had no connection with the bridging loan, only having been involved in the setting up of the Cabria trust. What did appear clear from these letters was that Mr. Leonard was anxious that the loan should be repaid, or replaced by mortgage finance, and Mr. Sutherland had already acknowledged that he had been slower than intended in addressing the matter. The eventual confirmation from the Bank in 1980 that the Solicitors' undertaking had been discharged was consistent with the true nature of the loan and the security provided.

15-123 As to any involvement with Mr. Reid during the loan period, Mr. Sutherland said this was initiated by the Bank in response to his inquiry of Mr. Leonard with regard to the finances of his wife's family. The Bank had suggested a discussion with Mr. Reid, and when this ensued, in the presence, Mr. Sutherland was sure, of Mr. Leonard, although he could not remember the meeting, Mr. Reid discussed the issue of setting up a trust and many related considerations, including the absence of a double taxation treaty between Ireland and Spain, when tax would be paid, and at what rate. Although Mr. Reid was not then Mr. Sutherland's tax or accountancy adviser, he had assumed that role at a later date in the 1980s, which resulted from their initial dealings regarding the trust. It accordingly seemed that Mr. Leonard's reference to Mr. Reid should be viewed in this context.

15-124 Likewise Mr. Sutherland acknowledged that when Mr. O'Dwyer noted that "*a suitably secured situation will exist within the next day or so*", proposing to extend the loan for a year when that happened, it seemed he was under the impression that he was going to receive some confirmation about some backing being in place.

15-125 Regarding the date of the setting up of the Cabria trust, Mr. Sutherland stated that he had been unable to ascertain this precisely, but he was sure it was in or around the time of commencement of the P3 deposit account, which was in April of 1976. This account could have been referred to at the time when he was seeking bridging finance: his father-in-law had helped him at various stages, and would no doubt have also helped in this regard, but nobody had a recollection of that being the case. Mr. Sutherland agreed that the references to Mr. Reid in bank correspondence and memoranda may effectively have amounted to references to his father-in-law, as the only context in which Mr. Leonard would have been aware of Mr. Reid in circumstances concerning Mr. Sutherland; accordingly, Mr. Sutherland felt that it may well have been the case that there had been a discussion at the time of seeking bridging finance to the effect that the funds of his father-in-law were there in the background as an element of additional comfort to the Bank.

15-126 When Mr. Leonard had informed Mr. Sutherland in his letter to him of 12th April, 1977 that £2,897.10 was the amount in their recent discussion, Mr. Sutherland agreed that it could well have been the explanation that this sum, when added to the amount lodged in the P3 account, amounted in total to approximately £15,000.00 of additional security; he could not recall this, but the facts were consistent with that interpretation.

15-127 Mr. Don Reid was at the time of these events a Tax Partner with Stokes Kennedy Crowley. He stated that he was not consulted and did not advise either party in relation to the bridging loan advanced by Guinness & Mahon to Mr. Sutherland, and knew nothing of its terms, including any aspects of security, save that the loan was made and repaid with interest. At no time did he meet Mr. Leonard concerning Mr. Sutherland's affairs, nor did he ever meet Mr. Leonard and Mr. Sutherland together. In any event, it would have been difficult to conceive what advice he could have given in regard to the bridging loan, save for aspects of tax deductibility in relation to interest paid. It was only in the late 1980s that he first acted on behalf of Mr. Sutherland as his financial adviser.

15-128 As to the Cabria discretionary trust, Mr. Reid stated that he had had no direct involvement in its formation. He believed that his advice was sought by Mr. Leonard on behalf of the Bank as to the type of arrangement that might best meet the needs of the Cabria family, and did then recommend the use of a discretionary trust, and that it should be located in a low tax off-shore jurisdiction.

15-129 Mr. Reid had no recollection of seeing the trust deed, but did advise the Bank of the need to get a clear statement of the settlor's wishes, particularly given possible language difficulties. He believed that he saw such a letter, which appeared sufficiently clear, and had recently seen a letter of 8th November, 1982, signed by the late Mr. Furze which, whilst he could not say it was identical, seemed of like effect.

15-130 He had no knowledge or involvement in regard to any movement of the trust to Ansbacher Cayman. His involvement had commenced with Mr. Leonard coming to see him in relation to the matter, and this arose out of his prior association as tax adviser to Guinness & Mahon. He was made aware of the family connection with Mr. Sutherland, but he saw Mr. Leonard on his own. His role was to advise in relation to the Bank's own affairs, but there were occasions when he became involved in the context of the particular situation of a customer of the Bank, although it was not a question of his services being made available by the Bank to customers. He did not in general terms advise the Bank regarding the setting up of trusts off-shore. In the present instance, he had advised as to the manner in which the Bank should go about meeting the requirements of the Cabria family, and the Bank then went the route of setting up a trust in the Channel Islands. This was one of very few such dealings that he had had with Mr.

Leonard, and its somewhat unusual nature of involving a Spanish client had contributed to its staying in his memory.

15-131 The content of a Declaration by Mr. Cabria's son, which had been furnished to the Tribunal by Mr. Sutherland through his Solicitor, was brought to Mr. Reid's attention. In this, Mr. Javier Cabria referred to having a central role in the business affairs of his parents due to their advanced ages. He went on to recall that his father had during the 1970s established a trust for the benefit of all members of his family; when seeking to create the trust he had sought legal advice from his son-in-law, Mr. Sutherland, who had suggested that the arrangements be made through a bank in Dublin. He had seen his father sign relevant documents, and confirmed that the trust and funds in it remained under his father's control until those funds were fully distributed; no part of these funds had been distributed to anyone other than members of the Cabria family, and he himself confirmed having been a substantial beneficiary.

15-132 Mr. Reid confirmed that this was the matter in relation to which he had advised, that an account in the name of Guinness Mahon Channel Islands P3 appeared to have been set up in 1976, and that a page of that account seemed to have found its way into Mr. Sutherland's loan file. Reference was further made to a document described as a Discretionary Settlement, between Mr. John Furze and Ansbacher Cayman, dated 8th January, 1980, and a related letter of wishes, which again had been brought to the Tribunal's attention by Mr. Sutherland through his Solicitors via his Spanish in-laws, seemingly from Ansbacher in the Cayman Islands. The letter of wishes was referable to members of the Cabria family, and Mr. Reid confirmed that its terms were largely similar to the letter of wishes initially seen and advised on by him. It accordingly seemed that the trust and trust funds had moved from the Channel Islands to the Cayman Islands.

15-133 It was agreed by Mr. Reid that Mr. Leonard's reference to him when writing to Mr. Sutherland could not then have been in a context of Mr. Sutherland's affairs, and that the only link that arose was through Mr. Reid's involvement in relation to the setting up of the Cabria trust. He further agreed that the use of the expression "*hypothecated funds*" was a normal and transparent reference to a quite ordinary banking arrangement whereby other funds would be used to back borrowings, and that this usage was not one prevalent in the covert back-to-back arrangements in Guinness & Mahon. It did appear that Mr. Leonard was under the impression that his dealings with Mr. Sutherland involved occasions of contact being made with Mr. Leonard by Mr. Sutherland at approximately six-monthly intervals, which would have more or less coincided with his needs to extend his borrowing facility.

15-134 Had Mr. Reid been asked to advise whether the trustees under the original Cabria trust could properly have provided security for Mr.

Sutherland's loan, he would have asked to see the trust deed and the letter of wishes. Providing such security, and doing so lawfully, were different matters. Since there was no evidence of any written advice from him, or documentation of any fee paid, it seemed to him unlikely that his formal advices had been sought. If a very generalised type of inquiry had been made of him, he would have been inclined to be hesitant, but it was possible that he might have said such a course could proceed, provided the trustees on being contacted indicated they could proceed on that basis. In any event, it was clear that the facility was extended from time to time, in circumstances in which Mr. O'Dwyer felt there was a backing security.

CONCLUSIONS

15-135 Even after careful consideration of the evidence and such documents as were to hand, including a small number of further documents that were found and produced after the evidence was heard, such factors as the death of Mr. Leonard, as the bank witness most crucially involved, the understandably imperfect recollections of Mr. Sutherland and Mr. Reid, and the limited documentation, leave elements of confusion and uncertainty over the matter, and inhibit the degree of confidence with which findings can be made.

15-136 It is clear that, at the material time of granting the bridging facility sought, some form of backing deposit was deemed by the Bank to form part of the security held, although not recorded in the facility letter, and that a diligent search by the Bank confirms Mr. Sutherland's evidence that he then personally held no assets or accounts whatsoever with the Bank.

15-137 Insofar as funds held on deposit off-shore on behalf of Mr. Cabria may have been informally pledged as additional collateral for the bridging loan, it is surprising both that there was insistence on this in the light of the substantial security comprised in the Solicitors' undertakings, and that, given the comparative formality with which this aspect was addressed by the Bank in correspondence and memoranda, that no written record whatsoever of this, or of any additional funds being lodged as sought by Mr. Leonard, is available.

15-138 Nevertheless, the evidence is to the effect that (1) Mr. Leonard's coupling of Mr. Sutherland and Mr. Reid in correspondence and memoranda could at the time have only been in a context of the latter's involvement in previously advising in relation to the Cabria trust, (2) the open and transparent reference on the loan file by Mr. Leonard, as the person most centrally involved, to hypothecated funds being held on deposit is significantly at variance with the Bank practice in relation to numerous instances of covert off-shore backing deposits observed by the Tribunal and (3) whilst lacking in certainty, the evidence of both Mr. Sutherland and Mr. Reid was consistent with some form of informal

charging of the Cabria deposit monies as additional security when the bridging loan was sought and granted.

15-139 Given the extended interpretation of “*payment*” as already indicated it follows that the comfort derived from the off-shore funds of the Cabria family as collateral for Mr. Sutherland’s bridging loan amounts to such a payment and brings the transaction within Term of Reference (c). However, it is fair to state that the bridging loan transaction preceded by some years the holding of public office on the part of Mr. Sutherland, and that in any event, the affording of a degree of domestically-related loan security is readily distinguishable from the making of a clandestine payment of money to a current holder of public office from an Ansbacher account, which would clearly appear the mischief contemplated by Term of Reference (c), when it was drafted.

BASIS OF INVESTIGATION AND PUBLIC SITTINGS INTO TAX AFFAIRS OF DUNNES TRUST

16-01 Following lengthy sittings involving the Terms of Reference referable to Mr. Michael Lowry, the Tribunal returned to a limited number of remaining matters referable to Mr. Charles Haughey. The first and most substantial of these, which gave rise to public hearings held in June and July, 2005, involved investigation of certain aspects of tax dealings had between the enterprise commonly known as Dunnes Stores and the Revenue Commissioners, and the possible involvement therein within the meaning of the Terms of Reference, of Mr. Haughey, during the period consequent upon his resuming the office of Taoiseach in March, 1987.

16-02 In this regard, the Tribunal was concerned primarily with Term of Reference (d), and also with the connected Terms (a) and (b), in relation to which it had already heard extensive evidence in public sittings between 1999 and 2001. The Terms of Reference are set forth at the commencement of this Report, and those in question need not now be reiterated: primarily, what was being inquired into, in condensed form, was whether Mr. Haughey by himself or any other person under his direction or procurement did any act or made any decision as Taoiseach to benefit any person who had made payments to him which could properly be deemed referable to his public office. Here, the person in question was Mr. Ben Dunne, and by logical extension, the Dunnes Stores interests with which he was then centrally connected.

16-03 Earlier in the year 1997, the year in which this Tribunal was established, the Tribunal chaired by Mr. Justice Brian McCracken had heard evidence that (a) on an occasion that it concluded occurred in late 1987 and probably in early or mid-November of that year, an approach was made to Mr. Noel Fox by the late Mr. Desmond Traynor to the effect that Mr. Haughey's severe financial problems necessitated the raising of about £150,000.00 from each of some six persons, which request was conveyed by Mr. Fox to Mr. Dunne, who on consideration indicated that he would pay the entire amount himself; (b) further thereto, substantial payments were made by Mr. Dunne to Mr. Haughey, but commencing in November, 1987, by which time certain of the tax matters in dispute between Revenue and Dunnes Stores had been resolved; (c) whilst the then Chairman of the Revenue Commissioners, Mr. Philip Curran, met with Mr. Dunne in March, 1988 at the request of Mr. Haughey, this meeting was on the basis of the evidence made available to that Tribunal considered to be merely a routine meeting, in which nothing specific was requested by Mr. Dunne, that no representations were made to Revenue by Mr. Haughey on behalf of any Dunnes interest, and neither was there any wrongful use by Mr. Haughey of his position as Taoiseach in this regard.

16-04 In the course of earlier public sittings held by this Tribunal, uncontradicted evidence emerged as to the making of substantial additional payments by Mr. Dunne to Mr. Haughey. When taken in conjunction with those payments of which the McCracken Tribunal heard evidence, the consequences were that not merely did the aggregate of all such payments greatly exceed what had initially been supposed, but in addition the time-scale of the making of those payments appreciably predated the sequence of payments identified by the McCracken Tribunal.

16-05 The additional Dunnes-related payments to Mr. Haughey dealt with in evidence to this Tribunal comprise (a) what have been referred to as the six Bearer Cheques, each dated 28th January, 1987 and signed by Mr. Ben Dunne, amounting in total to £32,200.00, (b) the Tripleplan payment in the sum of Stg.£282,500.00, made by cheque dated 20th May, 1987, drawn on an account of Dunnes Stores (Bangor) Limited, the proceeds of which were later lodged to Mr. Haughey's account with Guinness & Mahon in Dublin to discharge his then overdrawn balance, (c) the Wytrex payment in the sum of Stg.£200,200.00 which was lodged to the Ansbacher Cayman Sterling Call Account with Guinness & Mahon on 20th November, 1990, (d) the Carlisle Trust cheques in the amounts of £49,620.00, £50,962.00 and £79,418.00 dated respectively the 20th, 23rd and 27th November, 1992, amounting in total to £180,000.00, and (e) a cheque for £20,000.00 dated 29th May, 1993, lodged to Mr. Haughey's account with National Irish Bank. These additional payments bring the total Dunnes payments to Mr. Haughey to over £2.0 million.

16-06 Apart from these additional payments, an amount of documents and information came to the attention of the Tribunal in the course of its preliminary investigations, which appears not to have been made available to the McCracken Tribunal. Amongst the matters that emerged were the following. Firstly, despite Mr. Ben Dunne's evidence to the McCracken Tribunal that his meeting with Mr. Philip Curran in March, 1988, arranged by Mr. Haughey was the first occasion on which he had met the Chairman of Revenue, it appeared that he had in fact met Mr. Curran's predecessor, Mr. Seamus Pairceir, on a number of occasions commencing in April, 1987 and continuing up to the date of Mr. Pairceir's retirement in September, 1987; furthermore, Mr. Noel Fox was present at a number of these meetings, and it appears that the initial such meeting in April, 1987 was also arranged at the instigation of Mr. Haughey. Secondly, these additional dealings had by Mr. Dunne and Mr. Fox with Revenue appear to have been detailed and extensive, and to have included settlement negotiations in relation to extensive tax liabilities, and a waiver on the part of Mr. Pairceir of a sum for interest previously agreed to have been paid to Revenue as part of a separate settlement. Thirdly, it appears that after his retirement, Mr. Pairceir was retained in a consultancy capacity by Mr. Dunne, initially with regard to advising in relation to the appeal against a Capital Gains Tax assessment raised on 27th November, 1986, which had been the subject

matter of Mr. Pairceir's dealings with Mr. Dunne and Mr. Fox between April and September, 1987.

16-07 On foot of these and other matters which will be referred to later in this chapter, the Tribunal proceeded to public sittings. In its preparation for these, Mr. Haughey's Solicitors were asked to comment on the matters which had come to the attention of the Tribunal, and in letters of March and June of 2005 indicated that due to Mr. Haughey's ill health he was not in a position to give instructions or to give evidence in respect of any matters arising in the Tribunal. Mr. Haughey had already put his position regarding the payments received from Mr. Dunne on the record in a statement of 15th July, 1997, made by Mr. Haughey to the McCracken Tribunal. With reference to payments received from Mr. Ben Dunne, Mr. Haughey stated that Mr. Dunne neither sought nor was granted any favours, and that no improper motive was associated with any of the payments. As is recited elsewhere in this Part of the Report, Mr. Haughey reiterated that evidence in general terms in the course of his evidence to the Tribunal.

BACKGROUND TO DEALINGS BETWEEN REVENUE AND DUNNES

16-08 As the mid 1980s approached, the Dunnes Stores retail chain established and developed by the late Mr. Bernard Dunne Snr. and his wife Mrs Nora Dunne had expanded and prospered to such an extent that it was emphatically one of the outstanding successes among Irish indigenous business. It also then faced potentially enormous taxation liabilities. These were not the usual instances of taxation faced by business enterprises, such as Corporation Tax, PAYE, PRSI, Excise Duty or VAT. What then arose were potential liabilities to Capital Taxes which had not previously arisen, and which were rooted in the ownership structure of the Dunnes organisation.

16-09 In 1964, the late Mr. Bernard Dunne and the late Mrs Nora Dunne settled property on trust. The property, the subject matter of the Trust comprised the shares in the overall Dunnes Holding Company. This was an unlimited company, and each of the Dunnes Stores trading companies was a wholly owned subsidiary of the Dunnes Holding Company. By reason of this structure, the entire ownership of the trading companies was held through the Dunnes Holding Company by the Trust, and was subject to the terms of the Trust.

16-10 The Trust in question was a discretionary trust, the original Trustees being the late Mr. Bernard Dunne, the late Mrs Nora Dunne, Mr. John Dunne and Mr. John Spillane. The beneficiaries were each of the six children of the late Mr. and Mrs Dunne. By the mid 1980's, the period investigated by the Tribunal, the Trustees were Mr. Oliver Freaney, Mr. Noel Fox (a witness already heard in earlier Tribunal sittings), Mr. Frank Bowen, Mr. Bernard Uniacke and the late Mr. Edward Montgomery. Under the terms of the Deed of Settlement, the Trustees were permitted in their absolute discretion to

apply both the income and the capital of the Trust for the benefit of the beneficiaries. The Deed also provided that in default of the Trustees making an appointment of the capital of the trust fund by 15th March, 1985 (being 21 years from the date of the Trust Deed), the capital of the Trust (being the shares in the Dunnes Holding Company) was to vest equally in the beneficiaries. Accordingly, in the absence of the Trustees making an appointment of the shares amongst the beneficiaries before 15th March, 1985, the shares would automatically vest in the six siblings equally on that date.

16-11 Discretionary Trusts were frequently used as a form of legitimate tax planning, enabling income which would otherwise be subject to ordinary tax regimes to enjoy limited exposure to tax so long as the income remained within the Trust. Succeeding Irish Statutes enacted in the 1970s and 1980s provided for forms of Capital Taxation which, if required to be borne by a business of greatly increased value, would have entailed enormous liabilities for Dunnes. These would have impacted upon the tax liabilities of the Trustees, and indirectly of the beneficiaries, being Mr. Ben Dunne, then primarily running the business in succession to his father, and his five siblings.

16-12 Capital Gains Tax was introduced in 1975, and this was followed by the introduction of Capital Acquisitions Tax in 1976. Further, the Finance Act of 1984 provided for a form of Capital Taxation of Discretionary Trusts known as Discretionary Trust Tax. Two instances of this tax arose, firstly, an annual tax of 1% on the aggregate value of the assets, subject to the Trust, and secondly, a single application of tax at the rate of 3% of the value of those assets upon the death of any settlor or disponent. Accordingly, as and from 1986, the Trustees were liable for an annual charge to Discretionary Trust Tax of 1% of the value of the shares held by the Trust, and they were also liable for a 3% charge in respect of each of the deaths of Mr. and Mrs Bernard and Nora Dunne, (the Settlers of the Trust), who died respectively on 25th January, 1984 and 5th April, 1986.

16-13 Apart from Discretionary Trust Tax, liability for which was never in issue, there was an appreciably more serious situation for the Trustees and beneficiaries in that, in default of the Trustees making an appointment of the shares before 15th March, 1985, those shares would, as stated, vest equally in the six beneficiaries. This would have entailed the Trustees becoming liable to Capital Gains Tax, and the beneficiaries to Capital Acquisitions Tax. It appears that the Trustees and their advisers considered that the aggregate exposure to taxation by reason of all these matters could have been in the region of 50% of the value of the shares. Indeed, from the evidence of Mr. Liam Horgan, an accountant and adviser to the Dunnes interests, it seems that there was general concern within Dunnes that either the Dunnes Holding Company would have to raise funds publicly, or that part of the Dunnes enterprise would have to be sold off to meet these potential tax liabilities. Mr. Frank Bowen, one of the Trustees and also an

accountant, stated that the Trust's long-term future had been under discussion for several years, and the expert advice of accountants and lawyers from both this country and the United Kingdom had been taken. By late 1984, the options available to the Trustees were either to appoint the shares, or to seek to extend the terms of the Trust beyond 1985 by the device of resettling the assets on the same Trustees under a new trust. The preferred option of the Trustees was to appoint the Trust Fund, provided the cost was manageable, and Mr. Bowen confirmed that the only source of available funding would have been from the assets of the Dunnes Stores companies. Accordingly, the Trustees approached the Revenue Commissioners, with a view to establishing whether a basis could be devised whereby the shares held by the Trust could be vested in the beneficiaries, with Capital Acquisition Tax and Capital Gains Tax being paid at a level which could be afforded. The rate of tax was fixed so the sole variable was the value that might be placed on the shares by Revenue.

16-14 It appears that such negotiations as could be conducted in the limited time before the deadline of 15th March, 1985, dashed the Trustees' hopes in this regard, and accordingly the tax strategy that had been prepared by them and their advisers with a view to preventing the shares vesting in the beneficiaries, and thereby avoiding the potential liabilities to Capital Gains Tax and to Capital Acquisition Tax, was implemented. By executing a Deed devised to extend the life of the original Trust Deed, the vesting of the shares in the beneficiaries was sought to be postponed, with the Trustees transferring upon terms the shares held under the original Trust to be held by them as Trustees under a new Trust Deed.

16-15 These in summary are the exceptional instances of potential Capital Taxation liabilities which underlay the dealings between the Dunnes interests and the Revenue Commissioners over the period examined by the Tribunal.

MATTERS OF RECORD

16-16 In examining what transpired in the relationship between Revenue and the Dunnes interests, in the context of the Tribunal's Terms of Reference relating to Mr. Haughey, it is well at the outset to set forth a limited number of actual events or dealings of potential significance that transpired, and then to summarise such evidence as became available as to how that relationship evolved.

Discretionary Trust Tax

16-17 On 25th February, 1985, Mr. Frank Bowen on behalf of the Dunnes Trustees furnished to Revenue a return for Discretionary Trust Tax (the annual tax of 1% which had been introduced by the Finance Act, 1984) together with a payment of £500,000.00, based on a valuation of £33.4 million for the entire of the Trust funds.

16-18 On 8th September, 1986, Revenue raised assessments for Discretionary Trust Tax on the Dunnes Trustees, based on a valuation of the shares held in the Trust in the amount of £100 million. These assessments were appealed by the Trustees to the Appeal Commissioners of Revenue. It can be seen therefore, that from the outset there was a very considerable divergence between the valuations placed on the Trust assets by the Trustees and Revenue.

16-19 The appeals were duly listed for hearing on 16th March, 1987, but, following negotiations prior to hearing between the parties and their legal advisers, were settled on the basis of an agreed valuation of £82 million. On 25th May, 1987, a payment was made in discharge of the liability to Revenue of £3,564,000.00. Regarding the terms of the settlement and subsequent dealings between the parties, in particular with regard to a waiver of a portion of the agreed settlement amount referable to interest, further reference will be made in this Chapter.

Capital Gains Tax

16-20 By the 1964 Trust Deed creating the Discretionary Trust, it was provided that, in default of the Trustees making an appointment of the company shares before 15th March, 1985, the shares would vest equally in the six Dunne family beneficiaries, which would have incurred Capital Gains Tax liabilities for the Trustees, and Capital Acquisition Tax liabilities for the family beneficiaries.

16-21 Pursuant to the tax planning strategy devised by their advisers to avoid or defer such liabilities, the Trustees by Deeds executed on 14th March, 1985 sought to extend the life of the original Trust Deed, and postpone the vesting of the shares in the beneficiaries, by transferring upon terms the shares held under the original Trust to be held by themselves as Trustees under a new Trust.

16-22 Having considered the resultant position and taken legal advice, Revenue formed the view that a deemed disposal for Capital Gains Tax purposes of the assets from the old Trust to the new Trust had nonetheless occurred, giving rise to a Capital Gains Tax liability. Having advised the Trustees of their intention by letter, Revenue on 27th November, 1986 raised an assessment to Capital Gains Tax in the sum of £38.8 million. This was based on a valuation of the Trust assets by Revenue at £120 million: the difference between this valuation and the valuation for the purposes of the Discretionary Trust Tax assessment, made some two months earlier, arose from the different rules governing valuation under the two tax codes.

16-23 The Trustees appealed this assessment, and the appeal was duly listed and heard by the Appeal Commissioners on 22nd and 23rd September, 1988. On 11th November, 1988, the Appeal Commissioners delivered a determination in favour of the Trustees. Having taken legal

advice, this adverse finding was not appealed to the High Court by Revenue, so that it remained the outcome of the process that no Capital Gains Tax liability had at that stage been incurred by the Trustees.

16-24 Subsequent differences between Mr. Ben Dunne and other family members and the Trustees led to extensive litigation in the High Court, which was compromised. Further tax assessments and payments referable to Mr. Dunne's interests were then made, and at a later stage, following further litigation with Revenue, the remaining Capital Taxation and other tax liabilities referable to the other family beneficiaries were settled and discharged by agreed payments to Revenue.

Politics and Government

16-25 In all of the dealings between the Trustees and Revenue up to March, 1987, the Fine Gael and Labour Coalition was in power. Dr. Garret Fitzgeral was Taoiseach and Mr. Alan Dukes was Minister for Finance.

16-26 In or about the latter months of 1986, internal divisions arose in the Coalition Government, and the resultant uncertainty as to who would govern the country was brought to a head on 20th January, 1987, when the Labour members of the Government resigned over budget proposals in relation to health, and the Dáil was dissolved.

16-27 The resultant General Election of 17th February, 1987 produced an inconclusive outcome, and Dr. Fitzgerald continued as Taoiseach leading a minority Fine Gael Government until the new Dáil convened on 10th March, 1987, on which date the Fianna Fáil leader Mr. Haughey was elected as Taoiseach, and continued in that office until 30th January, 1992.

DEVELOPMENTS ON DISCRETIONARY TRUST TAX

16-28 One of the persons most closely connected on the Revenue side with recovering Discretionary Trust Tax from the Dunnes Trust, and also with preparations in relation to Capital Gains Tax, until his employment changed, was Dr. Don Thornhill. He became Assistant Secretary attached to the Capital Taxation Branch of Revenue in 1985, and also then became a member of a cross-cutting group established by Mr. Seamus Pairceir as Revenue Chairman to consolidate the attentions of different branches of Revenue dealing with the Dunnes Trust. He had previously held positions in Finance and Foreign Affairs, and viewed the structures of Revenue when he arrived there as very legally driven. As his intended role in Revenue related to systems and management leadership, it was unusual for him to become involved in an individual case such as Dunnes, but he did so at the request of Mr. Pairceir, and in practice came to report to him.

16-29 He was substantially involved in the preparation of valuations of the Dunnes enterprise for what were envisaged within Revenue as potentially

exceptional receipts of Capital Taxation which he had been aware were in the pipeline from his time in the Department of Finance and which were regarded by the Department as a significant contingent benefit to the public finances. This was an extensive exercise, primarily involving valuation of the shares of an unlisted company, and as such was viewed by witnesses on all sides as being far from an exact science. Entirely different rules applied under the respective tax codes to preparing valuations for Discretionary Trust Tax and Capital Gains Tax purposes, although in each instance allowance had to be made for discounting factors such as lack of control. As to Discretionary Trust Tax, liability for which had been accepted by Dunnes interests, the Revenue valuation prepared was in a range of £128 million to £120 million; for Capital Gains Tax, in relation to which liability was likely to be contested, the valuation was in the range of £140 million to £126 million (the reductions from the larger sums in each instance reflected the application of the relevant discounting factors).

16-30 Dr. Thornhill attended a number of meetings of the cross-cutting group, recalling that the case was treated with much sensitivity and circumspection, even within Revenue, due to its circumstances, including the fact that it had only been some four years previously that Mr. Ben Dunne had been kidnapped by members of an unlawful organisation.

16-31 Notwithstanding some relatively tentative negotiations between the sides in the course of 1985 and 1986, these appeared to have ground to a halt in the latter part of 1986. Dr. Thornhill recalled discussing the then current position in the Dunnes case with the Chairman, Mr. Pairceir on 3rd September, 1986. A memorandum of the conversation then prepared by him noted that Mr. Pairceir instructed him that he should proceed administratively with routine aspects of the case, such as the issue of reminders to Dunnes advisers; Mr. Pairceir had indicated that he would notify Mr. Bowen of Revenue's intention to proceed with the case which, as far as Discretionary Trust Tax was concerned, meant the immediate issue of an assessment for that liability which arose with effect from 25th January, 1985, once he had spoken to Mr. Bowen. Mr. Pairceir also then stated that he had informed the Minister for Finance of his intention to proceed administratively, as the last round of negotiations had not resulted in progress.

16-32 Accordingly, assessments for Discretionary Trust Tax duly issued from Revenue, based on a valuation of £100 million, for the 1% annual charge plus the 3% charge referable to the deaths of both Mr. Bernard Dunne Senior and his wife Mrs Nora Dunne as settlors. Once appealed by the Trustees, the matter was listed for hearing before the Appeal Commissioners on 16th March, 1987. Dr. Thornhill recalled attending with other Revenue colleagues, in addition to Mr. Bowen and other individuals on the Dunnes side, as well as legal representatives of both sides: following more than an hour of negotiations, the appeal was settled upon terms as to tax and interest that were then committed to writing. The fundamental

basis of the settlement was a compromise valuation of the Dunnes shares for Discretionary Trust Tax purposes in the amount of £82 million. Dr. Thornhill had been asked by Mr. Pairceir to keep him informed of the progress of any negotiations, and indeed regarded Mr. Pairceir's approval as a prerequisite to any settlement; accordingly when the £82 million figure emerged from the discussions between the lawyers, a figure viewed as reasonable by Dr. Thornhill, he telephoned Mr. Pairceir for such approval, which was duly forthcoming.

16-33 The agreed terms provided for tax payments and interest in relation to the deaths of both Mr. Bernard Dunne Senior and Mrs Nora Dunne and in relation to such of the 1% annual charges as were outstanding. Such payments were to be made within 21 days from 16th March, 1987, in default of which further interest was to accrue. It was further agreed that this basis of agreement was without prejudice to any liability for Capital Gains Tax.

16-34 Three days after the settlement, on 20th March, 1987, seemingly in response to a telephone call from Mr. Bowen inquiring as to the exact amounts due, Mr. John Reid of the Revenue Capital Tax Section wrote to Mr. Bowen, setting out full particulars of the various amounts due for tax and interest, where applicable, under both of the 3% and 1% headings, giving credit for the £500,000.00 paid on account in December, 1984.

16-35 Mr. Bowen replied to Mr. Reid's letter on 24th March, 1987; he observed that, as regards the tax due upon the death of Mrs Nora Dunne, interest had been calculated to run from the date of death right up to the date of the recent agreement. Whilst accepting that this accorded with what had been agreed at the settlement, he indicated that it was perhaps a little unfair that interest was calculated to run from the precise date of death, and he wondered if consideration could be given to a notional reasonable time-frame, within which the return might have been completed and payment made.

16-36 Mr. Reid replied immediately on 26th March, 1987, pointing out that the tax claim referable to the death of Mrs Nora Dunne on 19th March, 1986 was first notified to the Trustees on 7th May, 1986, with a further request for a return being made by letter of 8th September, 1986; further correspondence the following January had fully detailed all relevant matters as to tax and interest; by Statute, interest was payable from the valuation date unless paid within three months of that date which it had not been, and the Revenue Commissioners did not consider it appropriate to depart from that position, which indeed had formed part of the agreement of 16th March, 1987.

16-37 Thereafter, it seems that Mr. Reid pursued payment of the agreed sum with Mr. Bowen, but despite various assurances, difficulties appeared to be encountered by the Trustees in having the requisite cheque signed by Mr. Ben Dunne. No payment accordingly was made within 21 days of

the agreement, or by 25th May, 1987, on which date Mr. Reid wrote to Mr. Noel Fox, setting out full updated details of the tax and interest then due, amounting in aggregate to £3,626,450.00.

16-38 From the documents made available by Revenue, it appears that on the same day, 25th May, 1987, Mr. Pairceir telephoned Mr. Reid, and asked if all interest up to date had been included in the letter he had just sent Mr. Fox; when Mr. Reid confirmed that this was so, and that £62,450.00 represented interest since the date of the settlement on 16th March, 1987, Mr. Pairceir informed him that he proposed not to charge those two months interest in the circumstances of the case, and he promised to provide Mr. Reid with a note to such effect for Revenue files. No such note emerged from the documents produced to the Tribunal by Revenue.

16-39 Still on 25th May, 1987, Mr. Fox wrote to Mr. Reid, acknowledging his letter and enclosing his client's cheque for £3,564,000.00 that is, £3,626,450.00 less £62,450.00, "*as now agreed in settlement*", and requesting a receipt.

16-40 In evidence, Mr. Pairceir acknowledged that it appeared that he had agreed with Mr. Fox on 25th May, 1987 to forego the £62,450,000.00 interest since the day of the settlement. Whilst he could not recall the circumstances, he stated that it was not then uncommon for Revenue to concede some amount of interest in finalising a liability, as was he believed its entitlement on foot of the care and management provisions of all Finance Acts. He may also have hoped, given the unfavourable position of the national economy at the time, that waiving the interest may have assisted in inducing payment of the substantial remainder.

16-41 Mr. Pairceir did not agree that it was "*a bridge too far*" for the Trustees to seek a further concession after the written agreement. It was suggested to him that the Trustees would not have agreed to any such variation being introduced by Revenue after the agreement, and Mr. Pairceir accepted that there was scarcely reality in contending that he would not have received payment without making the concession. He doubted that the reason he yielded was because Dunnes were "*too big*", denied that any outside pressure had been brought to bear on him, and reiterated that he had afforded the concession to speed the process of payment.

16-42 Mr. Fox also testified on the matter, stating that he had no direct recall of discussions with Mr. Pairceir in this regard, but accepting that any such final dealings with Mr. Pairceir would have been had by him. He said that considerable interest was in any event paid, that it was Revenue practice at that time to give some degree of concession on interest, and that he had negotiated a lot of good settlements with Revenue on behalf of ordinary taxpayers. Obviously, he had telephoned Mr. Pairceir, and offered him immediate payment of what was more than £3,500,000.00 in return for

the further interest concession; what emerged was not non-compliance with the agreement, but rather the making of a fresh agreement. Addressing the same aspect, Mr. Bowen said that the issue was all about how much the Trustees had to pay, and ultimately they were retailers, and traded at all times. Mr. Dunne's evidence was that he had no involvement in the interest concession agreed by Mr. Pairceir, although he may have been told of it by Mr. Bowen or Mr. Fox: in his view, "*accountants do things to justify their fees*". At this very time, Mr. Pairceir was actively involved in meetings and negotiations with Mr. Dunne and Mr. Fox regarding the far more considerable issue of the assessment raised by Revenue to Capital Gains Tax in the sum of £38.8 million, arising from the resettlement of the Trust assets.

16-43 Of other Revenue evidence on the interest aspect, Dr. Don Thornhill stated that he was not in agreement with Mr. Pairceir's decision to waive the interest in question and, on the facts as known to him, he would not have done so. Whilst other views may have held sway in Revenue, and whilst there may have been factors involved such as obtaining closure, he felt that the settlement arrived at had been a very important benchmark, and that Revenue ought to have preserved its integrity.

16-44 Regarding the absence of penalties imposed on Dunnes for late payment of Discretionary Trust Tax, Mr. Cathal MacDomhnaill, who had been a Commissioner at the time and was appointed Chairman in October, 1990, stated that this had not been his area of expertise, and he had not then been aware of Mr. Pairceir's dealings regarding any partial interest waiver, but he acknowledged that there had been some slippage within Revenue in relation to this tax in the late 1980s.

DEVELOPMENTS ON CAPITAL GAINS TAX

16-45 Other than the matters of record already noted, and other individual matters or aspects that are addressed separately, a summary of the main dealings had between Revenue and Dunnes interests may conveniently be divided into those that occurred prior to the end of 1986, and those that occurred subsequently. In so dividing the periods, some limited element of overlap is unavoidable.

Dealings between Revenue and Dunnes prior to 1987

16-46 This initial period of relevant dealings had between Revenue and Dunnes interests was most fully described in the evidence of Mr. Frank Bowen, one of the Trustees and an Accountant, who was at that stage centrally involved in meetings and correspondence, and who kept some notes of events as they occurred.

16-47 Having described how the capital taxes introduced in the 1970s and 1980s had largely eliminated the benefits attaching to discretionary

trusts, so that potentially very high taxes were inevitable if a disposal occurred at the end of the term of the trust in 1985, Mr. Bowen recalled how he had initiated contact with Revenue in or about the start of 1985, with a view to ascertaining what value Revenue placed on the Dunnes shares, as this would determine what would have to be paid if a disposal occurred.

16-48 Mr. Bowen established contact by arranging an initial meeting with the Minister for Finance, Mr. Alan Dukes, through Mr. Bowen's friendship and association with the late Mr. Hugh Coveney TD. Mr. Ben Dunne also attended this meeting, and recalled that the approach adopted by Mr. Dukes was that, having regard to the very high outlay able to be discharged on store development by Dunnes from its profits, payment of high taxes on a disposal would do no more than retard that store development for a couple of years. Following this meeting, Mr. Dukes rang Mr. Bowen and said that the Revenue Chairman, Mr. Seamus Pairceir, would contact him to arrange a meeting, stressing that whatever might subsequently occur by way of assessment or settlement was totally a matter for Revenue, and not for him.

16-49 Mr. Pairceir duly telephoned Mr. Bowen, indicating the individuals who would attend the proposed meeting on behalf of Revenue, and following further exchanges, the meeting was held on 7th March, 1985. This was a critical and relatively formal meeting, attended on the Revenue side by the Chairman and a number of his colleagues, including Messrs Clayton, Quinlan and McDermott and on behalf of the Trustees, by Messrs Bowen, Fox, Uniacke, Edward Montgomery and Liam Horgan. Notes of what transpired were kept both by Mr. Bowen and by a representative of Revenue, and it is apparent that the overriding topic discussed was the capital value of Dunnes for taxation purposes. Further to some information furnished in advance of the meeting to Revenue, the Trustees advanced a value of £34 million and argued a number of economic matters in ease of the company, relying on such matters as its indigenous Irish identity, and the improbability that the then current levels of profits could be sustained in the face of increasing competition. However, the Revenue response was that the lowest valuation that it could accede to was £80 million, which would give rise to an aggregate for Discretionary Trust Tax, Capital Gains Tax and Capital Acquisitions Tax in the sum of £44.2 million. (At that time, legislation had not yet been introduced to allow Capital Gains Tax as a credit against Capital Acquisitions Tax, which would have had the effect of an approximately £10 million reduction overall). Mr. Bowen recalled Mr. Pairceir indicating that the lowest possible figure, one reflecting some element of reduction on the actual day of the meeting, was £43 million; he regretted that was "*the awfulness of the position*", but his obligation was to raise revenue for the State, and he could not base a valuation on the economic arguments advanced by the Trustees. Mr. Bowen responded that the amount sought was impossible, "*blew us out of the water*", and that he was left with no alternative but to seek to extend the Trust.

16-50 Whilst there seems to have been some mention at the end of the meeting of the Trustees making representations to the Minister for Finance against the perceived harshness of the valuation, nothing came of this; time was in any event extremely short for the Trustees to take action in relation to the Trust, and accordingly, on 14th March, 1985, Deeds were executed with a view to extending the Trust. Copies of these instruments were furnished by Mr. Bowen to Revenue in early April, then a period of very slight contact followed, with the Trustees awaiting Revenue's next move, broken only by two telephone conversations between Mr. Pairceir and Mr. Bowen in August, 1985. The substance of these conversations, as noted by Mr. Bowen at the time, and conveyed to his fellow Trustees was that (a) Mr. Pairceir now accepted that no Capital Acquisitions Tax liability had at that juncture arisen, since the Trustees had not taken possession of the assets beneficially, but was advised and believed that a disposal attracting a Capital Gains Tax liability had arisen, by virtue of the Trust instruments executed earlier that year, (b) whilst Mr. Pairceir expected Revenue to succeed on any such liability issue, he accepted that a measure of risk arose for both sides and (c) discussions to achieve a settlement should not be ruled out, but the stark conflicts between the sides on both liability and valuation made such a compromise highly improbable, so it would be necessary for Mr. Pairceir to set assessment procedures in train in the reasonably near future, bearing in mind the large amounts likely to be involved as to both principal and interest, and the likely notice that would be taken by the Public Accounts Committee of the Oireachtas of any assessment made.

16-51 Following these conversations, Mr. Bowen met with Mr. Pairceir on 23rd October, 1985, and, to Mr. Bowen's recollection, Mr. Pairceir conveyed to him that, whilst he was still prepared to entertain negotiations, prior discussions between them were no longer "*on the table*", and he would be proceeding afresh with the formal process of assessment. It was agreed between them that, whereas liability for discretionary trust tax was not in issue, it was emphatically in issue as regards Capital Gains Tax, so that it was sensible for both sides to test liability in the first instance, and defer matters of valuation.

16-52 Nothing of substance then transpired for a considerable period. A telephone conversation between Mr. Bowen and Mr. Pairceir took place on 10th March, 1986: apart from some discussion of the retention of an expert witness, it was Mr. Bowen's recollection, aided by a somewhat limited note, that Mr. Pairceir stated to him that the lowest valuation figure that would be acceptable to Revenue was £100 million, in respect of both Capital Gains Tax and Discretionary Trust Tax. As was noted in the evidence of the Assistant Secretary of the Capital Taxation Branch of Revenue, Dr. Thornhill, Mr. Pairceir on 3rd September, 1986 instructed Mr. Thornhill that he should proceed administratively in the matter, as recent negotiation had not resulted in progress.

16-53 A further telephone conversation, in fact probably two conversations, took place between the two on 10th November, 1986. Mr. Pairceir indicated that whilst a further meeting between the sides had been contemplated, this was now improbable, and in event was unlikely to change his view that he should proceed to assess and finalise what he viewed as a very substantial Capital Gains Tax liability. He had been asked to negotiate by the Minister, and had taken full account of the public interest in the matter, but felt that at the end of the day, it was his responsibility to proceed; once a deemed disposal was shown, no questions of equity arose in calculating the tax due. He had spent an enormous amount of time and resources looking into the position, and had obviously waited too long. As a result of these conversations, Mr. Bowen stated in evidence that both he and Mr. Pairceir had by then accepted that “*there was then a process under way that had an inevitability about it, and they might as well get on with it*”. Some Revenue notes and memoranda from in or about the time of these latter conversations were also drawn to Mr. Bowen’s attention, suggesting that some proposal to appeal to the Minister in respect of the rigour of the Revenue stance had been raised but not proceeded with on the Dunnes side, but that it had been conveyed in reply by Mr. Pairceir to Mr. Bowen that he would have to face up to his liabilities in regard to tax. As matters proceeded into 1987, it appeared that Mr. Bowen’s role in any dealings had with Revenue receded appreciably.

16-54 Another Trustee, Mr. Bernard Uniacke, also testified in relation to his recollections of the initial dealings had with Revenue, in addition to other matters which are referred to elsewhere in this Chapter. He stated that he had been appreciably less active as a Trustee than Mr. Bowen, but confirmed Mr. Bowen’s evidence as to what transpired at the initial meeting with Revenue on the 7th of March, 1985, recalling Mr. Pairceir stating that what he had to say “*was the law*”. A tax bill in the vicinity of £43 million was beyond what the Dunnes interests could pay, and Mr. Uniacke thought that they could have paid approximately £16 million, but the gap between the respective figures was too great. He recalled that the Trustees had been extremely concerned about the significant potential exposure to Capital Taxes, involving perhaps up to 50% of the value of the enterprise, and stated that from the mid-1970s onwards, serious consideration had been given to the position, and expert advice taken from both Irish and British leading practitioners.

16-55 In accordance with Mr. Pairceir’s decision, Mr. Christopher Clayton then in charge of the Capital Gains Tax section, proceeded to raise an assessment to Capital Gains Tax on the deemed disposal of the assets of the Trust consequent on the Deed of Settlement of 14th March, 1985 in the sum of £38.8 million. In raising the assessment, Mr. Clayton first had to calculate the taxable gain which, in accordance with the definitions in the Capital Gains Tax legislation, was the difference between the value of the shares held by the Trust on 14th March, 1985, being the date of the resettlement and their value as of April, 1974 as indexed up to 14th March,

1985 values less the costs and expenses of the transaction. The value which he took as the open market value of the shares as of 14th March, 1985 was £120 million, which was at the lowest level of the range of valuations which had been prepared by the Capital Taxes Division. The base value which he used for April, 1974 was £5.5 million which was indexed up to £22.77 million and a further allowance of £230,000.00 was given for the expenses of the transaction. Mr. Clayton assessed £38.8 million as the 40% Capital Gains Tax due upon the resultant balance. Mr. Clayton testified that he believes that this was the correct figure to assess and that as a Revenue Official he would not have countenanced raising an assessment to tax for any greater sum than he believed was properly due and payable.

Dealings between Revenue and Dunnes interests in 1987 and subsequently

The 1987 Meeting and Settlement proposed by Revenue

16-56 Apart from those witnesses who gave direct evidence of dealings, considerable assistance to the Tribunal was provided by Mr. Sean O’Cathain, a Principal Officer of Revenue who was a member of the “*cross-cutting*” team assembled by Mr. Pairceir to address the Dunnes taxation issues, and who made available a considerable amount of contemporaneous memoranda, notes and working papers prepared by him at the time of the events.

16-57 For present purposes, these memoranda commence with a note of 13th April, 1987, after the Capital Gains Tax assessment for £38.8 million had been raised and after the Discretionary Trust Tax assessment had been settled, recording a call from Mr. John Reid, another Revenue Official in the Capital Taxes Branch, in which there is reference to the agreed tax provided for in the Discretionary Trust Tax settlement of 13th April, 1987 not yet having been paid; the note also recorded that Mr. Ben Dunne had arranged a meeting with Mr. Pairceir on 27th April, some two weeks subsequently, and that “*JR wants to know what liability would be thrown up by a valuation of £82 million*”. It was accepted in evidence by Mr. Pairceir that it was reasonable to assume this was based on what he had told Mr. Reid at the time. It will be recalled that the settlement of the Discretionary Trust Tax assessment had been based on an agreed valuation of £82 million.

16-58 Mr. O’Cathain then noted that he had made the appropriate calculation that, based on an £82 million valuation, the Revenue claim for Capital Gains Tax would be £23.6 million, (rather than the £38.8 million assessed) and he so informed Mr. Reid when the latter rang again the following day.

16-59 From Mr. Pairceir’s evidence, and a subsequent note of Mr. O’Cathain, it appears clear that the meeting between Mr. Pairceir and Mr.

Dunne of 27th April, which in the event was also attended by Mr. Noel Fox, had been arranged at the request of the new Taoiseach, Mr. Haughey, who had met with Mr. Pairceir on an occasion on or shortly prior to 13th April, probably after one of the meetings of the Committee dealing with the proposed Irish Financial Services Centre, that were held in the Taoiseach's Department. Mr. Pairceir testified that all he could recall of his conversation with Mr. Haughey was the Taoiseach's request that Mr. Pairceir should meet Mr. Dunne. He acknowledged that at this point he had already on several occasions since 1985 met Mr. Fox and Mr. Bowen, and that he would readily have agreed to meet Mr. Dunne, if so asked by either Mr. Fox or Mr. Bowen. Asked whether in these circumstances he was surprised to be asked to meet Mr. Dunne by the highest political personage in the country, he responded that the Taoiseach had no jurisdiction over his activities, and presumed that the request was made by Mr. Haughey as a public representative in general terms, rather than as Taoiseach, but added that he would nonetheless not have questioned why the Taoiseach should have asked him to do this, "*or anything else, really*".

16-60 Reverting to the revised computations provided by Mr. O'Cathain, Mr. Pairceir acknowledged that in approximate terms, these amounted to a reduction of £20 million in the value of the Dunnes shares, and £12 million in the amount of Capital Gains Tax payable.

16-61 The next material memorandum of Mr. O'Cathain, dated 5th May, provided some degree of contemporaneous record of what had transpired at the meeting between Mr. Pairceir and Mr. Dunne, as presumably imparted to Mr. O'Cathain by Mr. Pairceir. It referred to Mr. Dunne indicating that he did not accept that there had been a disposal, but that he would rather not gamble on the outcome, particularly as it might take some years to resolve. It was also noted that Mr. Pairceir had pointed out that Revenue believed there had been a disposal, and had to pursue it, and that it appeared Mr. Dunne would like to settle, but that there had been no indication of what figure might provide a settlement, the only figure mentioned having been £23.6 million "*as being a revised claim, based on the £82 million market value of 1985*". Mr. Pairceir confirmed in evidence that, as indicated in the note, Mr. Dunne made it apparent at the meeting that, although he disputed liability for Capital Gains Tax at that stage, he would be prepared to settle for a lesser figure.

16-62 In further working papers prepared by Mr. O'Cathain of calculations undertaken by him in relation to the appealed Capital Gains Tax assessment about this time, there appears a passage, dated 4th May, in which he referred to Mr. Christopher Clayton having informed him that "*BD wants to settle CGT. What can be offered?*". This passage also refers to "*£82 million — could not be less*", and following some other entries, £5.5 million was noted in a context of being the market value as of 6th April, 1974, with a reference that "*there may be a case for increasing this*". Mr. O'Cathain then proceeded in his continued workings to carry out some

calculations by way of increasing the £5.5 million valuation to £8 million, the effect of which would be to reduce the Capital Gains Tax further from £23.69 million to £19.55 million. In drawing Mr. Pairceir's attention to these calculations, he was also referred to an adjacent reference by Mr. O'Cathain "*if it is not settled now, with the present Chairman, the family would face long delay and uncertainty*", and Mr. Pairceir acknowledged this was the point that had been made by Mr. Dunne when he came to see him. He also stated that he did not wish to ignore the possibility of settlement.

16-63 At a passage close to the conclusion of Mr. O'Cathain's working papers, he noted "*suppose £15 million was on offer to settle. This could be calculated as in the computation with discounting attached. They would then seek the return of the Trust Tax, probably circa £3 million, leaving net £12 million*". A figure of £15 million again appears close to the end of these working papers, and Mr. Pairceir agreed on inspection of these that it seemed that extensive calculations were then being undertaken to show how such a figure might be arrived at. However, he was disinclined to accept that this figure had been mentioned by anyone in anticipation of any meeting, stating that he, and not Mr. Dunne, had this figure "*in the air*".

16-64 As to that sum being a massive reduction from the £38.8 million assessed which was based on initial valuations painstakingly researched within Revenue, Mr. Pairceir stated that a difficult situation had now arisen, with the assessment under appeal, and an element of hazard entailed; he viewed this as putting him in a somewhat onerous position, as at that time even the sum of £16 million would have been of much benefit to the Exchequer, and accordingly he felt he was obliged to consider what he viewed as a substantial offer.

16-65 When it was drawn to his attention that a sum in the vicinity of £15/16 million had been "*on the table*" at the time of his dealings with Mr. Bowen back in 1985, he responded that he had not then been aware of that. Reference was then made to a further note of Mr. O'Cathain, recording a meeting with Mr. Pairceir and other Revenue officials, in which Mr. Pairceir had referred to his recent meeting with Mr. Dunne and Mr. Fox having been at the request of the Taoiseach; in the course of what was referred to as a frank discussion, Mr. Dunne had said that on his advice he did not believe that any Capital Gains Tax was due, but he did not want a long drawn out appeal, and recognised that at best the payment of the full tax could only be deferred; he had further said that "*£23 million was too much for him to pay now*", and that he would like to come to some agreement if possible. Mr. Pairceir had responded that the Revenue claim was for the full amount, and he was only nominee for the Dáil, but he would seek further advice on the matter. It appears that Mr. Dunne went on to outline some other proposals then under consideration, and some discussion of the possible repercussions took place. Mr. O'Cathain also noted that Mr. Pairceir had indicated some lack of enthusiasm for the proposal to increase the 1974

value to £8 million, but stated that he would like to hear more about it. It seemed that Mr. Pairceir concluded the meeting by inviting his colleagues to study the matters raised by Mr. Dunne, and requested that they meet again with him some days later.

16-66 In the context of the proposed increase in the 1974 value, Mr. Pairceir accepted that, since the chargeable gain in respect of which Capital Gains Tax was computed was the difference between the company's current value and its 1974 value as subjected to what was the indexation multiplier of 4.14, any increase in that 1974 value markedly decreased that gain, and the resultant Capital Gains Tax.

16-67 Subsequent memoranda of Mr. O'Cathain were also drawn to Mr. Pairceir's attention, covering a number of occasions in the remainder of the month of May, in which some of the matters raised included Mr. Pairceir expressing concern at possible difficulty he might encounter with the Comptroller and Auditor General if a settlement in the vicinity of £16 million was concluded following an assessment for £38.8 million; then reference by Mr. O'Cathain to relevant case-law, in the light of which he indicated that the Trustees seemed to have good grounds for arguing in favour of a continuing settlement as opposed to a deemed disposal; then a reference to Mr. O'Cathain himself stating that, with the current value discounted and the 1974 value increased, it would give the outcome he first was aiming at when he heard of negotiations. That note concluded with a reference to a telephone call from Mr. Pairceir, who had indicated agreement with a proposal from Mr. Fox to suspend preparations with Counsel for the Appeal hearing in the light of the on-going negotiations, on a basis of giving those negotiations a better atmosphere.

16-68 In a later portion of a lengthy memorandum of 22nd May, Mr. O'Cathain referred to the £82 million valuation, and to Mr. Pairceir expressing the view that "*apart from a bargaining point, we are constrained by it*". Mr. Pairceir accepted that this indicated that he then felt that £82 million was going to have to be the bottom line figure for the Capital Gains Tax valuation, notwithstanding that the written settlement recording that valuation for purposes of discretionary trust tax specifically provided that it was to be without prejudice to issues of Capital Gains Tax. He also accepted that the extensive discussions regarding the 1974 and 1985 valuations were undertaken with a view to arriving at a settlement figure, and that they were conducted solely between himself and a small number of Revenue officials, without any reference to Solicitor or Counsel. Neither was there any indication whatsoever at this time of any proposals or computations having been furnished to Revenue by the Dunnes Interests. In other words, this was an exercise that appears to have been promoted exclusively within Revenue following Mr. Dunne's intimation that he wished to consider settling the assessment.

16-69 At the start of June, it seems that the movements towards settlement were coming to fruition: on 4th June, Mr. O’Cathain recorded a conversation with Mr. Pairceir in a note made partly in Irish and partly in English, like some of his other memoranda. In translation, it was to the effect that Mr. Pairceir had met with Mr. Dunne, and they had settled on £16 million, with three years to pay, save that it had not yet reached a stage of final agreement, insofar as Mr. Dunne was going to think about it and come back to Mr. Pairceir. In evidence, Mr. Pairceir accepted that no figure had been advanced by Mr. Dunne or Mr. Fox at this stage of their dealings, so that the proposed sum of £16 million had been generated totally from within Revenue. However, Mr. Pairceir accepted that, before carrying out all the calculations in regard to quantum, it would have been necessary to know that the figure sought to be justified appeared acceptable to the other side. With regard to the proposed settlement figure, Mr. Pairceir again stressed that the £82 million valuation had been its starting point, and that, whilst not expecting to lose the pending Capital Gains Tax appeal, he was nonetheless conscious of its risks.

16-70 Mr. Pairceir did not agree that a sum of or close to £16 million had been mentioned by Mr. Dunne, Mr. Fox or Mr. Bowen, notwithstanding Mr. Bowen’s evidence to the Tribunal that the Trustees had at the time of their discussions with Revenue in 1985 come up with a figure in the £12/15 million region as their then available maximum then, which had been on the table, but had been blown out of the water by Mr. Pairceir’s request for £43 million.

16-71 It was Mr. Pairceir’s recollection that, in the dealings between Revenue and the Trustees in 1985, there was no discussion of the actual or potential amount of liabilities, although he was reminded by Tribunal Counsel of a Revenue note relating to the initial meeting of 7th March, 1985 to the effect that “*The parties (meaning the Dunes interests) have submitted a valuation of £34 million for the company. . . . The taxes payable on the basis of a valuation of £80 million would be £44.2 million.*”

16-72 Mr. Pairceir was also unable to throw any light on the content of a letter written to Mr. Bowen on 9th July, 1987, by the Senior Trustee, Mr. Edward Montgomery, in which reference was made to Mr. Montgomery’s understanding that “*indirect approaches had been made to Bernard to see if he would compromise the claim, which may indicate that the Revenue are not too happy about their chances of success*”. However, Mr. Pairceir did reiterate that it was certainly not true to say that the Revenue were not too happy about their chances of success.

16-73 A further note of Mr. O’Cathain, made on the same day as Mr. Montgomery’s letter, stated that Mr. Pairceir had told him that Mr. Dunne and Mr. Fox were coming in the following week, and he would accordingly like a copy of a settlement form. Mr. Pairceir acknowledged that this

indicated that as of 9th July, 1987, he was anticipating conclusion of the settlement at £16 million.

16-74 However, a subsequent note of Mr. O’Cathain, dated 29th October, but believed by Mr. O’Cathain to have been made in July, recorded that the negotiations with Mr. Dunne had foundered, apparently on a basis that Mr. Dunne wished to terminate the Trust and enable the beneficiaries to take their respective shares; this had emerged in the course of a meeting attended by Mr. Dunne and Mr. Pairceir only. Whilst some subsequent Revenue documentation indicated a degree of further consideration being given to this expanded proposal, now involving the further element of Capital Acquisitions Tax, but still predicated on the aforesaid revised valuations for 1985 and 1974, no progress appears to have been made, and events were overtaken by Mr. Pairceir’s retirement from Revenue on 11th September. The last of Mr. O’Cathain’s memoranda relating to Mr. Pairceir’s involvement as Chairman referred to the day prior to his retirement, 10th September, stating that there had been a call from Mr. Pairceir to Mr. Clayton to the effect that “*Dunnes (were) coming in*”. Mr. Pairceir responded that this surprised him, and whilst he would have seen them, he doubted that he would have been very active on the last day before his retirement. As to the reference in that note to the Trustees wishing to deal on a basis of a default vesting in the beneficiaries on the 15th March, 1985, as if the 1985 Deed had never existed, Mr. Pairceir doubted that this had ever been on the cards, or accorded with what he knew of the intentions of the Trustees.

16-75 Following Mr. Pairceir’s retirement, the settlement negotiations had by him in relation to Capital Gains Tax with Mr. Dunne and Mr. Fox terminated. His successor, Mr. Philip Curran did not continue Mr. Pairceir’s close and ongoing association with the matter and, with the promotion of Mr. Christopher Clayton from his position of heading the Capital Gains Tax section in the office of the Chief Inspector of Taxes, that position was inherited by Mr. O’Cathain until June, 1988.

16-76 Mr. O’Cathain was also recalled to give some further evidence by way of clarification of earlier matters, on 28th June, 2005. From the papers in his possession, he indicated that it seemed that the course of increasing the 1974 face value from £5.5 million to £8 million was not an entirely new idea in 1987, as some consideration of adjusting the lower value seemed to have arisen in November, 1986, although nothing tangible had then been done on foot of this. Mr. O’Cathain also stated that in his view the case against the Dunnes Trustees had been pursued diligently, properly and impartially, that interventions on behalf of taxpayers in his experience had never procured more than due entitlements, and that in this instance he felt that any intervention which led to Dunnes Trustees realising that they should negotiate with a view to reaching a settlement would have been beneficial.

16-77 Mr. Christopher Clayton, who had raised the Capital Gains Tax assessment, having probably heard of the settlement of the Discretionary Trust Tax Appeal on a basis of a valuation of £82 million (a different tax, reflecting different considerations and dates), then became aware of a query from Mr. Pairceir as to what tax would arise if this figure was used, leading to a sum of £23.6 million; he then became aware that Mr. Ben Dunne had indicated to Mr. Pairceir that this sum of £23.6 million was “*too much for him to pay now*”, whereupon further calculations were undertaken with the 1974 base value of £5.5 million increased to £8 million, bringing the final figure down to a sum in the vicinity of £17 million, £16 million or even £13 million. These dealings, which Mr. Clayton agreed seemed to coincide in time from the period when Mr. Pairceir first met Mr. Ben Dunne, involved no figures or arguments being furnished on behalf of Dunnes Trustees, and related totally to calculations carried out within Revenue. Mr. Clayton stated that he was hopeful that Revenue would win the Appeal, and regarded success as a probability, although his experience before the Appeal Commissioners and the Courts made him aware of the element of risk. Nevertheless, if he had thought the correct figure to seek was £16 million he said that he would not have suggested an assessment in the amount of £38.8 million. He also expressed some concern at the role Mr. Ben Dunne appeared to have played personally in the negotiations, stating that it was unusual to have a lay client as well as professional agents dealing with Revenue, and that it should have been clarified as to who was actually acting for Dunnes Trustees.

16-78 It therefore appears from Mr. O’Cathain’s memoranda, and was confirmed by Mr. Pairceir, that following Mr. Haughey’s request made at a meeting on 13th April, 1987, Mr. Pairceir met with Mr. Dunne and Mr. Fox on at least three and possibly more occasions. The initial meeting was on 27th April, 1987, when Mr. Dunne informed Mr. Pairceir that he wished to settle the assessment. It appears that at that meeting, a figure of £23.6 million was mentioned by Mr. Pairceir as Revenue’s “revised claim”. This figure, which represented a drop of £15.2 million from the tax assessed, was based on the value of the shares which had been agreed in the context of the Discretionary Trust Tax settlement the previous March, even though that settlement had been concluded on the footing that it was without prejudice to the Capital Gains Tax assessment and even though entirely different valuation rules applied to Capital Gains Tax. Mr. Dunne appears to have responded to this revised figure by informing Mr. Pairceir that £23.6 million was too much for him to pay at that time.

16-79 Mr. Pairceir met Mr. Dunne and Mr. Fox again on a date prior to 4th June, 1987. In the meantime, Mr. Pairceir had explored with Revenue officials how the Capital Gains Tax assessed could be reduced further. Having already dropped the valuation as of March, 1985 from £120 million to £82 million, Revenue focused on the base valuation as of April, 1974. For the purposes of the tax assessed by Mr. Clayton, this had been fixed at £5.5 million. This figure was increased to £8 million and with the

application of the multiplier had the effect of reducing the Capital Gains Tax further. With additional considerations of discounting factors it appears Mr. Pairceir took the view that a figure of £16 million could be justified to the Comptroller and Auditor General who he expected to query the settlement, given the scale of the tax assessed. This of course was in the vicinity of the figure which Mr. Bowen had represented as being manageable for the Trustees in his earlier meetings with Mr. Pairceir in 1985, and it was this figure of £16 million which Mr. Pairceir brought to this second meeting as being a figure which would be acceptable to Revenue. This figure, had it been accepted by Mr. Dunne would have represented a saving to the Trustees of £22.8 million and appears to have been offered to Mr. Dunne without any counter-offer or counter-proposal whatsoever emanating from that quarter.

16-80 Mr. Pairceir met Mr. Dunne in the week following 9th July, 1987 when Mr. Pairceir anticipated that the settlement at £16 million would be concluded. The settlement in fact foundered as by then, what Mr. Dunne wished to do was to ignore the Deed of Resettlement and approach the tax liability on the footing that the Trust had terminated on 15th March, 1985 and that the shares had been vested in the beneficiaries.

16-81 Little transpired in late 1987 or early 1988. On 29th February, 1988 the Appeal Commissioners notified the parties that the Capital Gains Tax Appeal would be heard on 9th and 10th June, 1988. Mr. Curran the then Chairman of Revenue, was requested by the Taoiseach, Mr. Haughey, to meet Mr. Ben Dunne, a matter disclosed to the McCracken Tribunal, although Revenue documents recording the circumstances surrounding the dealings with Dunnes interests were not available to the Tribunal.

The 1988 meeting with Mr. Curran

16-82 A memorandum of Mr. O’Cathain, dated 1st March, 1988, the day following notification by the Appeals Commissioners, recorded that the Taoiseach had on that date directed that Mr. Curran meet him at 5.30pm “*re. BND*” (the designation within Revenue of the Dunnes Trust), but on learning of Mr. Curran’s absence until the following week, had agreed to wait until then. Further memoranda of the 2nd and 3rd March, 1988 from Mr. O’Cathain noted his being asked to prepare a briefing note on the matter for the Chairman and doing so, speculating in the latter memorandum as to the possibility that Mr. Dunne was seeking a change in recognition of a section of the 1982 Finance Act. On 11th March, 1988 Mr. O’Cathain noted a telephone conversation with one of the Revenue Commissioners, Mr. John Reason, in which the latter informed him that Mr. Curran had met the Taoiseach, and had been informed by him that Mr. Dunne was “*confused and under tremendous pressure*”: Mr. Haughey also appears to have indicated that he would have Mr. Dunne briefed as to the Revenue position, whereupon Mr. Dunne would probably be advised to contact Revenue, and could do so by contacting Mr. Curran. Mr. O’Cathain also referred in that

note to some suggestion he had then made to Mr. Reason with regard to allowing payment of Capital Gains Tax and Capital Acquisition Tax by instalments over a period of years, and being asked by Mr. Reason to prepare some figures in that regard. Various figures and projections relating to possible approaches to settlement of the Capital Gains Tax Assessment were then set out by Mr. O’Cathain in a memorandum of 13th March, 1987.

16-83 The final relevant memorandum of Mr. O’Cathain comprised notes of telephone conversations on succeeding days, with Mr. Liam Reason, one of the Revenue Commissioners on 22nd March, 1988 and with Mr. Fox on 23rd March, 1988: as to the former, Mr. Reason informed Mr. O’Cathain that Mr. Curran had met Mr. Dunne and Mr. Fox the previous day, and that, in addition to discussion of other tax matters, Mr. Curran had noted the absence of progress on the Capital Gains Tax negotiations, and requested that the Trustees let him have their proposals; as to the latter, Mr. Fox had telephoned Mr. O’Cathain, mentioning that the Trustees had had a detailed and lengthy meeting with the Chairman, and would meet again soon. Mr. O’Cathain had in response expressed his hope that the outstanding Capital Gains Tax matter would be settled, and his view that the Trustees’ 1985 strategy had been mistaken.

16-84 In his testimony to this Tribunal, Mr. Curran stated that he had already been some years retired at the time of the McCracken Tribunal and, when contacted by the then Chairman, Mr. MacDomhnaill in the context of any political representations that may have been made, he mentioned a meeting with Mr. Haughey that he regarded as harmless, and later dealt with that Tribunal on that basis. As to why contacts between Mr. Pairceir and Dunnes interests between May and September of 1987 were not mentioned during his dealings with the legal advisers to the McCracken Tribunal, these matters did not then arise, and he was not asked in relation to them; in any event, he was not then aware of the meeting between Mr. Pairceir and Mr. Haughey in 1987, and had only seen Mr. O’Cathain’s note in that regard, or any related documentation, when furnished to him by this Tribunal in March, 2005. Whilst he acknowledged that he must have received Mr. O’Cathain’s briefing memorandum of 3rd March, 1988 which referred *inter alia* to Mr. Pairceir meeting Mr. Dunne on a number of occasions as detailed on file, this matter had not occurred to him at the time of the McCracken Tribunal and, if he had then thought about it, he would have assumed that others in Revenue would have dealt with the matter. He felt that it was not for him to talk of other meetings of which colleagues had told him.

16-85 Mr. Curran was taken through the transcript of portions of his evidence to the McCracken Tribunal by Tribunal Counsel. He had referred to it not having been normal for the Chairman to meet taxpayers as a routine matter, whether at the request of a politician or otherwise, but stated that it was the case that Revenue received a regular flow of representations from politicians, requesting that a particular taxpayer be looked at

sympathetically. Where such a communication was received from a Taoiseach or Government Minister, he would treat it very seriously. As to the request from Mr. Haughey to meet Mr. Dunne, he had been told the Taoiseach wanted to see him: on average he would have met the Taoiseach about four times annually, but usually in the company of Department of Finance officials. He would not normally know the purpose of such meetings until he arrived, and on this occasion the subject was Mr. Dunne: it was just a short meeting, with only the two of them present, and Mr. Haughey had said that the business of Dunnes was booming, but a problem had arisen in regard to the Trust and Capital Gains Tax, as a result of which Mr. Dunne wished to meet with the Revenue Chairman. Mr. Curran had said that he was happy to agree, and would have met Mr. Dunne even without the Taoiseach's intervention. There was no request for favourable treatment. Mr. Curran had duly met with Mr. Dunne, a meeting also attended by Mr. Fox, having got a briefing note as to the general background from colleagues in his office. Mr. Dunne had done all the talking at the meeting, but did not make clear what he wanted, tending to talk around the subject, and Mr. Curran had requested that whatever he sought should be expressed in writing, whereupon he would have his colleagues check if such requirements were within the law.

16-86 Dealing further in his evidence to this Tribunal with the matter of political representations, Mr. Curran said that his secretary would show him letters from Ministers on behalf of constituents, whereupon he would reply, but otherwise matters were largely dealt with by that secretary. In Revenue, they were conscious that politicians would show replying letters from Revenue to constituents, as an indication that they were doing their best for such constituents.

16-87 Whilst the norm in meeting the Taoiseach was to discuss budgetary matters in the presence of officials, it was perhaps once or twice that the topic had been individuals: as a Civil Servant, if the Taoiseach wanted to see you, it was more or less a summons, and you just went; records would not be kept, and there was no question of bringing a secretary to keep a note. There was seldom much to do in consequence, although he might make inquiries of his officials, but there was never any question of reducing a tax bill, or excusing someone who should be prosecuted. In the public service at that time, he viewed Revenue as unique in not having a political head, although unquestionably Mr. Haughey was in authority over him. As to whether the purpose of the meeting was merely to humour Mr. Haughey, Mr. Curran could not say what value Mr. Haughey obtained: he had his own personal way, which was very hands-on, and liked to meet people. As to the occasion in question, in which the meeting was initially sought on the day the message was received, it was unusual to have such little notice, and this he supposed could have indicated a degree of urgency. It was the position that the taxpayer had been identified by the time he met Mr. Haughey in this instance, and he had taken care to be briefed on the matter by officials. He had been less clear on the matter before the McCracken

Tribunal, not having on that occasion had sight of the Revenue documents. Not knowing what the Taoiseach had in mind, he had not sought a particularly detailed briefing from officials, but he had been aware that Revenue had a large case pending in relation to the Dunnes Trust.

16-88 The meeting with Mr. Haughey had only occupied between five and ten minutes, whereupon Mr. Curran had returned to Dublin Castle. Mr. Haughey had referred to Dunnes facing a large tax bill due to its increased value, and just seemed interested in introducing Mr. Dunne to Mr. Curran. As to the reference in a memorandum of Mr. O’Cathain to the Taoiseach having Mr. Dunne briefed as to the Revenue position, Mr. Curran stated that there had been no question of him telling Mr. Haughey that he would get such information in order for him to brief Mr. Dunne.

16-89 As to whether Mr. Curran had been aware when meeting Mr. Haughey that Mr. Dunne had already met Revenue officials and the previous Chairman, Mr. Curran could not be sure: he may have heard, but it was not important in his mind. Insofar as this was referred to in the briefing note, he may not have read this portion. In any event, he would not have referred to any such matter involving Mr. Pairceir. For someone like Mr. Dunne, facing very high tax, it was natural to go talking to anyone, looking for new information. Whilst Mr. Curran now knew Mr. Dunne had met Mr. Pairceir a number of times, having been introduced via Mr. Haughey, he did not at the time of Mr. Haughey’s request to him know it was the Taoiseach’s second intervention. He did not regard what was conveyed to him by Mr. Haughey as a request to look on the Dunnes position with greater sympathy.

16-90 In the evidence of Mr. MacDomhnaill, who it will be recalled succeeded Mr. Curran as Chairman in October, 1990 and remained Chairman during the currency of the McCracken Tribunal, he referred to a number of meetings had by him with Dunnes representatives on tax matters, both when he was one of the Revenue Commissioners to whom the Collector General and the Chief Inspector of Taxes reported, and then when he became Chairman in succession to Mr. Curran. He stated that, save for one held with Mr. Pairceir when acting as a consultant for Dunnes in 1996, which is addressed later in this Chapter, with regard to seeking changes in Discretionary Trust Tax law, all these meetings were arranged through Mr. Noel Fox, and no member of the Oireachtas had been involved. Since Dunnes very much represented the section described as “*large cases*” he saw it as sensible, and reflecting Mr. Fox’s commitment to his client, that he as Chairman should have dealt with Mr. Fox as a contact, and he had met also with a number of members of the Dunne family. Amongst the meetings was an occasion in 1990, when Mr. Fox contacted him urgently in relation to company cash flow problems in meeting tax payments at a time when the company also transpired to have overpaid Corporation Tax in advance, and Mr. MacDomhnaill was then able to facilitate the company by agreeing a temporary stay. A somewhat similar

situation arose in 1991, by which time Mr. MacDomhnaill was Chairman, with regard to administrative arrangements regarding Corporation Tax and PAYE. He also dealt with Mr. Fox and Dunne family members in the context of a voluntary disclosure relative to the matters that arose in the Price Waterhouse Report.

16-91 As to his dealings as Chairman with the McCracken Tribunal in 1997, he described his correspondence with Ms Annette O'Connell, the Registrar to that Tribunal. He had undertaken relatively elaborate inquiries, both within Revenue and with retired members of relevance, on the queries raised, including the substantive one regarding any political representations made with a view to changing Tax law, or otherwise ameliorating the position of Dunnes interests. He could not say for certain why the examination conducted at the time did not convey to him the documentation relating to Mr. Haughey's request for a meeting between Mr. Pairceir and Mr. Dunne. Factors that may have contributed included some likelihood that not all files may have been duplicated in the different branches of Revenue involved, the possibility that they simply missed Mr. O'Cathain's memorandum recording the request for the meeting, and the somewhat exacting time-limits imposed by the McCracken Tribunal. Mr. MacDomhnaill however had spoken with Mr. Pairceir, in addition to some other retired persons, and there had been reference to the Taoiseach seeking a meeting, but in the absence of any follow-up or request for any specific course of action, Mr. Pairceir had taken the view that what had arisen did not amount to a representation, and Mr. MacDomhnaill was inclined to agree.

Capital Gains Tax Appeal

16-92 There seems in fact to have been no further meeting or negotiations, and the Capital Gains Tax Appeal, having been adjourned to the 22nd and 23rd days of September, 1988, then proceeded, with full legal representation on behalf of both sides. The matter was decided in favour of the Trustees, and the Revenue Commissioners decided, having taken advice from Senior Counsel, not to appeal the determination to the High Court. Just as the Trustees in evidence indicated that they had always believed their carefully planned legal strategy would prevail, the preponderant view of Revenue witnesses was to the effect that a case long felt to be strong had in the event shown unforeseen frailties to such an extent as not to justify testing the matter in the Superior Courts. In this view, Mr. Clayton was a vigorous dissentient, stating amongst several matters raised that all earlier advices from Counsel had been supportive of the Revenue case, and that the decision not to appeal was inordinately hasty.

16-93 Following the adverse outcome for Revenue on the Capital Gains Tax Appeal before the Appeal Commissioners, Mr. MacDomhnaill recalled that he and his fellow Revenue Commissioners had all been agreed that it was not warranted to appeal that outcome. The matter had been referred

by Mr. John Reason, and having regard to the views expressed by their Senior Counsel, they were of a like mind that what had initially been assessed as a strong case for Revenue had in fact turned out to be a weak one, in the context of the relevant Trust law. In reply to Counsel for the Dunnes Trustees, Mr. MacDomhnaill said that in Revenue they had initially thought that the March 1985 strategy adopted by the Trustees gave rise to a new settlement and deemed disposal, but this transpired not to be the case, and the power of revocation Revenue had thought would not inure to the benefit of Dunnes' interests in fact did so. Had they felt there were real prospects of success in taking the matter to the High Court, they would have done so, as the potential tax yield then dwarfed all other Capital Gains Tax cases, but in the ultimate they had to make a decision that was fair to both sides. Replying to Counsel for the Revenue Commissioners, Mr. MacDomhnaill said that the views of Mr. Savage in this regard carried deserved weight and authority, and he did not agree with Mr. Christopher Clayton's evidence that the decision not to appeal was over hasty or in any other way questionable.

16-94 Such remaining matters of any relevance as transpired between Revenue and Dunnes interests will be referred to briefly at a later stage in this chapter.

Consultancy of Seamus Pairceir on behalf of Dunnes interests

16-95 According to Mr. Noel Fox, Mr. Pairceir's involvement in this context arose through Mr. Fox having told Mr. Ben Dunne that Mr. Pairceir was acting as a consultant on tax matters after his retirement, having heard this in accountancy circles. He suggested to Mr. Dunne that Mr. Pairceir should look at the Dunnes side of the then pending Capital Gains Tax appeal. Mr. Fox agreed that he did not mention this to his fellow Trustees. He did not view this as enabling insight into the Revenue side, and did not think anything new came out of the research paper prepared by Mr. Pairceir. Insofar as payment was made to Mr. Pairceir by Mr. Dunne personally, rather than by the Trust, this reflected what Mr. Fox thought occurred and was not done to cloud the position. No confidential information in regard to Revenue was thereby obtained, and Mr. Fox did not view the engagement as putting Mr. Pairceir in a position of conflict.

16-96 Mr. Ben Dunne was unable in evidence to recall whether it was Mr. Fox or himself who proposed Mr. Pairceir's retention, but he accepted that he, in any event, sanctioned it. He had no details of any contacts with Mr. Pairceir in this regard. He agreed that he paid Mr. Pairceir £10,000.00 plus Value Added Tax for his work in relation to the Capital Gains Tax Appeal, and a similar amount for subsequent work undertaken on other tax related matters. Mr. Dunne agreed with Tribunal Counsel that the payment for what was done by Mr. Pairceir on the Capital Gains Tax Appeal was a significant professional fee, but stated that it was the sum sought by Mr. Pairceir.

16-97 Mr. Pairceir testified that, following his retirement as Revenue Chairman in September, 1987, he undertook an advisory role in the Customs House Dock Development Authority. A colleague there was Mr. Noel Fox, who asked him to undertake some research work on the forthcoming Capital Gains Tax Appeal in 1988. To Mr. Pairceir's recall, the matter was raised by Mr. Fox over a lunch. What Mr. Pairceir stated that he did was to prepare a summary of the relevant statute and case-law, and express it in an intelligible and digestible form. He did not think he brought any special insight to the task by reason of having previously been involved on the Revenue side. The research paper prepared by him, dated in September, 1988, had been made available to the Tribunal by him and represented the culmination of his researches, or at least one such culmination. He differed from Mr. Dunne in regard to the manner in which remuneration had been agreed with Mr. Dunne, stating that Mr. Dunne had offered him the sum of £10,000.00, and had then paid it to him in advance. Mr. Pairceir acknowledged that the payment was a handsome one, indeed a very large one, for the research undertaken. Asked had there been any rules of engagement or code of practice governing the type of post-retirement professional engagements undertaken by Revenue officials, he stated that there were none at that time, but some had since been devised.

Other evidence by and on behalf of Dunnes Trustees

16-98 Mr. Noel Fox, who had already testified in early Tribunal sittings, stated that he accepted the substance of what was contained in Revenue memoranda and other documents regarding the various meetings he had with Revenue officials as a Trustee. Whilst acknowledging his association with Mr. Haughey, he said that he had had no involvement in or awareness of any meetings arranged by Mr. Haughey between any Chairman of the Revenue Commissioners and Mr. Ben Dunne.

16-99 He recalled involvement in the initial discussions on Capital Taxation with Revenue in March, 1985, and felt the lowest figures submitted by Revenue so far exceeded what the Trust could afford to pay that the Trustees were left with no alternative but to seek to extend the Trust.

16-100 He confirmed his earlier evidence in relation to the Tripleplan payment and the Bearer Cheques, and his acceptance that the Tripleplan payment predated by several months the first payment to Mr. Haughey that he had recalled in his testimony to the McCracken Tribunal. In payments in which he was involved, he had received instructions from Mr. Desmond Traynor in regard to payment amounts and routes, which he had in turn transmitted to Mr. Dunne. He agreed that from the time of the Tripleplan payment, there were issues being discussed with Revenue about the Trust, and that Mr. Dunne and himself were deeply involved in those discussions.

16-101 As to the settlement offer in the amount of £16 million made by Mr. Pairceir, he recalled that out of courtesy they had said they would

convey this to their advisers, but he felt that it made no sense, and that this was conveyed to Mr. Pairceir in due course. Whilst accepting that substantial Capital Taxation would at some stage be incurred when there was an actual disposal or appointment, he stated that the 1985 strategy had followed upon much advice and preparation, and their confidence in it was reflected in having made a nil return for Capital Gains Tax, without any payment on account.

16-102 Mr. Bowen stated that he had had no knowledge whatsoever of any meetings between Mr. Pairceir and Mr. Ben Dunne, or of any involvement on the part of the new Taoiseach, Mr. Haughey, in arranging that the two should meet in the first instance, although throughout his dealings with Mr. Pairceir, he had sought to ensure that his co-Trustees and the Dunne family beneficiaries were kept apprised of what was being discussed. Neither had he become aware of any proposed £16 million “*settlement*” raised at a meeting between Mr. Dunne and Mr. Pairceir on 4th June, 1987, a development which he felt might reasonably have been made known to all of the Trustees. His only intimation of any developments had been a reference in his co-Trustee Mr. Edward Montgomery’s letter to him of 9th July, 1987 to “*indirect approaches*” having been made regarding a compromise to Mr. Dunne, but no details regarding any such matters had been communicated to him. Regarding any such possible £16 million settlement, Mr. Bowen thought this in no sense feasible from the Trustees’ standpoint: He believed that no Capital Gains Tax liability then arose, and accordingly would only have been interested in settling on very attractive terms, akin to nuisance value. What would have been of much greater interest to him was a settlement based on complete dismantlement of the Trust, which addressed Capital Acquisitions Tax, Capital Gains Tax and Discretionary Trust Tax (in addition killing off the last named), and in this regard approximately £12-15 million had in total been on the table in 1985, or perhaps a marginally larger sum in or about 1987.

16-103 Mr. Bernard Uniacke, like Mr. Fox and Mr. Bowen a Trustee and Accountant gave brief evidence, already referred to in part. Like Mr. Bowen, he stated that he had no recollection of having been told of any meeting or dealings between Mr. Pairceir and Mr. Dunne, or of the proposed £16 million “*settlement*”, which would certainly have been a very significant matter, requiring serious discussion. He had been unaware of any payments of Dunne’s money to any politician until he received a telephone call from Mr. Ben Dunne mentioning this and other matters on 15th June, 1993, on which occasion no name was given. Neither had matters such as Mr. Dunne’s meeting with Mr. Pairceir as arranged by Mr. Haughey, Mr. Pairceir’s retention as a consultant after his retirement by Mr. Dunne, or Mr. Pairceir’s offer to Mr. Dunne to settlement of the Capital Gains Tax liability for £16 million been conveyed to him, to the best of his recollection. Mr. Pairceir had at no time acted as a consultant on behalf of the actual Trust.

16-104 Mr. Uniacke also dealt with the stormy events of 1993, in relation to which he had already testified to the McCracken Tribunal. As tensions within the Dunne family intensified, he was asked by Mr. Ben Dunne to attend the weekly board meetings as an observer. On 14th June, 1993, a motion was brought to suspend Mr. Ben Dunne’s executive powers as a Director. On the following day, 15th June, 1993, Mr. Uniacke received a telephone call from Mr. Ben Dunne, and noted what was then conveyed to him. After referring to the intended attendance the following Tuesday at Dunnes Stores Headquarters by Mr. Noel Smyth, Solicitor to Mr. Ben Dunne, with the Investigation Branch of the Revenue Commissioners, Mr. Uniacke noted that Mr. Ben Dunne had considered his position in regard to the motion, and prepared a response consisting of twelve points. Certain of these points were raised by Tribunal Counsel with Mr. Uniacke, in addition to putting to him portion of his related evidence to the McCracken Tribunal, including reference to the description of Dunnes as “*model taxpayers*” by Mr. Cathal MacDomhnaill, the then Chairman of the Revenue Commissioners. Among the twelve points was an intended application by Mr. Ben Dunne for the appointment of an Inspector under s.7 of the 1990 Companies Act; it was also noted that part of Mr. Ben Dunne’s evidence would refer to the payment of £1 million to a member of a previous Government to influence legislation affecting the Trust. In Mr. Uniacke’s evidence to the McCracken Tribunal, he had stated that some of Mr. Ben Dunne’s intended actions were quite fantastic and impractical, but he would nonetheless have taken them all seriously. No tax legislation conferring a benefit upon the Trust had since been enacted, and the proposed visit to Dunnes Headquarters by Mr. Smyth and the Investigation Branch of the Revenue Commissioners had not materialised; nevertheless, some of the other points made by Mr. Dunne, expressed in legal language by no means typical of him, had later been raised by him in the course of his subsequent litigation. As to how he would have responded had he known at that time that £1.9 million had been paid to a politician, and that that politician had twice arranged that Mr. Dunne would meet the Chairman of the Revenue Commissioners, Mr. Uniacke said that he was unsure as to how he could have taken the matter more seriously, other than reporting the position to the Directors.

16-105 Mr. Ben Dunne again testified. Having reviewed Tribunal documents, he stated that he accepted that his May, 1987 meeting with Mr. Pairceir was arranged at the request of Mr. Haughey, but said that he had no recall of any dealings with Mr. Haughey regarding any tax matters, whether the Trust, his own or any other family member. Like Mr. Fox, he was disposed to accept the general content of what was contained in Revenue documentation in relation to meetings and other dealings. As to the non-disclosure to the McCracken Tribunal of his dealings with Mr. Pairceir when Revenue Chairman, he had not recalled these until he had sight of Mr. Pairceir’s statement.

16-106 Mr. Dunne recalled discussions about the future of the Trust many years previously, in the light of increasing enactments providing for Capital Taxation, particularly with Mr. Fox and Mr. Montgomery, and also with Mr. Bowen. Things remained somewhat up in the air, as it was difficult to get all the siblings together, and he recalled saying to Mr. Montgomery that if they did not watch the business, there would be nothing left to talk about. His inclination was to extend the Trust, as he had been engaged in the business since the age of sixteen, and never contemplated leaving it.

16-107 Regarding the delay in payment of the settlement agreed for Discretionary Trust Tax liability in 1987, he denied that this was due to any fault on his part.

16-108 He recalled clearly the circumstances in which the Deeds of March, 1985 came to be entered into: following extensive legal advice and preparation, they all assembled in Head Office on the day in question, with a midnight deadline for signing. It was hoped that Mr. Alan Dukes, as Minister for Finance might come up with some better proposals, and with this in mind they waited until after 11pm before signing.

16-109 Whilst he was aware of some meetings with Revenue, he was too busy running the business to be particularly involved. He was aware that they would have to pay Discretionary Trust tax, but was reassured by Mr. Montgomery, to whom he was particularly close, on “*the big tax*”, to the effect that they would win on appeal. He could not remember his meeting with Mr. Pairceir on 27th April, 1987, as arranged by Mr. Haughey, but accepted from the documentation that it occurred. Having put much thought and effort into helping the Tribunal, he thought that the main reason for this meeting may have been seeking provision for his sister Theresa in the light of her personal circumstances. But his first knowledge of Mr. Haughey’s involvement was when he received the Tribunal documents. Whilst he accepted that he may have given the Bearer Cheques to Mr. Haughey, it was only from Tribunal evidence that he had come to know that the Tripleplan payment was for Mr. Haughey, and he had previously thought that the John Furze payment was the first one. But he did not now dispute that the Tripleplan payment was at approximately the same time as he had met with Mr. Pairceir at the request of Mr. Haughey, and that Mr. Matt Price in Northern Ireland had obtained his approval before providing that sterling cheque. In all the circumstances now apparent, it did seem that Mr. Traynor’s approach was in early, not late, 1987, but Mr. Dunne denied that what had emerged contradicted his evidence to the McCracken Tribunal.

16-110 Neither did he recall the meeting with Mr. Pairceir, in which the latter appeared to have offered to settle the Capital Gains Tax liability for £16 million. Having a good memory for figures, he found it incredible that he could not recall this, and acknowledged himself at a total loss, but he just could not remember it. A similar vagueness and lack of recall emerged as to the preponderance of remaining dealings had by Mr. Dunne with

Revenue as referred to in documents furnished to the Tribunal, including his meeting arranged by Mr. Haughey with the new Chairman, Mr. Curran, shortly after the Capital Gains Tax appeal had been listed for hearing. As to Mr. Haughey's apparent description at that time of Mr. Dunne being confused and under enormous pressure, Mr. Dunne accepted that the former may have applied but denied the latter. He could not explain how the Taoiseach was involved, and was unaware of such involvement until he received the Tribunal documents.

16-111 Mr. Dunne was questioned in relation to the evidence as to what he had stated to Mr. Uniacke on 15th June, 1993. As to Mr. Uniacke's written note, Mr. Dunne said that Mr. Uniacke would not have written the matters contained unless they accurately represented what he had said during the course of the telephone call. He had previously spoken to Mr. Noel Smyth, and must have received some document from him about the matters raised, or else he could not have remembered them. They represented a serious response to what had arisen, but one from a very broken man. He recalled Mr. Smyth mentioning to him matters relating to oppressed minorities under the Companies Acts. Various of the matters contained in Mr. Uniacke's note were put to Mr. Dunne, and he acknowledged that, allowing for his state of health and annoyance at the time, there were at least elements of truth in the matters raised, and that they were serious matters brought to the attention of Mr. Uniacke, and were matters that he intended to rely upon in his litigation against the Trustees. In raising the matters noted by Mr. Uniacke, he had also intended to put pressure on the Trustees and on other family members to deal with the position. He further agreed that he must have made the observation "*if they are taking me out, I will take them out*". Insofar as he accepted that he must have told Mr. Uniacke that he had paid £1 million to influence tax legislation, he said that the reason for this was the civil war going on in Dunnes Stores, that desperate people do desperate things, and that the purpose behind these things was to get Mr. Fox and members of his family into trouble.

16-112 Mr. Dunne acknowledged that, whatever the previous aggregate of payments by him to Mr. Haughey, the final figure that had emerged, amounting to approximately £2 million, was the true position. He denied that the purpose behind the payments had been to obtain anything from Mr. Haughey, in particular with regard to the taxation problems faced by the Trust.

16-113 As to his evidence to the McCracken Tribunal, in relation to seeking through Mr. Haughey a meeting with Mr. Curran as Revenue Chairman on a basis tantamount to seeking a social encounter with someone equivalent to one of Dunnes' large suppliers, he stated that he realised that this was at least incorrect. He had in fact also met the previous Chairman, Mr. Pairceir, on a number of occasions, initially also through the good offices of Mr. Haughey, and had been in the thick of detailed discussions with him, including those giving rise to Mr. Pairceir's offer of

settlement in regard to the Capital Gains Tax liability. He had not informed the McCracken Tribunal of this because he had not remembered it, although he himself acknowledged that he now found that unbelievable. It was further the position that he had no recollection of the various further payments to Mr. Haughey above and beyond what had been disclosed to the McCracken Tribunal until brought to his attention by this Tribunal, including those made prior to what was represented as the initial payment in November/December, 1987.

16-114 After adjourning overnight, Mr. Dunne concluded his evidence on these matters on 30th June, 2005. Of the matters in relation to which he had said that he had no recollection until brought to his attention by this Tribunal, he included the Wytrex payment, the three cheques referred to as the Carlisle payments, and the £20,000.00 paid to Mr. Haughey following a lunch at his residence, as well as the Tripleplan payment and the Bearer Cheques.

16-115 From an attendance of a telephone call of 4th June, 1987 from Mr. O’Cathain to Mr. Bowen, Mr. Dunne agreed that it seemed that Mr. O’Cathain had conveyed to Mr. Bowen his understanding that Mr. Dunne had again been talking to Mr. Pairceir. As to Mr. Dunne’s meetings with Mr. Pairceir, he was disposed to agree that Mr. Pairceir was on his own on the Revenue side, at least as regards the one meeting remembered by Mr. Dunne, although Mr. Dunne said his practice would have been to have Mr. Fox in attendance with him.

16-116 It was put in conclusion by Tribunal counsel to Mr. Dunne that the true motivation for payments to Mr. Haughey that significantly both exceeded and predated what had been conveyed to the McCracken Tribunal was not admiration for the recipient, but was for purposes connected with the Trust and its tax. Mr. Dunne replied that the money was paid for one purpose only, which was to discharge a debt owed by Mr. Haughey.

BALANCE OF DEALINGS BETWEEN REVENUE AND DUNNES

16-117 A further aspect of the dealings between Revenue and Dunnes was inquired into in the course of the public sittings of June and July, 2005. Whilst relating back to the occasion on which the Discretionary Trust Tax liability was settled in March, 1988, this was not addressed in correspondence between Revenue and Dunnes until early 1996. On 26th January, 1996, Mr. Noel Fox furnished a tax return on behalf of the Trustees to the then Assistant Secretary of the Capital Taxes Division, Mr. Michael O’Grady, which followed upon a settlement concluded in November, 1994 of the litigation between Mr. Ben Dunne and the Trustees. In a letter sent with the return, Mr. Fox referred to an amount of £2.2 million as the dividend paid by the Dunnes Holding Company to Trustees in June, 1994, to enable them discharge their Discretionary Trust Tax liability, and asserted that “as

part of the financial settlement of the Discretionary Trust Tax in 1988, it was agreed by the Revenue (Mr. Seamus Pairceir) that no additional liability to tax would arise in relation to this dividend”.

16-118 The reference to a dividend related to the manner of payment of the Discretionary Trust Tax of 1% falling due annually. In order to discharge this liability, it was necessary for the Trustees to be put in funds by the Dunnes Holding Company, and this was done by payment of a dividend in the required amount by the Holding Company to the Trustees. Ordinarily, the Trustees would have been liable for Income Tax on such dividends, at the standard rate then obtaining less a tax credit to which they would have been entitled. If the standard tax rate exceeded the dividend tax credit, the Trustees would have faced a net Income Tax liability for the resultant difference, as in fact transpired to be the case from the year 1988.

16-119 However, what Mr. Fox was contending in his letter, and what was reiterated by the Trustees in much subsequent correspondence, was that by reason of a further agreement concluded at the time of the Discretionary Trust settlement in March, 1987, the Trustees had been assured that, notwithstanding any later divergence between the two rates of tax, they would not be required to discharge any net Income Tax liability. Given the ongoing increase in the value of the Dunnes enterprise, any such agreement if made would have represented a sizeable benefit to the Trustees and beneficiaries, including Mr. Ben Dunne. Some communications within Revenue appeared at first instance confirmatory of such an agreement; Mr. Tadgh O’Connell, then an official in the Office of the Chief Inspector dealing with matters arising between Dunnes and Revenue, and Mr. Michael O’Grady, who by the time of the Tribunal sittings had become one of the Commissioners of Revenue, met with Mr. Fox in November, 1994. It was Mr. O’Connell’s recollection that Mr. Fox then mentioned the alleged agreement. Mr. O’Connell also formed the view from conversation with Mr. O’Grady that the latter accepted the correctness of Mr. Fox’s contention and he wrote to Ms Eileen O’Sullivan of the Dublin Tax District on 13th March, 1996, advising her that there was no need to raise an Income Tax assessment on foot of the Trustee’s return furnished by Mr. Fox, alluding to his having received confirmation from Mr. O’Grady to the effect that Revenue had agreed that no such liability arose in respect of distributions made for the purpose of Discretionary Trust Tax liabilities.

16-120 Nonetheless, in evidence Mr. O’Connell stated that when he later spoke to Mr. O’Grady regarding the matter, he realised that he had misunderstood what had been said by him, and his belief that Mr. O’Grady supported Mr. Fox’s contention was incorrect. An extensive examination of papers within Revenue then undertaken by Mr. O’Connell elicited no evidence supporting the alleged agreement. He further discussed the position with Mr. Christopher Clayton, then the Chief Inspector, and the then Assistant Secretary, Ms Maureen Moore, and in consequence issued an Income Tax Assessment for 1994/1995 on 14th July, 1997, in the sum of

£64,533.00. Along with assessments for the other years in question raised in February, 1998, this assessment was appealed by the Trustees. When the appeals were heard by the Appeal Commissioners in February, 2000, the assessments to Income Tax were upheld, with the Appeal Commissioners indicating that they considered they had no jurisdiction to determine the factual issue of whether or not the alleged agreement had been concluded.

16-121 The Trustees then appealed to the Dublin Circuit Court, and in the course of those proceedings filed an Affidavit of their Solicitor seeking that Revenue make discovery of relevant documents in their possession. A portion of that Affidavit referred to the strong belief of the Trustees at all times that the agreement contended for had been made with Revenue, and stated that, had the Trustees ever apprehended that Income Tax would be sought on dividends, they would have taken appropriate action in response, such as availing of the provisions of the 1993 Statutory Amnesty, or taking other measures to confirm or enforce the full basis of agreement. Discovery was duly ordered by the Circuit Court, and an Affidavit was filed on behalf of Revenue, which did not include in the Schedule of relevant documents in its power or possession the aforesaid note of 13th March, 1996 from Mr. O’Connell to Ms O’Sullivan.

16-122 The Income Tax assessments raised on the Trustees were subsequently settled. Although the Tribunal has not been afforded sight of the relevant Income Tax portion of the settlement documentation, it has received the written confirmation of the current senior solicitor to the Trustees that “*assessments were raised on the Trustees for the full amount of all Income Tax received by the Trustees in respect of the tax years 1987/88 to 1996/97 inclusive, and that all such assessments were paid in full*”.

16-123 In the course of the correspondence between the Trustees’ representatives and Revenue made available to the Tribunal in relation to this Income Tax aspect, a letter of 4th March, 1998 on behalf of the Trustees was written to Revenue by Mr. Frank Bowen on Deloitte & Touche notepaper. In that letter, reference was made to the commencement of divergence between the relevant rates of tax having arisen as and from 6th April, 1988; it was stated that the 1987 Appeal had been attended by three Trustees, Mr. Uniacke, Mr. Fox and Mr. Bowen, and it was the distinct recollection of all of them that the agreement then concluded extended to a commitment not to levy Income Tax on dividends used to discharge Discretionary Trust Tax; particular reliance was placed on the recollection of Mr. Horgan, and it was requested that in all the circumstances the various Income Tax assessments raised in this regard should be withdrawn.

16-124 In evidence, Mr. Horgan was in no doubt that he was not in fact present on the occasion of the listing of the 1987 Discretionary Trust Tax Appeal, or in any way involved in the settlement negotiations that then

occurred. This he had subsequently conveyed to Mr. Bowen, and whilst he accepted that Mr. Bowen and Mr. Fox were genuinely convinced as to the correctness of their position in regard to the settlement, they were in his view wrong, and had misunderstood the position of Revenue when the agreement was concluded. He was emphatic that Revenue would not have concluded an open-ended agreement to forgive Income Tax forever, notwithstanding divergences in the standard rate of tax and the dividend tax credit.

16-125 This view was replicated in the preponderance of evidence given by Revenue witnesses. Other than as to Mr. O’Connell’s initial understanding of his discussions with Mr. O’Grady, in relation to which an explanation and correction was provided, the Revenue evidence was clearly to the effect that no agreement such as was contended for by the Trustees had been concluded in relation to Income Tax on dividends, and that it would have been entirely contrary to Revenue practice to have made an open-ended agreement that would override any future changes in tax rates. Mr. Pairceir stated in evidence that he was astonished at the suggestion that Revenue entered into such an agreement, and was indeed unaware of it until he received correspondence from the Tribunal in March, 2005. Other Revenue evidence similarly denied the making of any such agreement, including that of Dr. Don Thornhill, who recalled some discussion along similar lines being raised by the Trustees in the course of the settlement negotiations when the Discretionary Trust Tax appeal was listed, in response to which he had stated that, whilst Revenue would be reasonable, he could give no assurance or undertaking in that regard. Indeed, in Mr. Bowen’s own evidence, he acknowledged that it was fair to say that some element of cross purposes had arisen in his discussions with Revenue, and that the position seemed to have been one of mutual mistake. He also stated that the belief he had taken away from the negotiations that there had been an agreement on Income Tax as well as Discretionary Trust Tax may have been optimistic. Mr. Fox, who had also been present at the negotiations, similarly accepted in his evidence that there seemed to have been mutual mistake.

16-126 Some further aspects of this matter, which were raised in evidence, add little to the position, and need not be set forth. Overall, given the weight of the evidence on both the Revenue and Dunnes’ side, the absence of any written reference to the alleged further basis of agreement in the settlement memorandum or elsewhere, and the need in any event for unambiguous proof of so distinctive and open-ended a basis of agreement, it would plainly not be warranted for the Tribunal to conclude that such an agreement was made. Some perplexing factors nonetheless remain, not least the fact that, (notwithstanding the commencement of self-assessment) given the absence of any Income Tax returns, Revenue appear in the course of an ongoing relationship of regular contact with the Trustees to have taken no steps whatsoever to seek Income Tax from the annual dividends for a substantial number of years.

CONCLUSIONS AND RECOMMENDATIONS

16-127 Even before allowance is made for the several additional matters not made known to the McCracken Tribunal, it is well at the outset to consider the situation faced in the early months of 1987 by the persons most centrally involved. For Mr. Ben Dunne, the business to which he had devoted his working life, and which up to then had been protected by a trust, was facing exposure to Capital Taxes that had the potential to approach half its entire value; whilst thought to have taken place at a later stage in the year, it was nonetheless the position that his then close associate and Trustee, Mr. Noel Fox, had notified him of the critical financial predicament faced by Mr. Charles Haughey, whom Mr. Dunne admired, and with whom he had been acquainted, whereupon Mr. Dunne indicated that he would discharge the entire amount required, as opposed to merely contributing. For his part, Mr. Fox was closely associated with both Mr. Dunne and Mr. Haughey, was through daily meetings and otherwise as Trustee and Financial Adviser centrally involved in the potential taxation crisis faced by his largest client, and had been deputed by Mr. Desmond Traynor to seek a contribution from Mr. Dunne in ease of Mr. Haughey's financial problems. For Mr. Haughey himself and those who rendered assistance in relation to his finances, the simple imperative was the urgent raising of money to address those problems.

16-128 When the additional information that had not been made available to the McCracken Tribunal is engrafted onto the picture of events, the actions and the motivations of those persons centrally involved undeniably emerge in a clearer focus and more logical sequence. In particular,

- (i) The aggregate of payments made to Mr. Haughey by Mr. Dunne from assets of the business greatly exceeded what had been conveyed to the McCracken Tribunal as the totality of such payments, with the preponderance of such additional payments, particularly the Tripleplan payment, being made in a manner that was covert and extremely difficult to detect. Mr. Dunne professed in evidence to have forgotten of all such payments until brought to his attention by this Tribunal.
- (ii) Further, those additional payments markedly predated what had hitherto been conveyed as a timescale of payments commencing in late 1987, and it is apparent that both the request for money for Mr. Haughey, and Mr. Dunne's response to it, was set in train at a time when Mr. Haughey had good prospects of returning to political power, and when battle lines had been drawn in the large Capital Taxation issues between Revenue and Dunnes Interests.
- (iii) Rather than an isolated and innocuous 1988 request from Mr. Haughey that Mr. Dunne be facilitated in meeting the Chairman of Revenue (a request in fact made at the very time when a date was first fixed for hearing in the crucial Capital Gains Tax Appeal), Mr. Haughey had in fact the previous year within a month of becoming

Taoiseach arranged that Mr. Dunne met the previous Chairman of Revenue, following which extensive meetings and negotiations on the taxation issues were set in being between the Chairman and Messrs Dunne and Fox.

16-129 In assessing the dealings had between the Dunnes Trustees and their advisers and the Revenue Commissioners after an approach was first made by the Trustees through the agency of the then Minister for Finance, Mr. Alan Dukes in early 1985, it is impossible to avoid a clear impression of “*a game of two halves*”, the first comprising the years 1985 and 1986, and the second comprising 1987 and subsequent years. In that initial period, there was considerable formality and circumspection about the manner in which a number of delegates from both sides were introduced and met, the content of that initial meeting was carefully minuted on both sides, and such discussions as then and in subsequent conversations between Mr. Frank Bowen and Mr. Seamus Pairceir took place disclosed only politely expressed but distinctly polarised respective positions; there seemed minimal prospects of moving towards a negotiated settlement, and it came as no surprise in late 1986 when Mr. Pairceir indicated both to his colleagues and to Mr. Bowen that he had delayed too long in discussions, and proposed to proceed administratively with a view to recovering the taxes due. In contrast, once Mr. Haughey as new Taoiseach in 1987 set discussions in motion again by requesting Mr. Pairceir to meet Mr. Dunne, the form and substance of those renewed discussions immediately and markedly differed from what had preceded them: Meetings became informal and consisted of Mr. Pairceir on his own as Chairman meeting either or both of Mr. Dunne and Mr. Fox, who substantially superseded, Mr. Bowen and the content of such meetings was only incidentally noted on the Revenue side though notes of Mr. O’Cathain referring to what Mr. Pairceir or others had passed on to him, and not at all on the Trustees’ side.

16-130 As to the actual substance of those discussions, a clear change in approach and emphasis on the part of Revenue was at once evident upon their resumption: far from his earlier view that negotiations had proved fruitless and counter-productive in terms of time and resources expended, Mr. Pairceir promptly proceeded to implement a course of dealings whereby he instructed officials to prepare tax computations grounded on revised base values and other premises that significantly alleviated the potential burden faced by the Dunnes Trustees, and then dealt with Mr. Fox and Mr. Dunne on that basis. It has already been noted how the £82 million agreed as a valuation for Discretionary Trust Tax purposes appears to have become a benchmark figure in the larger Capital Gains Tax discussions, notwithstanding the express context in which that amount was agreed, and how the earlier £5.5 million valuation was increased to £8 million, something that seems to have been discussed within Revenue prior to 1987 but never until then acted upon. Notwithstanding the precise terms of the Discretionary Trust Tax settlement in relation to tax and interest, and the refusal in correspondence by Mr. John Reid to entertain Mr. Bowen’s

request for a concession on the amount of interest due, Mr. Pairceir verbally varied that agreement and afforded that concession in subsequent discussions with Mr. Fox, made the offer of an £16 million settlement for Capital Gains Tax at a meeting with Mr. Dunne, and continued up to and after Mr. Dunne's rejection of this to explore terms of settlement up to the date of his retirement. In all of this, allowance must be made for the matters stressed in evidence by Counsel for both the Trustees and Revenue, and in particular for the risk element inherent in a contested Appeal that ultimately was resolved in favour of the taxpayer. Yet the Appeal was not one that was at that time viewed with undue pessimism within Revenue, and careful examination of all that transpired between the sides only underlines how materially the Revenue conduct of matters diverged from previously once discussions were resumed, after Mr. Haughey came to power, and how assiduously Revenue sought to arrive at a settlement acceptable to the Dunnes Trustees during the several months that Mr. Pairceir dealt with Mr. Fox and Mr. Dunne.

16-131 In the course of his evidence, Mr. O'Cathain, who at all stages acted on the directions of Mr. Pairceir and was a conscientious and helpful witness, referred at one point to what Mr. Dunne may have been looking for, and concluded by stating that any intervention which induced the Trustees to negotiate towards settlement was beneficial; of course it is right that in an extremely large case involving valuation of the shares of an unlisted company a rapport and dialogue with a view to possible compromise should exist between professionals on both sides, but this did not emerge as a material factor in the earlier dealings between Dunnes and Revenue, and it is probable that few taxpayers would regard the process of tax collection as one in which negotiation or mediation is uppermost.

16-132 As has already been stated, the evidence heard would not support a Tribunal finding that any agreement was made by Revenue not to charge Income Tax on dividends provided to discharge Discretionary Trust Tax. The Tribunal accepts the assurances given that the Trustees subsequently paid income tax assessments for the relevant years at a much later stage (although it has not had sight of the computations or terms of such payments) but regards the length of time that matters were left in abeyance after the discussions in the course of the 1987 Discretionary Trust Tax settlement as more indicative of a degree of indulgence, than of the reasonableness then referred to by Dr. Thornhill.

16-133 There also arises what on any proper construction was the unhappy development of Mr. Pairceir's retention after retirement as a Consultant on the other side of the still unheard Capital Gains Tax Appeal, in relation to which he had earlier figured so prominently. Insofar as there were marginal divergences in evidence, the probabilities are that Mr. Fox invited Mr. Pairceir to undertake this work in the context of their joint involvement with the Customs House Dock Development Authority, that Mr. Pairceir accepted on a basis of acting for Mr. Dunne personally rather than

the Trustees, that this course was then sanctioned by Mr. Dunne, and that Mr. Dunne then offered him a sum of £10,000.00 plus VAT and paid it to him in advance. Mr. Pairceir proceeded to prepare a research paper, dated in September 1988, which was made available to the Tribunal, and was described by him as a summary of the relevant statute and case-law, expressed in an intelligible and digestible form. He subsequently undertook additional tax-related work on behalf of Mr. Dunne, for which he was paid a similar fee. In evidence, Mr. Pairceir accepted that the payment was a handsome indeed very large payment for the research undertaken, and a reading of the document undoubtedly reinforces that view. Given that the Trustees had already retained the best available advice in Ireland and England to advise on their Capital Tax strategy, the question arises as to whether such an advance payment for unspecified future work was nothing more than a gesture of recompense to Mr. Pairceir for such assistance as he had furnished the previous year, or an attempt to influence Revenue by including its recent Chairman as an adviser. It appears sufficient for the Tribunal to state clearly that the retention of Mr. Pairceir was in the circumstances entirely inappropriate, that this should have been clearly realised, if not by Mr. Dunne, by both Mr. Pairceir and Mr. Fox, and that this development serves to compound and confirm the infirmities and shortcomings in the requisite arms-length relationship in Mr. Pairceir's dealings with Mr. Fox and Mr. Dunne the previous year. Asked in evidence whether any guidelines existed within Revenue as to post-retirement professional engagements undertaken, Mr. Pairceir said that there were none at the time of his retirement, but that some had since been devised. To guard against clear potential conflicts of interest in the future, it is desirable that a recommendation in this regard be appended at the conclusion of this Chapter.

16-134 Regarding the interest concession made by Mr. Pairceir to Mr. Fox in the amount of £62,450.00, this may in itself have reflected a relatively modest discount upon the agreed settlement figure (approximately 1.72%, as opposed to the 1% referred to by Mr. Fox in evidence). Yet the settlement in itself had reflected the adoption of a compromised valuation, and the resultant tax and interest due had been reduced to writing with much care. When approached on behalf of the Trustees with regard to the interest concession, Mr. Reid had responded by letter that the Revenue Commissioners did not consider it appropriate to depart from the statutory position which the Trustees had acknowledged as having been incorporated into the agreement. The concession cannot realistically be regarded as a necessary allowance to procure payment of the balance, and it is not difficult to imagine the Trustees' response had Revenue sought to increase their entitlements on foot of the concluded agreement. The sum discounted was not a trifling one at the time in question, the view of Dr. Thornhill that Revenue ought to have preserved the integrity of the written settlement is an understandable one, and the circumstances in which the concession was agreed were inappropriately informal and belated. Whilst Mr. Pairceir had discretion to agree the concession on foot of the care

and management provisions of Finance Acts legislation, its making and its circumstances may fairly be viewed as further evidence of a disposition on the part of Mr. Pairceir to yield ground in response to expressed concerns of the Trustees, that contrasted with the disposition he had shown during the preceding two years.

16-135 All of the foregoing matters have been carefully assessed, in conjunction with the fact that Mr. Haughey as Taoiseach saw fit to contact the Chairman of Revenue twice in successive years in relation to the problems of the Dunnes Trust, plus the agreed evidence of Mr. Uniacke as to what was said to him by Mr. Dunne, plus Mr. Dunne's own evidence that his testimony to the McCracken Tribunal as to why he came to seek a meeting with Mr. Curran was at least incorrect. On the evidence in its totality, the Tribunal is constrained to find that, in approaching Revenue on behalf of Mr. Dunne in relation to his tax problems, Mr. Haughey sought to and did confer a benefit on Mr. Dunne by way of actual and offered amelioration of those problems in subsequent dealings with Mr. Pairceir. Again having regard to the totality of the evidence heard, the substantial payments made by Mr. Dunne to Mr. Haughey must be regarded as payments primarily motivated by his resumption of the Office of Taoiseach in 1987, as referred to in paragraph (a) of the Tribunal's Terms of Reference, and accordingly, Mr. Haughey's contact with Revenue constitutes an act within paragraph (d) of those Terms of Reference. What may have been actually stated by Mr. Haughey must in all probability remain a matter of conjecture, but in the light of the close temporal link with Mr. Pairceir's reappraisal of the merits of the assessment which, in the view of the Tribunal, amounted to nothing short of a complete about turn in the consistent thinking of Revenue over the previous two year period, the connection cannot be tenably regarded as purely coincidental.

16-136 The Terms of Settlement offered by Mr. Pairceir to Mr. Dunne constituted a real and tangible benefit to Mr. Dunne, in that they conferred on him an option, which he did not previously have. Before Mr. Haughey's intervention, there was only one course open to Mr. Dunne, namely to proceed with the appeal by the Trustees against the assessment. After Mr. Haughey's intervention, Mr. Dunne had a choice, either to allow the appeal to proceed, or to settle the assessment by a payment of £16 million pounds, the sum originally indicated by the Trustees as affordable, and which would then have represented a saving of £22.8 million pounds of the tax, as assessed. Irrespective of how matters ultimately unfolded, the Tribunal is satisfied that such an option was, at the time, a valuable and substantial benefit conferred on Mr. Dunne, directly consequent on Mr. Haughey's actions.

16-137 In making the above finding, it is to be inferred that either Mr. Dunne or Mr. Fox, more probably the latter, communicated to Mr. Haughey the extent of the tax problems faced by the Dunnes Trust at some time close to the making of the initial payments to Mr. Haughey. There is no

evidence that the Dunnes Trust as an entity, and in particular Mr. Bowen and Mr. Uniacke as the witnesses who testified, were aware of, much less privy to, any related dealings with Mr. Haughey, or related meetings and negotiations had with Mr. Pairceir by Mr. Dunne and Mr. Fox. The late Mr. Montgomery may have had some inkling of ongoing dealings, as apparent from his aforesaid letter, but it would be quite unwarranted on that basis to attribute to him or to the trustees other than Mr. Fox any material knowledge or involvement regarding those matters.

16-138 In making the findings set forth in the preceding paragraph, the Tribunal neither infers nor intends any collective criticism of the Revenue Commissioners as a Government Agency. Indeed, as was commented upon in evidence, it was the experience of the Tribunal that, not merely in relation to Dunnes Trust inquiries but with regard to all avenues of inquiry pursued by the Tribunal, persons in the employment of Revenue were unfailingly helpful, diligent, punctual and courteous in their responses. Given the culture of confidentiality that invariably attends Revenue business, this openness and cooperation has been highly valued. In the present instance, what has been found is that, following Mr. Haughey's meeting with Mr. Pairceir, Mr. Pairceir instituted discussions and calculations, and made decisions, which provided for a significantly more favourable Capital Gains Tax regime for the Dunnes Trust, and that the connection was not coincidental. All that was done by other Revenue personnel concerned with the case, both those who testified and those who were unavailable to do so, was carried out under the direction and supervision of the Chairman, was undertaken in good faith, and those persons are not criticised in that regard. In particular, the role of Mr. O'Cathain was confined to providing advice and assistance in the case, as and when requested to do so. Further, as with other Revenue matters addressed in this part of the Report, the involvement of Mr. Clayton displayed high competence and commitment.

16-139 By way of recommendation, and following upon the remarks concerning Mr. Pairceir's post-retirement engagement as a Consultant on behalf of Mr. Dunne, it should be ensured that persons leaving the Revenue service are left in no doubt that their future engagements must avoid situations in which there are clear conflicts of duty and interest, such as regrettably arose when Mr. Pairceir retired. The Tribunal is of course aware that many tax practitioners move from the public sector to the private sector, not by any means invariably upon attaining retirement age, and that there is also some traffic in the opposite direction. This is a proper and commendable course, and all that the Tribunal is anxious to ensure is that, as in other professions, appropriate guidelines and procedures are in place to avoid situations of conflict.

16-140 Again in a recommendatory context, the Tribunal was somewhat concerned by a portion of the evidence of the former Chairman Mr. Curran, in which he made mention of a fairly regular practice during his tenure as

Chairman of receiving letters from politicians, including Government Ministers, urging more favourable treatment on behalf of constituent taxpayers. This practice may since have declined, and the Tribunal does not suggest that a public representative may not draw to Revenue attention matters of which it may be unaware, for example that a constituent taxpayer who is unrepresented may be terminally ill or may have experienced particularly difficult personal circumstances. But the Revenue Commissioners resemble the Director of Public Prosecutions in being a Senior Government Agency exercising far-reaching powers without being under the direction of any political head. Mr. Curran tended in evidence to be sanguine in his response to these overtures, indicating that a Minister or politician might only wish to show the particular constituent some Revenue letter in response as evidence of an effort having been made, but there is nonetheless potential for concern if this practice remains prevalent, particularly if there were representations from Government Ministers, who might be perceived within Revenue to have some form of indirect influence or power in this regard. The Tribunal is conscious of the need to balance the independence of Revenue in this regard with democratic accountability, and before finalising any view as to a specific recommendation has sought the views of Revenue and others. One possible course would be the enactment of a statutory provision somewhat analogous to Section 6 of the Prosecution of Offences Act, 1974. By that section it is provided that, subject to certain exceptions, it shall not be lawful to communicate with prosecutors for the purpose of influencing a decision to withdraw or not to initiate criminal proceedings. It would not seem difficult to devise some comparable provision relating to representations seeking to affect the treatment given to a particular taxpayer; it would in practice be directed more to dissuading people in positions of authority from making such representations, rather than to what might be termed “*crank*” communications, and might indeed serve to alleviate the commitments of public representatives facing excessive demands from those they represent.

INTRODUCTION

17-01 The title of this Chapter imports a quotation from one of many submissions and memoranda prepared by officials of the Department of Justice (since renamed the Department of Justice, Equality and Law Reform) in which concern and misgivings were expressed over the manner in which a number of succeeding Ministers for Justice conferred naturalisation on persons from other states. Before proceeding to the comparatively small number of such naturalisations which came to be examined in public sittings as possible acts or decisions within the Terms of Reference relating to Mr. Charles Haughey, it is well to set forth some brief matters of background.

17-02 Under Irish law, provision was made for two procedural routes to naturalisation. The relevant statute was the 1956 Irish Nationality and Citizenship Act, introduced by the then coalition Government headed by Mr. J Costello, which was in turn amended by the 1986 Irish Nationality and Citizenship Act, introduced by the coalition Government then led by Dr. G Fitzgerald. Whilst it will be necessary to examine in greater detail the provisions of Sections 15 and 16 of the 1956 Act, as amended, it may be said by way of outline that, apart from the very rare instance of conferring honorary Irish citizenship, the primary route to naturalisation involved satisfying the Minister of certain temporal conditions regarding an applicant’s notice of application and duration of residence within the State, as well as an intention in good faith to reside within the State after naturalisation. The secondary route to naturalisation was in effect created by Section 16 of the 1956 Act, which empowered the Minister of the day to exempt an applicant from some or all of the foregoing requirements in certain situations, the majority of which were obvious and understandable, but which also included the more amorphous instance “*where the applicant was of Irish descent or Irish associations*”. No definitions, guidelines or Statutory Instruments ever sought to clarify this provision and, whilst the initial requirements seemed reasonably self-explanatory, it was the concept of Irish associations in particular that proved to be a problematical area. There seems to have been no coherent attempt to define “*Irish associations*” or to construe its meaning in the context of all the words of Section 16. However it in time became the practice to make passports available to a significant number of non-nationals on a basis of undertaking financial investment in Ireland: the evolution of this practice is not clear, and nor does it appear that there was any systematic approach to the consideration of applications based on so-called “*Irish associations*” in the form of actual or promised investments. At one point, in April of 1988, a proposal initiated by Civil Servants in the Department of Justice to formulate a preferred approach on the part of their Minister in the form of a “*statement of intent*”, a draft of which was actually produced at Cabinet, was rejected by the Government on the basis that it might tie the Minister’s hands.

17-03 Apart from the want of definition or precision in relation to Irish associations, it is apparent that there was a considerable degree of indulgence extended by politicians from all parties, whether in Government or in opposition in making applications for naturalisation based on Irish associations, and a like degree of latitude on the part of a number of Ministers for Justice in acceding to a very high proportion of them.

17-04 The rationale most frequently advanced for the liberal construction placed upon “*Irish associations*” was that Ireland was at the time of most such applications undergoing harsh times economically, so that the need for regeneration and inward investment could arguably have been said to outweigh niceties of legal construction. Many TDs, from virtually all parties and from diverse parts of the country, availed of this latitude, and there were undoubtedly instances in which the sums invested in return for naturalisation inured appreciably to the economic benefit of local communities; yet there were also occasions in which the sums promised were not honoured in full, or in which their effective basis of payment transpired to be little more than what was described as “*soft loans*”. Overall, it has to be viewed as at best highly debatable whether a Court, if asked to construe “*Irish associations*”, would agree that a Minister should enjoy the wide latitude exercised by a number of Ministers for Justice in operating this part of the legislation.

17-05 A substantial number of Department of Justice naturalisation files, both residence-based and investment-based, was produced by the Department upon an Order being made. The making of such an Order was felt to be the appropriate course procedurally, and in no sense reflected any want of cooperation on the part of the Department of Justice, Equality and Law Reform; on the contrary, the cooperation and assistance rendered by that Department at all levels and at all times to the Tribunal have been exemplary. All of the matters contained in these files, some of which were already partly or wholly in the public domain, were considered in detail, and further information was sought where necessary, in the course of the Tribunal’s private investigations. Regard was also had to such potentially relevant evidence as had emerged at earlier Tribunal public sittings. Having evaluated all these matters, and also taken into account the limitations contained in the relevant Terms of Reference, it was decided to proceed to public sittings in the first instance only in relation to some fifteen inter-related and residence-based applications brought by Lebanese nationals over the course of a considerable number of years in the 1980s.

17-06 Each of these applications was granted, the first fourteen on foot of the provisions of the 1956 Act, and the last on foot of that Act as amended by the 1986 Act. Although a number of succeeding Ministers for Justice were involved in these applications, each of them was granted at a time when Mr. Charles Haughey was Taoiseach. It also appeared that each of these applications was proposed or promoted by Dr. John O’Connell, who during those years was a TD, a close associate of Mr. Haughey, and for a

portion of that period Ceann Comhairle of the Dáil. Dr. O’Connell has informed the Tribunal that all fifteen of the persons who were naturalised were relatives of, or were connected to, Mr. Mahmoud Fustok, and that Mr. Kamal Fustok, who was naturalised on 3rd June, 1981 was the younger brother of Mr. Mahmoud Fustok. Furthermore, (a) it appeared that the majority of these naturalisations were made against the advice of senior officials within the Department; (b) it appeared that Mr. Charles Haughey had directly intervened in relation to the last of those naturalisations and that a degree of involvement on his part had been apparent in relation to certain of the earlier applications; (c) it seemed that Mr. Mahmoud Fustok, the person to whom all the applicants were connected, may have made a payment to or may have been a source of funds in a bank account held for the benefit of Mr. Haughey, within the meaning of paragraphs (a) and (b) of the Tribunal’s Terms of Reference. Of the foregoing three matters, the first two will be addressed more fully when the evidence that was heard at public sittings is summarised.

17-07 Regarding (c), evidence was heard by the Tribunal in earlier public sittings in relation to a lodgement on 19th February, 1985 of £50,000.00 to an account in Guinness & Mahon in the name of Amiens Securities Limited. This was an account from which it appeared that payments for the bill-paying service operated by Haughey Boland on behalf of Mr. Haughey were made. From the bank’s records, the source of this lodgement was a cheque payable to cash, drawn on an account of Dr. John O’Connell. In Dr. O’Connell’s evidence, he then stated that the cheque was in respect of a payment by Mr. Mahmoud Fustok, a Saudi Arabian Diplomat with connections to the Saudi Royal Family, to Mr. Haughey, which Mr. Fustok had asked Dr. O’Connell to transmit to Mr. Haughey on his behalf. Although Mr. Fustok did not then or in the later public sittings relating to passports testify to the Tribunal, he informed the Tribunal in the course of its private inquiries that this payment was for a racehorse which he had purchased from Mr. Haughey, but as he purchased and sold so many horses, his records did not extend back to 1985. In the course of Mr. Haughey’s evidence to the Tribunal on 2nd and 3rd October, 2000, he stated that, whilst he recalled Mr. Fustok purchasing a yearling from Abbeville Stud, he had no particular recollection of the payment in 1985 through Dr. John O’Connell, but believed that the payment in question was in respect of a yearling purchased by Mr. Fustok. Mrs. Eimear Mulhern, Mr. Haughey’s daughter, who then managed Abbeville Stud, had also given evidence on 8th July, 1999 that she recalled that Mr. Fustok had purchased a yearling from Abbeville Stud, but that she had no involvement in that transaction, and knew nothing of the payment of £50,000.00 in February, 1985. No records dating from that period for Abbeville Stud were available.

17-08 Before proceeding to summarise the evidence heard at public sittings in relation to the fifteen applications for naturalisation, it may be useful to return briefly to the relevant provisions of the Irish Nationality and Citizenship Acts. Under the 1956 Act, it is provided by Section 15 that the

Minister for Justice may accede to an application for a Certificate of Naturalisation, once satisfied that the application complies with certain conditions. For persons of full age among the applicants, the conditions that were pertinent related to notice of application and duration of residence within the State. As to notice, an applicant must have given notice of intention to make an application at least one year prior to the date of that application; as to residence, the applicant must have had a period of one year's continuous residence in the State immediately before the application, and in addition, for a total period of four years of the immediately preceding eight years. The following Section of the 1956 Act, Section 16, provided that in certain cases the Minister might, even though these or other preconditions for naturalisation not presently relevant were not complied with, nonetheless grant an application for a Certificate of Naturalisation. Such cases included those where the applicant was a naturalised Irish citizen acting on behalf of his minor child, and where the applicant was a woman who was married to a naturalised Irish citizen. Further provisions of the 1956 Act provide for the revocation by the Minister of Certificates of Naturalisation procured by fraud, misrepresentation or concealment of material facts or circumstances (Section 19), and for the form and evidential requirements of naturalisation applications, in which the inclusion of knowingly false statements or information was constituted a criminal offence (Section 17). The 1986 Irish Nationality and Citizenship Act introduced a number of amendments, including the removal of the requirement of one year's notice in applications under Section 15. Other portions of the Act were directed to providing for equality of gender between spouses in families whose members sought Certificates of Naturalisation, and for increasing the maximum fine on conviction for the offence created under Section 17 of the earlier Act, but otherwise left substantially intact the scheme thereby created.

EVIDENCE HEARD AT PUBLIC SITTINGS

17-09 Although the 1980s saw an unusually frequent sequence of General Elections and changes of Government, Mr. Charles Haughey was Taoiseach at all times when each of the fifteen applications with which this Chapter is concerned were granted. Of Ministers for Justice whose involvement is noted, Mr. Gerard Collins was the incumbent for two separate terms, and there will also be reference to involvement as Ministers on the part of the late Mr. Jim Mitchell, the late Mr. Sean Doherty, and Mr. Michael Noonan. In addition, Mr. Alan Dukes served briefly as Minister for Justice during the concluding months of one Government's period of office, but appears to have had little or no significant involvement in the matters under consideration.

17-10 Regarding the State Agencies to which reference will be made in the course of summarising the evidence, it should be stated that the Aliens Section, part of whose duties related to Certificates of Naturalisation, was a small section within the Department of Justice. During the period that the

first fourteen of the fifteen naturalisations under review were being dealt with, Mr. Peadar O'Toole was the Assistant Principal in charge of that section, and he reported to Mr. John Olden, one of the Assistant Secretaries of the Department of Justice. By the time of Mr. Haughey's return to Government as Taoiseach in March, 1987, following which certain material events occurred in relation to the last of the fifteen naturalisations; Mr. Olden had been promoted in a different department and was succeeded as Assistant Secretary for the Division of the Department of Justice which included the Aliens Section by Mr. Cathal Crowley. The Aliens section itself was by then headed by Mr. Bryan O'Brien, who reported directly to Mr. Crowley. Reference will also be made to the Aliens Registration Office, which was a Division of the Special Branch of An Garda Síochána, based in Dublin Castle, with which all non-nationals resident in the State at that time were obliged to register, and which was also the agency responsible for investigating the residency of non-nationals applying for residency based naturalisation.

First group of applications

17-11 The first relevant set of applications for naturalisation supported by Dr. John O'Connell arose in 1980, during Mr. Haughey's first term as Taoiseach, and when Mr. Gerard Collins was Minister for Justice. The four Lebanese individuals involved were:

- (i) Mr. Ibrahim Moubarak;
- (ii) Mr. Razouk Daher;
- (iii) Mr. Philip Noujaim;
- (iv) Mr. Kamal Fustok.

Following representations made on their behalf by Dr. O'Connell to the Aliens Section of the Department in June, 1980 formal applications on their behalf were received on 16th December, 1980. In further documentation which came to hand shortly before evidence was heard at public sittings, it emerged that Dr. O'Connell had written to Mr. Haughey as Taoiseach on 22nd July, 1980, stating that he needed Mr. Haughey's help badly in the matter, that the response of the Department of Justice had not been very sympathetic to the applicants, and that he would view it as a great personal favour if as Taoiseach he would intervene. Following this, it appears that the file relating to the applications had passed temporarily from the Department of Justice to the Taoiseach's Office; a note to the Taoiseach from his private secretary seems to have been appended to the file, stating that it was the Department of Justice file on Dr. O'Connell's "*Lebanese people*", and that Dr. O'Connell would be calling to the Taoiseach's office again later that day. Mr. Olden stated in evidence that it was very unusual for a file from the Department to go to the Taoiseach's office, and it would have to have been on foot of a request in that behalf.

17-12 Mr. O'Toole examined the applications and on 17th February, 1981 furnished Mr. Olden with a Memorandum in which he expressed concerns in relation to whether the applicants had satisfied the requirements of residing within the State for the requisite period. He stated that the Department only had their word that they had been in Ireland since 1973, and that, in regard to Mr. Kamal Fustok, it was on record from the British Home Office that he had spent considerable time in the UK since 1976, and that his mother lived there. Mr. Olden thereupon noted on the memorandum his advice to the effect that there was no basis for excusing the four applicants from the requirement of giving one year's notice of intention to make an application, and that there was no independent evidence that they had resided in the State for the requisite period.

17-13 Having considered the entire memorandum, by letter dated 24th February, 1981, Mr. Collins conveyed to Dr. O'Connell that he had considered the applications, that the requirement of one year's notice had not been fulfilled, so that he was unable to grant the applications and had to defer them until June of that year, at which stage he stated that he would grant them, provided that all other preconditions of naturalisation had been fulfilled.

17-14 As June approached, each of the applicants wrote to the Department confirming their wish for naturalisation as soon as possible; Mr. O'Toole provided a further memorandum to Mr. Olden indicating satisfactory responses to Garda inquiries, and Mr. Olden furnished this to the Minister with a reminder of what had earlier transpired. Accordingly, each of the applicants was informed by letter of 2nd June, 1981 that his application had been approved, and Certificates of Naturalisation issued to each of them on 3rd June, 1981.

17-15 In his evidence, with regard to these initial applications, Mr. Collins stated that in granting the applications after their initial referral, he had relied on the information conveyed from Garda inquiries that they had fulfilled the residence requirements as set out in their applications. He recalled the receipt of the applications in the Department, and had been aware that they had been sponsored by Dr. O'Connell, to whom he had not been close; no dealings between Dr. O'Connell and himself had occurred, other than his letter of deferral, but Dr. O'Connell and his private secretary had been in regular contact with Mr. Collin's private secretary with a view to having the applications processed without delay. Mr. Collins also stated that it was probable that Mr. Haughey as Taoiseach had informed him that Dr. O'Connell had been in contact with him over the four applications, and conveyed Dr. O'Connell's anxiety that these applications should be processed speedily. As stated, however, his eventual decision to grant the applications had not been based on this, but on the Garda Reports made available.

17-16 In Dr. O’Connell’s further evidence to the Tribunal in March, 2006, specifically addressed to the passports matter, he commenced by confirming the contents of what he had conveyed in the course of private investigations. He stated that the four applicants were all of Lebanese origin and had been introduced to him by a Lebanese medical colleague, Dr. Mahmoud Barbir, a graduate of the Royal College of Surgeons in Ireland; Dr. Barbir had conveyed to Dr. O’Connell that the applicants were refugees who had fled their country at the outbreak of the Civil War in the Lebanon, and he, Dr. Barbir was helping them at his home in Dublin. Dr. O’Connell was apparently asked by Dr. Barbir if Dr. O’Connell would inquire, as a member of the Oireachtas, about the possibility of the applicants obtaining passports or travel documents. Dr. O’Connell stated that he had sought the advice of an official of the Immigration Department who interviewed the applicants and gave them application forms to complete, which they did, and that Dr. O’Connell and friends of his who met the applicants acted as referees; when Dr. O’Connell then checked the United Nations Charter, he discovered that refugees from war-torn countries could be supplied with travel documents. He brought this fact to the attention of the then Taoiseach, Mr. Charles Haughey, and later learned that travel documents had been issued to the applicants. Whilst making representations on behalf of these four applicants and subsequent Lebanese applicants connected to them, Dr. O’Connell indicated that he spoke to both Fianna Fáil and Fine Gael Ministers.

17-17 Dr. O’Connell stated in his further evidence that he was very annoyed at reading some of the documents prepared by some of the officials at the Department of Justice because in his view they implied that he received a reward for the representations he made on behalf of the various applicants for naturalisation. Dr. O’Connell testified that Mr. Fustok did send a new “*top-of-the-range*” BMW car to him, but that he, Dr. O’Connell sent it back two days later. Dr. O’Connell explained in evidence that he made a rule when he first entered politics that he would not accept any political donations or election donations and that was the reason why he sent the car back to Mr. Fustok. Dr. O’Connell believed that the car was sent to him some time in the year 1980.

17-18 It is also pertinent at this juncture to refer to other evidence given at an earlier stage of public hearings. That was the evidence of Ms. Catherine Butler, who it will be recalled was a special adviser to Mr. Haughey, on 12th October, 2001. In her evidence, Ms. Butler stated that Mr. Haughey’s evidence to the Tribunal in relation to having had no contact with Mr. Fustok after 1986 was incorrect. In a conversation with Mr. Haughey at Kinsealy soon after he had given his evidence on this matter, Ms. Butler had pointed out to him that he had stayed at Mr. Fustok’s residence in Chantilly, outside Paris subsequently, at some time between 1987 and 1990, and had stayed with him there again after his retirement in 1992. Ms. Butler further testified that, when she had then raised with Mr. Haughey his

visit to Mr. Fustok between 1987 and 1990, Mr. Haughey acknowledged that he had completely forgotten about this.

Second group of applications

17-19 Following a General Election, there was a change of Government on 30th June, 1981. Mr. Haughey was succeeded as Taoiseach by Dr. Garret Fitzgerald, and Mr. Collins was succeeded as Minister for Justice by the late Mr. Jim Mitchell. Dr. O'Connell was also elected as Ceann Comhairle of what was the twenty third Dáil.

17-20 On 10th November, 1981 six further applications for naturalisation were received by the Aliens Section of the Department of Justice through the office of the Ceann Comhairle, Dr. O'Connell. The applicants were:

- (i) Mr. Mohamad Moubarak, a minor, who was a brother of Mr. Ibrahim Moubarak of the initial four applicants;
- (ii) Mr. Mehzen Youssef Moubarak, also a minor brother of Mr. Ibrahim Moubarak;
- (iii) Mr. Bechara Anis Shoukair;
- (iv) Mr. Michael Albinia.
- (v) Mr. Slieman Youssef Moubarak;
- (vi) Mr. Wael Khairi.

Inquiries into the applicants were again set in train by the Aliens Section with the Alien Registration Office, and a memorandum of 9th December, 1981 was furnished by Mr. O'Toole to Mr. Olden and the late Mr. Mitchell's private secretary. In this it was noted that there was no previous record either in the Department or the Aliens Registration Office of the presence in Ireland of any of the applicants, and that none of them had given the statutory advance notice of at least twelve months: accordingly, it was advised that the applicants had not fulfilled the statutory prerequisites and should be required to account for themselves to the Aliens Registration Office.

17-21 By letter dated 23rd December, 1981, the late Mr. Mitchell notified Dr. O'Connell in terms similar to those conveyed by his predecessor, Mr. Collins, to Dr. O'Connell in relation to the initial four applicants, to the effect that, since the requisite twelve months notice has not been given, he would defer consideration of the applicants until December, 1982, at which stage he would grant the applications provided that all other preconditions for naturalisation were fulfilled. He also conveyed to Dr. O'Connell that with regard to the two minors who were members of the Moubarak family, these applications should be made on their behalf by their parent or guardian.

17-22 With further regard to these two minors, Mr. Olden on 8th February, 1982 advised Mr. Mitchell against granting them Certificates of

Naturalisation, since it appeared both to Mr. O'Toole and himself on the information then available that the statutory preconditions had not been fulfilled. Mr. Olden indicated to Mr. Mitchell that;

“To grant Certificates in these cases without, at the very least, some proof the youths are living here, and not equally or better placed for naturalisation in some other country is, in my opinion, pushing our liberality very far”.

It nevertheless appears that Mr. Mitchell decided that he would grant Certificates of Naturalisation to the two minors in view of their elder brother's naturalisation, and he informed Dr. O'Connell to this effect by letter dated 26th February, 1982. Events overtook this intended course on Mr. Mitchell's part, insofar as a further change of Government led to Mr. Haughey being re-elected as Taoiseach on 9th March, 1982 with the late Mr. Sean Doherty being appointed as Minister for Justice. Dr. O'Connell was again elected as Ceann Comhairle.

17-23 On 8th September, 1982, Dr. O'Connell wrote to Mr. Doherty and expressed his anxiety in relation to the six Lebanese applications, stating that, as the Minister was aware, there was “*a particular interest*” in the matter, and that he would be most grateful, as a personal favour to him, if the Minister would look into the matter with a view to regularising the position. In his evidence of March, 2006, Dr. O'Connell acknowledged the likelihood that his reference in that letter was to Mr. Haughey. Later in the same month, following what he accepted must have been a conversation with Mr. Doherty regarding these applications, Mr. Olden on 23rd September, 1982 recorded that the Minister was satisfied that the applicants had been in the State for the requisite period as stated, that they had complied with the other requirements of the Act, and that he was prepared to dispense with them having to wait a full year after they gave notice of intention to apply: accordingly, the Minister had directed that they be naturalised forthwith on payment of the appropriate fee. In his evidence, Mr. Olden recalled Mr. Doherty saying to him that he had information of his own to support the view he had taken, but no such information was made available to Mr. Olden. Following confirmation of this position by a letter of Mr. Doherty to Dr. O'Connell, Certificates of Naturalisation issued to the four adult applicants on 29th September, 1982. The two minor applicants were also naturalised on the same day. It appeared that the four adults attended at the Department offices accompanied by Dr. O'Connell, who paid by cheque the £400.00 fees involved; the two minors attended in the company of Dr. O'Connell's private secretary and, when a Departmental Official indicated that it had been expected that their naturalised elder brother, Ibrahim, would have accompanied them, the private secretary stated that he had had business to attend to.

17-24 However, within days after the granting of these applications, the Aliens Registration Office conveyed to Mr. O'Toole certain doubts regarding the fulfilment of the statutory conditions by a number of Lebanese nationals

who had registered with that office, including the six individuals who had just been naturalised. Mr. Olden conveyed to the Minister Mr. O’Toole’s recommendation that the Aliens Registration Office should be instructed to proceed with inquiries to ascertain how, as claimed by these applicants, they had lost their passports, and to get detailed reports of the businesses in which they had been engaged, and of their places of residence since 1974. Despite Mr. Olden’s request that the Minister should authorise these inquiries, it does not appear that such investigations were ever authorised by the late Mr. Doherty. It further seems that, in granting the applications, the Minister did not have before him reports from the Aliens Registration Office in relation to the applicants, and that such Garda information as was imparted was conveyed subsequent to the granting of the naturalisations.

Third group of applications

17-25 In November, 1982, it was conveyed to the Department of Justice that four further Lebanese nationals, again promoted by Dr. O’Connell, were seeking Certificates of Naturalisation, although no formal applications were then made. The individuals involved were:

- (i) Mr. Kamal Moukarzel;
- (ii) Mr. Adnan Moubarak;
- (iii) Ms. Lelia Moubarak;
- (iv) Mr. Antoine Ghorayeb.

Matters in this instance moved with exceptional rapidity. On 30th November, 1982, Mr. Doherty’s private secretary noted that the Minister was satisfied from information available to him that the four applicants had been in the State since 1974, and that he wished to have them naturalised immediately. From Departmental files, it did not seem that any information was at that time available to the Minister in relation to these individuals. Also on 30th November, 1982, Mr. Olden advised the Minister in writing that he would be leaving himself open to serious criticism if he went ahead with the naturalisation of these four applicants, that the information available was not adequate to enable the Minister to satisfy himself that the conditions for naturalisation had been met, and that, apart from one or two applicants, there was nothing to justify them from being exempted from the residency or notice requirements. Still on the same day, the Minister’s private secretary recorded the Minister’s response, to the effect that “*the Minister said to go ahead and naturalise, as he had already decided, and that he would be providing satisfactory written evidence*”. Whilst Mr. Olden could not recall discussing the position of these further applicants with Mr. Doherty, he thought it likely that he had done so.

17-26 Garda Reports from the Aliens Registration Office then came quickly to hand, on foot of which Mr. Olden on 3rd December, 1982 again advised the Minister that it did not seem that the four had resided in the

State for any period; he further advised the Minister that he and his colleagues in the Aliens Section were not at all satisfied that the four qualified for naturalisation, and that these doubts now extended to some of the earlier Lebanese naturalisations, including the two Moubarak minors, whose recent naturalisations seemed “*highly questionable*”. In the light of all of these matters, Mr. Olden concluded his written advice by suggesting that the Minister consult the Attorney General before taking a decision in these cases. As Mr. Olden confirmed in his evidence, a recommendation that a Minister should consult with the Attorney General was the strongest stance open to a Civil Servant in circumstances where a Minister appeared to be acting beyond the limits of his discretion or otherwise illegally. The Minister’s response was conveyed in a memorandum of his private secretary, also dated 3rd December, 1982, to the effect that the Minister “*was satisfied that these people had given a year’s notice of intention orally, and wished to have them naturalised today*”. It was in these circumstances then clear to Mr. Olden that the Minister was going to proceed to naturalise the four in any event, without the involvement of Civil Servants, so there was little point in making a public issue out of the matter, even if that had been advisable.

17-27 In the event, Certificates of Naturalisation issued to the four on 8th December, 1982, so that the entire procedures involved had occupied only about three weeks, a speed of process probably not unconnected with the occurrence of the last of the General Elections in a tempestuous year, which occurred on 24th November, 1982. This resulted in the assembly of the twenty fourth Dáil on 14th December, 1982, and the election of Dr. Garret Fitzgerald as Taoiseach of a Fine Gael/Labour Coalition Government. The resultant changes included the replacement of Mr. Doherty (having granted ten of the fifteen naturalisations addressed in this chapter) as Minister for Justice by Mr. Michael Noonan, and the further replacement of Dr. O’Connell as Ceann Comhairle by Mr. Tom Fitzpatrick, (since recently deceased).

Fourth and final group of applications

17-28 Upon Mr. Noonan’s appointment as Minister, there were no applications for naturalisation pending connected with Dr. O’Connell or with any of the applicants already referred to. However, following an inquiry to the Aliens Section by Dr. O’Connell regarding the possible naturalisation of Mrs. Nahida Khairi, the wife of the Mr. Wael Khairi who had been naturalised the previous September, an application for her naturalisation was received from Dr. O’Connell’s office on 25th February, 1983. It seems that at this stage the office and a staff member of the Ceann Comhairle’s office were still being used for the purposes of this application, although it is also possible that Department of Justice officials may have been in error in recording contacts as coming from the Ceann Comhairle’s office.

17-29 A submission to the new Minister prepared by Mr. O’Toole, and supported by Mr. Olden, stressed the frailty of proof of residence as required, cast doubts on the bona fides of both Mr. and Mrs. Khairi and, in addition to proposing Garda inquiries into Mrs. Khairi’s residential credentials, recommended against granting the application, which in the case of a wife of a naturalised Irish citizen would normally have been a matter of course. It appears that Mr. Noonan expressed agreement with this advice, and asked that Garda inquiries be expedited.

17-30 The final matter by way of Lebanese applications first arose on 18th April, 1983, when it appears that a lady employed in the Ceann Comhairle’s office telephoned the Aliens Section to state that Dr. O’Connell would call to the Department the following day in regard to applications for naturalisation of three children of Mr. and Mrs. Adnan and Lelia Moubarak, both already naturalised on the previous December 8th. Whilst the Department file did not state whether or not Dr. O’Connell did call the following day, Mr. Olden thought that it was probable that he did so, as formal applications were received on behalf of these three minors.

17-31 Matters proceeded, with Mr. Noonan agreeing to meet Dr. O’Connell in relation to the outstanding Lebanese applications. This meeting took place on 21st September, 1983, and in advance of it the Minister had sought the relevant file and had been furnished with a written submission and résumé prepared by Mr. O’Toole, which indicated the frailties of both applicants’ apparent compliance with statutory requirements, and the manner in which related applications had been dealt with in the recent past.

17-32 Mr. O’Toole was present at the meeting between the Minister and Dr. O’Connell, and prepared a short report on it. In this he stated that Dr. O’Connell had placed particular stress, in dealing with the Moubarak children, on one of them who required kidney treatment in the USA, and in relation to whom Senator Edward Kennedy appeared to have arranged that the girl could enter the USA, but only for a limited period; it seems that the Minister then drew Dr. O’Connell’s attention to what he said were unresolved questions, including the whereabouts of the Moubarak family, who appeared not to be at the address in Ireland stated, the “*odd fact*” that the Moubaraks declared in their own naturalisation applications that they had no children, and that it appeared that all the children had been born in the Lebanon whilst the parents were supposed to be living in Ireland. The report continued that Dr. O’Connell could not explain these details, but stated that he had no doubt about the children; as to whether the child with the health problem could obtain or have a Lebanese passport, he did not know, but would find out. The Minister then asked that the family call into the Department to see Mr. O’Toole in regard to the unresolved matters, and Dr. O’Connell said that that could be arranged.

17-33 At the conclusion of Mr. O’Toole’s report on this meeting, it appears that he some fourteen months afterwards, on 21st November, 1984, added a note to the effect that he had spoken to the security section which ordered the recent Garda investigation, and had been told it was “*best to let sleeping dogs lie*”, a course with which he indicated his agreement.

17-34 Mr. Olden stated that there was no record on departmental files that the Moubaraks or Dr. O’Connell came to the Department to discuss the outstanding issues with Mr. O’Toole but, since Mr. O’Toole was a careful official who recorded all significant developments in cases with which he dealt, he felt the probability was that no such meeting occurred. Insofar as Dr. O’Connell had earlier taken exception to the manner in which Mr. O’Toole had dealt with some of the Lebanese applications, Mr. Olden also stated that he had had no concerns whatsoever in relation to his colleague’s discharge of his duty, and felt he would not have been discourteous. In any event, none of the outstanding applications were processed during Mr. Noonan’s tenure as Minister for Justice, or that of Mr. Alan Dukes, who briefly succeeded him in that office until the next change of Government, which occurred on 10th March, 1987, with Mr. Haughey being re-elected as Taoiseach. Mr. Gerard Collins was then re-appointed as Minister for Justice, a position he held until 12th July, 1989 when, following a further election, he was succeeded by Mr. Ray Burke. By the time of the March, 1987 change of Government, Mr. Olden, having been appointed as Secretary to the Department of the Gaeltacht, had been succeeded in the Department of Justice as the Assistant Secretary having responsibility for the Aliens Section by Mr. Cathal Crowley, and the Aliens Section itself was headed by Mr. Bryan O’Brien, who reported directly to Mr. Crowley.

17-35 In Mr. Crowley’s evidence, he recalled that, shortly after the new Government took office in March, 1987, an issue arose in relation to the naturalisation of the three minors who had been brought to Mr. Noonan’s attention in 1983, and also in relation to a further connected minor, Ms. Faten Moubarak, the daughter of Mr. Slieman Moubarak, who had been naturalised in 1982. After examining departmental documentation and discussing the matter with Mr. O’Brien, Mr. Crowley, on 29th July, 1987, furnished Mr. Collins with a memorandum setting out the attitude of the Department. This reiterated the concerns expressed previously in relation to the fact that the parents of the minors in question had made no reference to any of them in their own application forms, even though information in regard to applicants’ children was a matter sought in those forms, and also to the possibility that the applications of the fathers had been obtained fraudulently, since it appeared that neither father may have had the requisite residence within the state to warrant naturalisation.

17-36 Mr. Crowley stated that he became aware that there was pressure from the Taoiseach’s office in relation to these applications, and particularly that of Ms. Faten Moubarak. In his view, Mr. Collins decided to adopt a similar approach to that of his predecessor, Mr. Noonan, in effect that he

would neither grant nor refuse the applications, but would adopt what Mr. Crowley termed a “*not to proceed*” formula. On 8th September, 1988, the Taoiseach Mr. Haughey wrote to Mr. Collins:

“Dear Gerry,

I would be grateful if you would look, as sympathetically as possible, at the question of granting Irish citizenship to Ms. Faten Moubarak, of 42 Willowbrook House, Northbrook Avenue, Dublin 6.

This girl is twelve years of age and her father Slieman Moubarak, of the same address is an Irish citizen. He is very anxious that his daughter, who resides here, should become a citizen also.

I would be grateful if you would look into this case and let me know whether there is any problem about it, and whether there are any further details you would require.

With kindest regards,

Yours sincerely

Charlie Haughey”

Mr. Collins replied to the Taoiseach’s letter on 9th September, 1988 with a standard and non-committal holding letter. A further inquiry from the Taoiseach’s office, by letter of 14th December, 1988, resulted in a further query to Mr. Crowley from the Minister’s private secretary the following day. This prompted Mr. O’Brien to furnish Mr. Crowley with a memorandum, dated 6th January, 1989, in which he recounted the history of the matter, and recommended Ms. Faten Moubarak should not be naturalised. On the same day, Mr. Crowley forwarded this memorandum to the Minister’s private secretary, together with a note of his own to the effect that if the Minister, who was familiar with this problem, did not wish to proceed with the matter, steps should be taken to remove it from the “*Justice Outstanding Issues List*” in the Taoiseach’s office.

17-37 It was Mr. Crowley’s impression throughout this period that Mr. Collins did not wish to act against the advice of his Civil Servants, but that he was under considerable pressure from the Taoiseach. Matters ultimately came to a head, with Mr. Collins requesting Mr. Crowley to meet the Taoiseach; it was Mr. Crowley’s understanding that the issue would be brought to a conclusion at that meeting, and that ultimately it would be the Taoiseach who would determine it. However, he stated that when he was asked to meet the Taoiseach, he immediately checked with Mr. O’Brien in the Aliens Section, and only then realised that it was the Faten Moubarak case that was to be discussed. From both available documentation and recollection of witnesses, it proved somewhat difficult to pinpoint the exact date that this occurred, but as the overall evidence progressed, it seemed clear that the occasion was during the early part of March, 1989, and probably March 3rd.

17-38 Mr. Crowley’s meeting with the Taoiseach, which took no more than ten to fifteen minutes, was in Mr. Haughey’s office in Merrion Street. No one

else was present. Mr. Crowley was already acquainted with the Taoiseach from his former service in the Law Reform Division, when Mr. Haughey had been the Junior Minister in charge. The meeting was entirely cordial, and Mr. Haughey was fully conversant with the background to the application and with the concerns and objections on the part of the Civil Servants. In Mr. Crowley's recollection, Mr. Haughey took the view that for humanitarian reasons and in the light of her position as a dependent juvenile alien residing here, Ms. Moubarak should be naturalised; even if there were doubts over the *bona fides* of her father's naturalisation "*she should not be visited with the sins of her father*", as Mr. Crowley recalled Mr. Haughey putting it. It seemed to Mr. Crowley that in taking the opposite view to the Civil Servants, Mr. Haughey expressed his reasons very impressively, and made a statable case, even though Mr. Crowley was not disposed to revise the official stance or change his own mind. Mr. Crowley recalled Mr. Haughey concluding by saying "*we know your objections. This is what we'll do, send the forms down here*" or words similar. Mr. Crowley was in no doubt that the Taoiseach had given a direction in the matter. He also obtained the impression from the meeting that the family of Ms. Moubarak was known to Mr. Haughey and that her father was involved in the bloodstock industry.

17-39 Following the meeting, Mr. Crowley made a brief handwritten record on a copy of the memorandum of 6th January, 1989, which he felt accurately set forth what occurred. This read as follows:—

"Discussed with Taoiseach at Minister's request. This girl (14) has been here for the required period and there are humanitarian reasons (she can't travel). Send form to Taoiseach and on completion to be for decision (positive). Even if father's case is in doubt this is not strictly relevant"

Mr. Crowley stated that he was pretty sure that he had not informed his Minister Mr. Collins of his meeting with the Taoiseach, feeling that Mr. Collins did not wish to become involved in the matter again after taking a particular stance on it. He did however mention the meeting to some of his departmental colleagues. No actual naturalisation was granted to Ms. Moubarak, and nothing further transpired in that regard, during the remainder of Mr. Collins' term as Minister. He was succeeded by Mr. Ray Burke on 12th July, 1989. Mr. Crowley stated that he had not been aware of a document indicating that there should be no correspondence in relation to the case of Ms. Moubarak, but he was sure there was sensitivity in relation to the case.

17-40 A further indication of the degree of interest shown in the case of Ms. Moubarak emerged in the evidence of Mr. Stephen Magnier. As a Principal Officer in the Security Section of the Department of Justice between the years 1986 and 1990, he had occasion to deal directly with Mr. Haughey whilst Taoiseach approximately two or three times annually.

17-41 This was because it was Mr. Haughey's practice to take over the functions of the Minister for Justice when the incumbent was out of the jurisdiction, and instances arose in which it was necessary to brief Mr. Haughey on security matters. On one such occasion, which Mr. Magnier could not recall save to say that it was between mid-1988 and 1990, Mr. Magnier recalled that at the conclusion of their business, Mr. Haughey asked could he inquire into the possibility of whether anything could be done in relation to a member of the Moubarak family. The family name meant nothing to Mr. Magnier, but he promptly sought the file, and when he saw what Mr. Crowley and Mr. O'Brien had written, felt that was good enough for him. He recalled that when Mr. O'Brien saw what he was reading they exchanged glances, and as experienced Civil Servants knew that what was involved did not look quite all right. Mr. Magnier sought a further meeting with Mr. Haughey the next day, and indicated to him that the position did not look good, that the file was suspect in some respects, and that his recommendation was that it was not possible to naturalise any family member. Mr. Haughey seemed to accept this, and that concluded their dealings. It was likely that Mr. Magnier informed the Minister of this encounter on his return. Mr. Magnier had not been aware that Mr. Haughey had met separately with Mr. Crowley in relation to the matter. He also confirmed that there was disquiet among senior Department of Justice personnel in relation to this, and other Lebanese cases linked with Dr. O'Connell.

17-42 The evidence of Mr. Gerard Collins in relation to the initial four applications has already been referred to, and he had no involvement in relation to the second and third groups of Lebanese applications promoted by Dr. O'Connell. Upon taking up what was his final term as Minister for Justice, he became aware of the case of Ms. Faten Moubarak. As was apparent from the departmental documentation and evidence, he confirmed that, in accordance with the reservations of his Civil Servants, he did not grant naturalisation to her whilst he was in office. He recalled receiving the Taoiseach's letter of 8th September, 1988, in addition to further inquiries from the Taoiseach's office. Mr. Collins stated that Mr. Crowley may have met with the Taoiseach on or about March 3rd, 1989, to discuss the matter of Ms. Moubarak; when Mr. Haughey was Taoiseach his office had a policy of establishing high-level Civil Servant contacts in different departments, thus enabling direct contact for purposes of following up matters. Mr. Collins considered it unlikely that he would have asked Mr. Crowley to meet the Taoiseach in relation to any matter directly raised by the Taoiseach, as Mr. Haughey would have expected a direct response, and he certainly would not have authorised Mr. Crowley to negotiate and conclude a position on behalf of the Department in regard to Ms. Moubarak. However, whilst he did not direct Mr. Crowley to go to the Taoiseach, Mr. Collins acknowledged that, in fairness to Mr. Crowley, if there was pressure from the Taoiseach at election time, he may have said "*go talk to the man and tell him what's involved*" or words similar.

17-43 Mr. Collins expressed annoyance that Mr. Crowley had indicated that he felt Mr. Collins was opting out of the decision, and stated that the Taoiseach had no right to give a direction in the matter: he, Mr. Collins would not have complied with any such direction, and what had been done was wrong. He had not been told of what had transpired, and would not have tolerated or abdicated his jurisdiction in a matter that was for decision by him only. If he had yielded to pressure and naturalised the girl, he would have had no credibility in the Department, and his predecessors, Mr. Noonan and Mr. Dukes would have learned what had happened and “*had (his) head on a plate*”.

17-44 As to the phrase written on departmental documentation “*no action for the time being*” attributed to the Minister, Mr. Collins felt that this looked like the way he would write the phrase; the advice of the Civil Servants spelt out the problems involved, in particular the possibility that fraud had been involved in obtaining the naturalisation of the infant’s father. In the previous Government, Mr. Noonan had been similarly briefed against granting naturalisation, and had been very firm, so Mr. Collins resolved that he was not going to change, irrespective of the pressure applied. He could clearly see the implications of what was involved in the decision sought. The phrase “*let sleeping dogs lie*” was one Mr. Collins had been known to use, and may have been given rise to by the past background of possible fraud, the involvement of Dr. O’Connell as a referee, and the circumstances of the earlier grants by Mr. Doherty. Mr. Collins had had a poor relationship with Dr. O’Connell, due to other reasons, but Dr. O’Connell was closer to the Taoiseach, and used the Taoiseach and his office at a time when the Government had little or no majority, in order to maximise his influence in favour of the Lebanese naturalisations.

17-45 Mr. Collins recalled occasions after Cabinet meetings when the Taoiseach had addressed him in terms of “*can you not do something in relation to this to keep O’Connell happy?*” or words similar, and Mr. Collins had responded that there were serious problems, and the matter was best left alone. Yet reminders and phone calls persisted, and Mr. Collins said that the pressure was on him, not on the Civil Servants, but the Taoiseach nonetheless got no satisfaction from him in the matter. Both he and Mr. Haughey knew that this was a “*non-runner*”.

17-46 Regarding the departmental memorandum headed “*Friends of Mr. Fustok*”, Mr. Collins said that he had not heard of the gentleman alleged to have given a large sum of money to the Taoiseach, Mr. Haughey. He also confirmed, in relation to concerns expressed by Mr. Ray Burke towards the conclusion of Mr. Collins’ evidence, that he was not in any way suggesting that Mr. Burke had sent Mr. Crowley to talk to the Taoiseach, and appreciated that Mr. Burke had only entered the picture much later.

17-47 All the other evidence confirmed that no naturalisation of Ms. Moubarak occurred during the remainder of Mr. Collins’ term as Minister

for Justice. But it was apparent that the matter continued to be pressed by the Taoiseach's office both during the remainder of his term and after he had been succeeded as Minister by Mr. Burke on 12th July, 1989. Mr. Paula Connolly, an Executive Officer attached to the Minister's Office in the Department of Justice, referred in her evidence to dealing with a number of such ongoing inquiries by telephone from the Taoiseach's office. It is unnecessary to detail these, but it seems that such telephone contact was made with striking regularity after the Taoiseach's letter to Mr. Collins, and occurred in November, 1988, twice in January, 1989, February, 1989, March, 1989, April, 1989, September, 1989, October, 1989, November, 1989, April, 1990, and even in September, 1990, which was some months subsequent to the eventual issue of a Certificate of Naturalisation to Ms. Moubarak. Ms. Connolly understandably had minimal personal recall of these conversations, and relied on the records that were produced to the Tribunal by the Department of the Taoiseach. From these records, it seems Ms. Connolly on the occasion of one inquiry referred to what presumably was Mr. Crowley's meeting with the Taoiseach, and on a later occasion in March, 1990, she appears to have informed the Taoiseach's office that the matter was very sensitive because Ms. Faten Moubarak was Libyan (sic); then in April, 1990 she appears to have stated that the Taoiseach was aware of what was happening on the case, and that no correspondence was to issue. Regarding the last such conversation, Ms. Connolly surmised that her caller had inquired should a letter be sent, and she had responded in the negative after making inquiries in the Department.

17-48 The actual naturalisation of Ms. Moubarak, as recorded on the Certificate that issued, was dated 4th May, 1990. The departmental files included a completed application form by her father Mr. Slieman Moubarak on her behalf, which was dated 1st May, 1990. Nothing on the file indicates any of the circumstances in which the document was received, and neither is there any document recording any of the several inquiries from the Department of the Taoiseach, or any separate documentation whatsoever subsequent to January, 1989, after the memorandum on the matter prepared by Mr. O'Brien and Mr. Crowley on 6th January, 1989 (on which also has been added Mr. Crowley's subsequent note of his meeting with the Taoiseach). On the bottom left hand corner of the copy of the said Certificate of Naturalisation on the Department file is a manuscript entry which reads:—

"Delivered by hand to Oifig An Taoiseach — David McAuliffe — 4/5/90".

The signatory of that entry, Mr. David McAuliffe, stated in evidence that he was then a Higher Executive Officer working in the Aliens Section of the Department. Insofar as it may have involuntarily contributed to some initial confusion regarding the date of Mr. Crowley's aforesaid meeting with Mr. Haughey, Mr. McAuliffe stated that the handwritten date "*1 May 1990*" on the side of Mr. Crowley's note of the meeting was an entry in fact made by him, although he could not recall why he did so.

17-49 Mr. McAuliffe stated that he had prepared the Certificate of Naturalisation for Ms. Moubarak. It was most unusual that he would have done this without some form of accompanying submission and recommendation, and he was therefore inclined to believe that he was asked to prepare a draft certificate only, that is, one prepared for future signature, by one of his line managers. He could not recall to whom he passed the draft certificate, and noted that it was signed by Mr. Michael Mellett, an Assistant Secretary with different responsibilities to Mr. Crowley, who Mr. McAuliffe presumed was deputising for Mr. Crowley at that time. More particularly, Mr. McAuliffe confirmed that he had made the handwritten entry on the bottom left corner of the Certificate, indicating delivery by hand to the Taoiseach's office on 4th May, 1990.

He believed that he had done this to show that, rather than the normal course of being sent to the address set out on the Naturalisation Application form, the Certificate had in fact been delivered by hand to the Taoiseach's office. Mr. McAuliffe could not recall whether he himself had delivered the Certificate there, but he was certain that he must, in order to have made the entry, have been advised accordingly.

17-50 Regarding delivery of Certificates of Naturalisation in general, Mr. McAuliffe indicated that, being the important documents that they were, they would in most instances be sent by registered post, rolled up in a tube, to the address on the application form, or alternatively they would by arrangement be collected by hand. Other than one occasion involving a Certificate granting Honorary Irish Citizenship, for presentation by the Taoiseach at a function in the USA, Mr. McAuliffe could recall no other occasion on which a Certificate of Naturalisation was sent to the Taoiseach's office. Mr. McAuliffe also had a vague recollection of overhearing at an earlier stage in the Department a conversation relating to Mr. Crowley's meeting with Mr. Haughey in relation to Ms. Moubarak's case, in which a reference to not visiting the sins of the father on the daughter had stuck in his mind.

17-51 Mr. Bryan O'Brien also testified in relation to his involvement as Principal Officer in the Aliens Section until his departure from that position in August, 1989 as already summarised. Mr. Michael Mellett also confirmed in brief evidence that he was the Assistant Secretary of the Department of Justice who had signed Ms. Moubarak's Certificate of Naturalisation, in substitution for Mr. Crowley who was the Assistant Secretary having responsibility for the Aliens Division. For any Assistant Secretary so signing, this was in turn a delegated authority from the Minister for Justice of the day. It would not have been for him to inquire into the circumstances of the individual case, and it would be customary to assume that the Division that had prepared the Certificate had adequately investigated all relevant matters. Mr. Mellett stated that he had in any event no recollection of signing the Certificate, or otherwise having any dealings with the matter,

and had no inkling that there could be anything by way of a cause celebré about it.

17-52 Mr. Ray Burke gave evidence to the effect that he was Minister for Justice between 12th August, 1989 and 11th February, 1992, a period including the grant of naturalisation to Ms. Moubarak, but had no dealings or involvement in the matter in relation to the decision or its processing. He only saw the relevant Department of Justice file for the first time in November, 2005, in the course of dealings with the Tribunal. The only decision made to grant naturalisation was that of the Taoiseach, Mr. Haughey, as set forth in Mr. Crowley's note and confirmed in his evidence.

17-53 Mr. Burke recalled that he had been made aware of the case and file, together with its complications, in the course of receiving a briefing from Mr. Stephen Magnier, but had then been strongly advised by Mr. Magnier against involving himself. He took this good advice, and never raised any queries with the Aliens Section in regard to the matter. The last recorded movement on the file before it was sought by the Tribunal was in January, 1989, when it went from the Aliens Section with the recommendation of Mr. Crowley to the Office of the Minister, Mr. Collins, and was subsequently returned.

17-54 As to his own knowledge that naturalisation had been granted, Mr. Burke recalled that some time, he could not say when, he was informed by Mr. Magnier, as a passing comment in the course of a conversation on other matters, that a Certificate had been issued. It might have been mentioned to him that this was at the behest of the Taoiseach, but he did not have a clear recall. Questioned by Tribunal Counsel as to whether he was out of the jurisdiction in the early days of May, 1990, Mr. Burke responded that, since the grant was made pursuant to a decision made earlier by the Taoiseach, it would not in any event have had to come to him as Minister; it was possible he had been away at the time, but he had not retained any diaries, and on checking with the Department of the Taoiseach, there did not appear to be any record of his functions then having been delegated. Mr. Burke concluded his evidence by stating that he had absolutely no dealings in relation to the matter with either Mr. Haughey or Dr. O'Connell; having recently become aware of what had transpired at Mr. Crowley's meeting with Mr. Haughey, he felt that, whilst not saying that he would have taken a similar view himself, he could understand the humanitarian reasons expressed by Mr. Haughey.

CORRESPONDENCE HAD WITH TRIBUNAL

17-55 Following the Opening Statement and initial evidence heard in relation to these matters, a number of related letters were received by the Tribunal, from Mr. Mahmoud Fustok and Mr. Slieman Moubarak. On 27th December, 2005, a letter was written to the Tribunal Solicitor Mr. Brady by

Ms. Nicole Saloman on behalf of Mr. Fustok. In this, she stated that she had received a note from Mr. Fustok stating the following:—

“All of the names written in your letter dated the 5th of December, 2005 fled from the Civil War in Lebanon in 1976 -77 to London and Saudi Arabia. They were all homeless, many of their passports were expired, and could not travel back to their country. All of the Moubaraks came to London with the exception of Slieman Moubarak that fled to Saudi Arabia.

- 1. Ibrahim Moubarak was employed in my offices working in the horses business between Ireland and England.*
- 2. Mohamad Moubarak was a minor, eight years of age, went to school in London, and later on, when he became sixteen years of age, he moved to Ireland to learn the training business and lived in Ireland for seven years and worked for Vincent O'Brien and the Mullens.*
- 3. Mohsen Moubarak, also a minor, around ten years old went to school in London and than joined his brother Mohamad between England and Ireland.*
- 4. Slieman Moubarak went to Saudi Arabia, worked for Euro System until 1980, was sent by the company to Belgium and England for certain courses, and later on, employed several Irish technicians in the Euro System in Saudi Arabia, as of 1981, he was relocated to England.*

Ibrahim and Slieman Moubarak later on bought two flats in Dublin, opened bank accounts and were travelling back and forth between Ireland, England and Saudi Arabia because of the nature of their work.

- 5. Faten Moubarak, born in 1977, her full story well known by Mr. Haughey and Dr. O'Connell. A child who did not know her real father till the age of eight, kindly ask Mr. Haughey and Dr. O'Connell about her story.*
- 6. Kamal Fustok is my brother, who is married to an English girl and has three children, opted to live in England, never travelled to the Arab world since then.*

During that period of time I was preparing with the Irish Government for an invitation of the King of Saudi Arabia to Ireland, the purpose was to inject business in Ireland, which was suffering economically the visit was later on fulfilled as a result, many Irish doctors and Establishments were working in Saudi Arabia. I have explained the status of my brother Kamal for the officials and asked a favour for him that was granted. Under no circumstances did any official in Ireland ask me for any financial gift or donation of any kind, the 50,000.00 pounds mentioned in your letter I am positive it was a purchase of a horse or a share in a stallion that I truly do not recall. I assure you everything was proper and legal. My friendship with all the Irish officials concern was mainly for the promotion of the Irish economy. I assure you that all the people who got their Irish citizenship approximately 25 years ago cherish and honour it as long as they live”.

The letter was signed at its conclusion on behalf of Mr. Fustok by Ms. Saloman, with an indication that her capacity was as Mr. Fustok's private secretary in the USA.

17-56 The second item of correspondence was again addressed to the Tribunal Solicitor on January 14th, 2006 by Mr. Slieman Moubarak, and was sent by facsimile from his residence in North Hollywood, Florida, USA. In this Mr. Moubarak stated that it had been brought to his notice that a Department of Justice official had adverted to possible fraud in obtaining naturalisation on his part, by representing in his application that he had no

children, then later applying for naturalisation of his daughter Faten. According to Mr. Moubarak, the explanation was simple, in that he had divorced his wife shortly after their marriage, unaware of her then having being in the early stages of pregnancy; having been away from Lebanon due to the Civil War, he some years later discovered that the child born was his daughter, took full responsibility for her, and applied for naturalisation on her behalf. Mr. Moubarak in conclusion indicated that he would appreciate it if the official in question would set the record straight by withdrawing his allegation, and referred to respecting and honouring his Irish citizenship. In response, by letter of 27th January, 2006, Mr. Brady noted the matters raised, but inquired why it appeared that none of these matters had, in the course of the application on behalf of his daughter, or at any previous stage, been brought to the attention of the Department of Justice or to any other persons, such as those sponsoring the application. Mr. Moubarak replied on 29th January, 2006, stating that Dr. O'Connell, the Prime Minister Mr. Haughey and the Minister for Justice were all aware and knew fully of his daughter's case and situation.

17-57 Sadly, a mere two weeks after the short public sittings held in relation to these matters, on February 10th 2006, it was reported in Irish and USA media that Mr. Mahmoud Fustok had died from injuries occasioned earlier that day: it appeared that he and a friend had been jogging on the public highway at Pompano Beach, Florida, USA when they were struck by a Sports Utility Vehicle which then crashed into a nearby building, in circumstances in which it was reported that the driver appeared to have had some sort of medical emergency at the wheel, and that a spokesman for the local Sheriff stated that no charges were pending. Other and subsequent media reports and obituaries referred to Mr. Fustok's long and distinguished career in equine circles internationally as a breeder and owner.

CONCLUSIONS

17-58 Whilst only briefly touched upon as a postscript to Mr. Magnier's evidence, and not strictly germane to the Tribunal's Terms of Reference, it was apparent from the many investment-based naturalisation files furnished by the Department to the Tribunal that, however well-intentioned its objectives of attracting inward investment to the State at a time of economic stringency, the operation of the investment-based scheme was of at best dubious legality in the context of the relevant provisions of the 1956 Act, and the decision to abandon it was overdue and correct. There were undoubtedly a number of cases in which much needed funds were attracted to particularly depressed areas by virtue of the operation of the scheme, and in some such instances, where naturalisation was granted contrary to the advices of Department officials, it could be said that those advices may have been unduly legalistic; however, in a majority of such cases, it is the view of the Tribunal that the tenor of those negative advices was correct, rational and served both to curb the incidence of dubious

applications being granted, and to induce the eventual decision to abandon the investment-based scheme.

17-59 In approaching the fifteen grants of naturalisation as possible acts or decisions on the part of Mr. Haughey falling with the Tribunal's Terms of Reference, it is important to exercise particular caution and fairness, having regard to such factors as the inability of Mr. Haughey, due to his condition of health to challenge most of the relevant evidence, and the fact that, in many other cases, political decisions to naturalise were taken notwithstanding advices to the contrary by departmental officials, on occasions perhaps correctly so.

17-60 Whilst material events in relation to the fifteen grants of naturalisation ranged over a considerable number of years, the evidence heard undoubtedly demonstrates a clear pattern of consistent and exceptional support for the applications on the part of Mr. Haughey as Taoiseach, an unvarying association with both Dr. O'Connell and Mr. Fustok in respect of all the applications, and a payment of £50,000.00 made in approximately the middle of that period of years by Mr. Fustok to Mr. Haughey in a manner that could on no appraisal be viewed as transparent. Many of the applications were granted in unsatisfactory circumstances, and in the teeth of robust departmental advices to the contrary; Dr. O'Connell specifically invoked the assistance of Mr. Haughey as Taoiseach in advancing the applications, and Mr. Haughey conveyed to Mr. Collins the anxiety of Dr. O'Connell that the applications should be processed speedily; in conveying by letter of 8th September, 1982 to the late Mr. Doherty that there was "*a particular interest*" in the applications then being promoted, Dr. O'Connell invoked the influence and authority of the Taoiseach in support of the applications.

17-61 With regard to the final naturalisation, that of Ms. Faten Moubarak, a particularly unequivocal position emerged. Clear evidence has been adduced to the effect that,

- an exceptionally explicit level of written and oral departmental advice over a lengthy period had made clear the unanimous view of senior officials that, given the substantive and procedural frailties of the naturalisation of Ms. Moubarak's father, her application ought not to be granted; these advices were of a cumulative nature, and included the exceptional advice by Mr. Olden to the late Mr. Doherty that he should take the advice of the Attorney General before finalising naturalisation decisions.
- Apart from the specific written and oral advices tendered, the anecdotal evidence given by witnesses, in particular by Mr. Crowley and Mr. Magnier as Senior officials and by Mr. Collins and Mr. Burke as Ministers, conveyed forcibly the extreme sensitivity of Ms. Moubarak's application and the particular unease felt by both Civil

Servants and Politicians as to the manner in which it was being advanced.

- As regards Mr. Haughey himself, there was apparent a wholly exceptional and disproportionate involvement on the part of a Taoiseach in Ms. Moubarak's application. Apart from Mr. Haughey's involvement with the earlier and related cases advanced by Dr. O'Connell, this included his specific written request by letter to Mr. Collins as Minister, his verbal request in that behalf to Mr. Magnier, his ongoing requests to Mr. Collins made subsequent to Cabinet meetings, his specific direction to Mr. Crowley, unprecedented in that witness's experience, that the application should be granted, the manner in which, pursuant to that direction, the Certificate was finally completed and furnished in May 1990, and the sustained and continual series of requests made through the Office of the Taoiseach for completion of the matter until and even after that had been done.
- The payment of £50,000.00 by Mr. Fustok to Mr. Haughey, made through the agency of a cheque made out to cash by Dr. O'Connell, and paid into an account from which payments to Mr. Haughey's bill-paying service were made, was clandestine and undisclosed, and preceded (bearing in mind that Mr. Haughey was in Opposition for a portion of the ensuing period) Mr. Haughey's specific involvement in Ms. Moubarak's application.

17-62 The explanation advanced for the payment, namely that it was in consideration for the purchase of a yearling, is highly unconvincing and improbable; such limited inquiries as the Tribunal has undertaken indicate that a purchase price of £50,000.00 for a yearling at that time would have been considered a significant and substantial purchase, the amount was one which appreciably exceeded the salary of the Taoiseach at the time, and in a purported transaction between a professionally run Stud and an internationally known horse owner and breeder, it seems wholly extraordinary that there exists no passport in relation to the yearling, no documentation whatsoever in relation to any sale, and no information even of an anecdotal nature as to how any such yearling fared after purchase. The Tribunal in the circumstances is driven to conclude that no such sale in fact took place, or if a yearling was transferred to Mr. Fustok, its true worth or value did not remotely approach the amount of the payment made.

17-63 Reference was made in the evidence of both Mr. Crowley and Mr. Burke, albeit with reservations, to humanitarian reasons having been a motivating factor in Mr. Haughey's direction to grant Ms. Moubarak's application, in order to enable her to join her father as an Irish citizen in Dublin. Again, while it cannot be gainsaid that such reasons may have had some influence in motivating Mr. Haughey, the evidence does not at all support a conclusion that these constituted a primary factor in the involvement undertaken by him as Taoiseach. Apart from the fact of the

payment, it appeared from the evidence of Mr. Collins, which the Tribunal accepts, that when Mr. Haughey urged Mr. Collins after Cabinet meetings to grant the application it was in a context of seeking “*to keep O’Connell happy*” rather than urging any humanitarian or other intrinsic merits in respect of the decision itself. More particularly, if as Taoiseach Mr. Haughey was unhappy with Mr. Collins’ reluctance to move on the matter on a basis of principle, there were surely appropriate procedures open to him to enable a review of the situation, whether by having the matter brought before Cabinet, seeking to appoint a Cabinet Sub-Committee, referring the issue to the Attorney General, or otherwise, rather than making a specific direction without reference to his Minister in the manner described.

17-64 In all these circumstances, the Tribunal finds that the payment of £50,000.00 made by Mr. Fustok to Mr. Haughey was a substantial payment made to him through the agency of Dr. O’Connell in circumstances falling within the meaning of Term of Reference (a), by reason of being connected with the granting of Naturalisation to certain non-nationals associated with Mr. Fustok, and in particular Ms. Faten Moubarak. Further, in involving himself and assisting in connection with the said Naturalisations, and in particular by directing the Naturalisation of Ms. Faten Moubarak, Mr. Haughey made a decision by way of return for that payment, which accordingly was a decision within the meaning of Term of Reference (d).

17-65 In furnishing the said payment of £50,000.00 to Mr. Haughey on behalf of Mr. Fustok, Dr. O’Connell knew or ought to have known that it related to these naturalisations. Further, in the manner and procedures deployed by Dr. O’Connell in the course of sponsoring the naturalisation of the said non-nationals, Dr. O’Connell conducted himself inappropriately.

17-66 The proceeds of the said payment of £50,000.00 were a source of money to a bank account discovered by the Tribunal to be held for the benefit of Mr. Haughey for the purposes of paragraph (b) of the Tribunal’s Terms of Reference as already addressed in Chapter 6.

17-67 It is not necessary to analyse the role played by succeeding Ministers for Justice throughout the period of both the residence-based applications for naturalisation reviewed in this Chapter, and the several investment-based applications. Indeed, the Tribunal’s private investigations of the relevant files would suggest that subsequent Ministers for Justice of different Governments after this period took important initiatives in response to the concerns of their Civil Servants. However, allowing for the fact that Mr. Alan Dukes had no real involvement in these matters during his brief period as Minister, it is proper to say that Mr. Michael Noonan took a correct and principled approach in line with the advices of his officials to the Lebanese applications then before him, and that, to a greater degree because he was a member of a Cabinet led by Mr. Haughey, Mr. Gerard Collins showed commendable resilience and sound judgement in resisting the substantial pressures brought to bear on him during his last period of

office as Minister for Justice. Whilst some differences did emerge at the hearing between the recollections of Mr. Collins and Mr. Crowley as to the circumstances in which the latter came to Mr. Haughey in regard to the case of Ms. Mubarak, these were more of form than substance. It is not necessary to analyse or focus upon exactly what took place between Mr. Collins and Mr. Crowley, but a basis that Mr. Collins asked his Senior Official to meet Mr. Haughey with a view to an informal exchange of views rather than as an actual plenipotentiary may well represent what probably transpired; in the light of the resistance to pressures shown by Mr. Collins at a time and in circumstances when his position was far from an easy one, a finding that he abdicated his responsibilities would certainly not be warranted.

INTRODUCTION

18-01 There is no connection between Mr Charles Haughey and the disposal in 1990 of State owned lands at Deerpark, Blessington, Co. Wicklow to Roadstone Dublin Limited (“Roadstone”) a member of the Cement Roadstone Holdings Plc Group of Companies. Nor is there any connection between the operation of the Ansbacher accounts and this disposal. These lands containing Glen Ding Woods have come to be known (possibly inaccurately) as the Glen Ding lands and will be so referred to in this Report.

18-02 What prompted the Tribunal’s inquiries into the disposal and particularly the conduct of the sale of the Glen Ding lands was the part played by Cement Roadstone Holdings in the operation of the Ansbacher accounts; the role of Mr. Desmond Traynor, as Mr Haughey’s close associate and financial adviser in providing the banking operations through which these accounts were operated; the fact that these banking operations from which Mr Haughey benefited were conducted from 1987 onwards from the Head Offices of Cement Roadstone Holdings, and the fact that at various times up to eight directors of Cement Roadstone Holdings benefited from the services provided by Mr. Traynor in the operation of those accounts. Aspects of the disposal, already in the public domain, suggested that there may have been a departure from normal procedures in the conduct of the sale. Of these the most important were first, that, in a response to a Parliamentary Question the then Minister for Energy, Mr. Ray Burke, stated that the lands would not be sold save by public tender competition to be advertised in the National Press; secondly the related statements made orally and in writing by the Department of Energy to various interested parties to the same effect. In addition it was apparent from the Department’s files that a previous disposal of related lands had taken place in the 1970’s and that this had been conducted in the usual way, that is, by public tender advertised in the Press.

18-03 The Tribunal’s inquiries were conducted under Terms of Reference (a), and (d) of the Tribunal’s Terms of Reference. In this Chapter, the matter will be approached under three principal headings. The first heading deals with a brief account of the relevant pre-1990 history of the land in State ownership in the Blessington area. The second heading deals with the circumstances of the 1990 sale. Lastly, some attention will be devoted to the question whether the Glen Ding lands were sold at an undervalue.

THE PROPERTY IN SALE

18-04 Under a contract dated 18th June, 1991 between the Minister for Energy of the one part and Roadstone of the other, the State (in the person of the Minister) agreed to sell and Roadstone agreed to purchase the Glen Ding lands for the sum of £1.25 million. The contract price of £1.25 million

included a figure of £250,000.00 for the commercial trees on the land as set out in Special Condition 7 of the Contract of Sale. Although an agreement in principle to sell the Glen Ding lands was made on the 20th December, 1990 there was considerable delay in framing the precise terms of the contract. The contract was not in fact executed until, as already mentioned 18th June, 1991. It was not completed, that is, by the transfer of the lands, until 16th December, 1992.

18-05 Prior to the 1970s, the State lands at Blessington, including the Glen Ding lands extended to approximately 221 acres (“the Blessington lands”). The 1990 sale was not the first disposal of part of the Blessington lands to Roadstone. A previous sale had taken place in the 1970s. This involved 84 acres approximately. Following the 1970s disposal the State was left with approximately 180 acres at Blessington.

18-06 The Blessington lands have long been known to contain substantial deposits of sand and gravel. The fact that these deposits lie so close to Dublin, the major growth centre of the country, made them extremely valuable. Whilst, as will appear below, the immediate factor precipitating the 1990 sale was a Government strategy to raise funds to reduce the national debt by disposing of surplus State assets, the earlier sale was unrelated to any such national strategy and was prompted simply by expressions of interest in the valuable sand and gravel deposits on the lands. The 1970 sale evolved over a considerable period of time in that the expressions of interest from which it originated were first made in the late 1950s. The lands were not eventually formally offered for sale until the late 1960s.

18-07 It does not appear to have been canvassed at any time in the course of that sale process that the disposal would take place otherwise than by public tender or public auction. A request to negotiate a private treaty sale was received from one interested party. Representations were made on behalf of that party by Mr. Haughey and the late Mr. Desmond Traynor. This party was a competitor of Roadstone. The request was declined by the Department.

18-08 The sale was conducted by giving express notice of the proposal to sell to those parties who had already indicated an interest and in addition notice was given in the press. Roadstone’s tender was ultimately successful. The total consideration for the 84 acres in sale was £150,000.00. A down payment of £50,000.00 was made in 1971, followed by five annual instalments at £20,000.00 each between 1971 and 1976.

THE CIRCUMSTANCES OF THE 1990 SALE

18-09 In July, 1987 the Government adopted a policy of disposing of surplus State assets with a view to applying the proceeds towards the reduction of the national debt. A procedure was followed whereby the

Department of Finance invited other Government Departments to identify assets surplus to their own requirements which might usefully be sold in pursuance of this policy objective. The Forest Service of the State, then under the umbrella of the Department of Energy, had substantial land holdings. Of course most of those land holdings were afforested, or, if not, were presumably of little value except for afforestation. However, the Glen Ding lands, whilst partly afforested also contained sand and gravel deposits, the value of which far exceeded the forestry or pure agricultural value of the lands, a fact already demonstrated by the 1970s disposal.

18-10 Within the Forest Service there were differing views as to whether the Glen Ding lands qualified for disposal as surplus to Department requirements. Ultimately a consensus was arrived at that in principle the Glen Ding lands were surplus to requirements. The Department was of the view that they constituted an extremely valuable asset likely to attract substantial interest from the market. Government sanction to dispose of the land was obtained on 18th December, 1987.

18-11 It was recognised that in preparation for the sale, it would be necessary to obtain an accurate assessment of the quantum of sand and gravel in the deposit. In or around April, 1988, the Geological Survey of Ireland was contracted to conduct a survey of the Blessington lands. It was envisaged at this stage that planning permission would be applied for on the basis that this would markedly enhance the value of the asset. Mr. Kieran O'Malley, a Planning Consultant, was retained to make a planning application. Through Mr. O'Malley, the Department retained the services of Mr. John Barnett, a Minerals and Environmental Sciences Consultant, to advise on the specialised aspect of sand and gravel extraction in the context of the proposed planning application. Mr. Barnett's initial brief appears to have been confined to defining the extractive area; that is, limiting the area from which it was proposed to extract sand and gravel in such a way as to attract the approval of the Planning Authorities. Mr. Barnett was later asked to put a value on the quantities of sand and gravel present in the deposit once they had been estimated.

18-12 At this point, it is worth remembering that Glen Ding was not the only parcel of land disposed of by the Forestry Service in pursuance of the Government initiative. At or around the same time many other plots of land, both large and small were also sold. None of these other parcels approached the value of the Glen Ding property. However, whilst estate agents were consulted and retained in the disposal of most of the other properties the Department retained control of the disposal of the Glen Ding lands in-house, as it were, employing the appropriate specialists whose services were deemed to be necessary to enable the sale to be carried through. It was in this context that Mr. O'Malley and Mr. Barnett were retained.

18-13 In parallel with these considerations, the Department also devoted attention to the implications for the sale of the presence of heritage features on the land. Heritage issues arose on two fronts. They arose first in the context of the Department's dealings with the Office of Public Works by whom claims to preserve certain heritage features on the land were being pressed. The Office of Public Works wished the Department to retain, and ultimately cede to it, the land on which these heritage features were situated. Secondly, in pre-planning discussions with Wicklow County Council, the Council's Planners had highlighted their own concerns in relation to the conservation of potential heritage features on the lands.

18-14 In its approach to discussions with the Office of Public Works, one view within the Department was that regardless of the presence of heritage features, all of the remaining Blessington lands should be disposed of so as to maximise the sand and gravel content of any sale. However, there was also a view that the claims of the Office of Public Works should be acknowledged, and, if possible, accommodated. Eventually this view prevailed. In discussions, and in correspondence, between the Department and the Office of Public Works, the latter initially sought the exclusion from the sale of a substantial area of land in the vicinity of the Rath Turtle Moat, one of the heritage features in question. A compromise was arrived at whereby the area sought to be excluded was reduced. A reduction of the excluded area from 28.9 acres to approximately 25 acres was confirmed by letter from the Office of Public Works to the Department on 15th August, 1988. It seems however, that this reduction was not adhered to in that, ultimately, a larger area of approximately 35 acres was transferred from the State to the Office of Public Works. Whilst State lands at Blessington in 1990 amounted in total to approximately 180 acres, after the exclusion of the area of the Rath Turtle Moat and its surrounding "*contextual land*," the Department was left with 145 acres available for sale. The totality of the State lands at Blessington in 1990 is shown on **Map No. 1** (see page 451) bounded in black. The area of land ultimately retained by the State is shown on **Map No. 1** and coloured in red. The balance of the land on **Map No. 1**, comprising approximately 145 acres, and coloured in green, is the area sold to Roadstone. The above mentioned map divisions and acreages are approximate and are displayed for illustrative purpose only.

18-15 By 20th April, 1990, Mr. O'Malley had concluded his informal discussions with the relevant County Councils, namely Wicklow and Kildare. On 20th April, 1990, Mr. O'Malley conveyed to the Department his informal impressions, following his dealings with Wicklow County Council, that obtaining planning permission could be problematical. Anticipating that his report would be negative on the question of the prospects for a successful planning application, he was asked to re-orientate his approach so as to arrange for an estimate of the value of the sand and gravel deposits, firstly on the basis that permission for extraction would be obtained and, secondly on the basis that an application would not be pursued at all and that the lands would be sold without permission. The rationale for this approach was

rehearsed in Mr. O'Malley's formal report which he delivered in or about 30th April, 1990. With planning permission, the value of the land would have been enormously enhanced. He advised that a planning refusal would effectively sterilise, if not destroy, the value of the sand and gravel deposit. He identified the issue of planning as one likely to attract major objections, including possibly An Taisce, Roadstone and other third party interests. He viewed the issue of access onto the Dublin Road, without the need to pass through the village of Blessington, as pivotal from a planning perspective. He expressed the view that Roadstone, as an adjoining occupier, was in the best position to make a successful application in as much as it was not affected by the access issue. This was because Roadstone bordered the Department lands thus enabling it to exploit the sand and gravel deposits by an extension of its existing quarry. Because it already enjoyed access onto the Dublin Road, this avoided any prospect of having to rely on an independent access on the Kildare side, to the Glen Ding lands thereafter passing through the village of Blessington. In concluding his Report Mr. O'Malley suggested, although this was probably not within his area of expertise, that the sale of the lands should be put to tender.

18-16 Mr. O'Malley's formal report was accompanied by Mr. Barnett's report dealing with aspects of the proposal within his special area of expertise. Mr. Barnett defined an extractive area extending to no more than 83 acres. This extractive area can be seen outlined in red on **Map No. 2** (see page 453). This was based on a number of limitations which had already in part been alluded to in the Geological Survey of Ireland as follows:

- (i) The need to avoid extraction near the Rath Turtle Moat.
- (ii) The need to ensure an appropriate set back from the outer margin of the area from which the deposits were being removed.
- (iii) The need to arrange appropriate independent access.

It should be borne in mind that both Mr. O'Malley and Mr. Barnett approached the question of planning and the question of value on the basis that the disposal would be of a stand alone site, that is, unrelated to the Roadstone site, and therefore one on which independent access to the public road would have to be incorporated.

18-17 Mr. Barnett in his report noted, as already mentioned, that there were a number of environmental factors including, in particular heritage factors which had the potential to restrict the area from which the Planning Authority would allow sand and gravel extraction. In his report therefore he set about defining a limited extractive area. It should be borne in mind that he was dealing with the entirety of the Blessington lands since at the time of the preparation of his report, the area in sale had not been delimited by the Department. Having defined an extractive area he then set about defining the quantity of sand and gravel within that area having regard to

the potential life of the pit. He then set about putting a value on the sand and gravel in the extractive area. He approached the question of value on two bases, firstly, on the basis that planning permission would be granted and secondly, on the basis that no application for planning permission would be made, and the land would be sold without planning permission. In each case he added a value for timber. Relying on the Geological Survey of Ireland Report, Mr. Barnett calculated that within the 83 acre area defined for extractive purposes, there were approximately 6.744 million tonnes of sand and gravel. This was a workable tonnage after deduction of 20% for fines. Mr. Barnett put a value of approximately £1.259 million on this mineral resource. To this he added a sum of £41,500.00 for trees giving an approximate value for the extractive area of £1.3 million. He went on to point out that, without planning permission, the area had no value for mineral extraction. Without planning permission he valued the land at £860,000.00.

18-18 Apart from a reference to the proposed mode of sale in response to a Parliamentary Question, at no time had there been any public announcement of the Department's intention of disposing of the Glen Ding lands. The Department had however received expressions of interest in purchasing the lands from a number of sources. Some of these were mentioned in the course of the Tribunal's public sittings including the interest expressed by Hudson Brothers Limited, commencing on the 27th July, 1987, Roadstone, commencing on the 28th August, 1987, Mr Michael Kavanagh, commencing on the 9th of November, 1987 and Tracey Enterprises (Dundrum) Limited, commencing in or about February of 1988. The response to the Parliamentary Question contained the only formal public reference to the lands, prior to the sale. At the time Mr. Ray Burke was the Minister responsible for the Department. Speaking in the Dáil on 20th October, 1988 he responded to a question raised by Deputy Hussey in which reference was made to the lands. The question and the response are as follows;

"To ask the Minister for Energy if the sand pit at Glen ding or Deerpark, Blessington, Co. Wicklow which belongs to the State will be advertised for sale openly, and bids accepted from all interested parties before any question arises of selling it off to the neighbouring concern."

Reply:—

"It is the intention that when the sand pit in question is offered for sale, tenders will be invited by public tender competition which will be advertised in the National Press".

This response was consistent with earlier indications from the Department as to how the Department proposed to deal with the lands. It was also reflected in subsequent statements by the Department, both oral and written, as to the manner in which the lands were to be disposed. Notwithstanding the Dáil statement, Roadstone (whether or not it was aware of the statement) continued to press its interest. By 1989, a new party had expressed an interest in purchasing the lands, namely Mr. Brendan

Johnston of Johnston Industries. The Department continued to entertain these approaches.

18-19 What follows is a chronological table of the Department's main dealings with these two parties up until the 5th September, 1990, after which time the conduct of the sale began to take a significant turn.

- (i) On 28th August, 1987 Roadstone wrote to the Department expressing an interest in purchasing State lands at Blessington.
- (ii) On 2nd September, 1987, the Department sent a *pro forma* reply acknowledging receipt of the letter.
- (iii) On 2nd November, 1987 Roadstone again wrote to the Department to ascertain whether any decision had been made as to whether the land in question was available for sale or letting for gravel extraction purposes.
- (iv) On 17th November, 1987, Mr. Terry O'Brien of the Department, pursuant to a prior arrangement, met with Mr. Seamus Breathnach of Roadstone at Blessington. At the meeting Roadstone expressed an interest in purchasing approximately 48.6 hectares (120 acres) of the Glen Ding lands.
- (v) On 14th March, 1989 Roadstone again wrote to the Department querying whether the lands would be sold.
- (vi) On 10th April, 1989 Mr. Johnston wrote to the Department expressing his general interest in the property.
- (vii) On 6th June, 1989 Roadstone wrote to Coillte Teoranta to ascertain the up to date position and again inquiring whether the Department proposed to sell.
- (viii) On 12th June, 1989 the late Mr. Smart of the Department wrote to Roadstone replying to Roadstone's earlier letter to Coillte. Mr. Smart informed Roadstone that the Department intended to sell an area of land containing a substantial quantity of sand and gravel and that the sale would be by public tender to be advertised in the Press.
- (ix) On 7th December, 1989 Mr. Johnston wrote to the Department expressing his continued interest in the lands and requested a meeting with the Department; specifically he indicated that he had a particular interest in operating the site with the Department on a consortium basis.
- (x) On 12th January, 1990 Roadstone wrote to Mr. Smart to ascertain the then current situation concerning the Department's intention with regard to selling the property.
- (xi) On 16th February, 1990 Mr. Smart replied to Roadstone informing them that the Department was making efforts to put the property

on the market but that it could not be guaranteed that the preparatory work would be completed to enable the land to be advertised in 1990.

- (xii) On 10th May, 1990, Mr. John Gillespie, Mr. Philip Carroll and Mr. Smart of the Department met with Mr. Martín MacAodha and Mr. Breathnach of Roadstone. This meeting had been arranged at the request of Roadstone. Roadstone's representatives were informed that the Department intended to sell and that the sale would probably be by public tender but that the proposed mode of sale was still subject to a number of considerations. They were informed that there was much interest in the property and that, without prejudice to the Department's right to sell by public tender, a private offer by Roadstone or anyone else would not be ruled out. The fact that the Office of Public Works would be acquiring part of the area containing a ring fort was drawn to their attention and that for this reason the precise area for sale had not yet been determined. They were informed that they would be advised of the precise area for sale as soon as it had been identified.
- (xiii) On 22nd May, 1990 Mr. Johnston wrote to Mr. Carroll expressing his continued interest in making an offer for the land, or in the alternative, entering into a joint venture with the Department to develop the land as a sand and gravel operation.
- (xiv) On 29th May, 1990 Mr. Carroll replied to Mr. Johnston inviting Mr. Johnston to meet him.
- (xv) On 5th June, 1990 a copy of a map showing the approximate area in sale was sent to Mr. Johnston.
- (xvi) On 6th June, 1990 a similar map was sent to Mr. Breathnach of Roadstone.
- (xvii) On 5th July, 1990 Mr. Breathnach of Roadstone rang Mr. Smart of the Department inquiring whether there was any truth in the rumour that the Department had already obtained planning permission for the lands. He was informed by Mr. Smart that the Department did not have planning permission.
- (xviii) On 20th July, 1990 Mr. Carroll and Mr. Smart met with Mr. Johnston at the Department's office. Mr. Johnston informed the Department that he would only be interested in acquiring the lands provided that they had full planning permission and that without planning permission his view was that the lands were of little value. His proposal was that the lands would be purchased on the basis of a lump sum payment upfront and thereafter by way of royalty payments at the rate of about 20p per tonne, as the material was extracted. Mr. Johnston informed the Department that he envisaged opposition to any planning application arising from the fact that the lands appeared to be used as an amenity area but

that he thought that this difficulty could be overcome. He wished to purchase sand and gravel only. He was informed by Mr. Carroll that the Department proposed to sell the site lock, stock and barrel, that is, that they were not interested in entering into any joint venture type arrangement, nor any arrangement entailing the payment of a lump sum together with royalty payments. Mr. Johnston indicated that before considering the matter he would require a statement of the total area in sale together with any borehole information and site investigation material. The officials informed Mr. Johnston that the area for sale would be the surface area and not any reduced area limited by planning conditions attached to a permission to extract sand and gravel. Mr. Johnston, like Roadstone, was informed that part of the lands would be ceded to the Office of Public Works and that in due course he would be informed of the precise area in sale. He was also informed that there were other interested parties and that the Department reserved its right to sell by public tender competition.

- (xix) On 1st August, 1990 Mr. MacAodha and Mr. Breathnach of Roadstone met with Mr. Gillespie and Mr. Carroll. The purpose of the meeting was to clarify certain issues so as to enable a proposal to be put to the Roadstone Board preparatory to submitting an offer to the Department. At the meeting the Roadstone representatives were informed that the area in sale amounted to approximately 145 acres. At the conclusion of the meeting, they indicated to the officials that they hoped to revert to the Department with a solid proposal before the end of August, 1990.
- (xx) On 23rd August, 1990 Mr. Carroll wrote to Mr. MacAodha setting out the basis upon which the valuation of timber on the site had been calculated. This information had been promised at the meeting of 1st August, 1990.
- (xxi) On 5th September, 1990 Mr. Smart wrote to Mr. Johnston informing him, as he had promised at the meeting of 20th July, that the area in sale amounted to 145 acres approximately.

18-20 On 26th September, 1990 Department officials met with Roadstone. An offer was made by Roadstone of £1.1 million, of which £700,000.00 was to be a down-payment with the balance of £400,000.00 payable upon the grant of satisfactory planning permission to extract sand and gravel. Whilst the officials indicated that the Department was unwilling to accept any offers subject to a planning condition, they nevertheless agreed that if an offer were formally made it would be considered. Roadstone confirmed the offer by letter of 4th October, 1990. It appears that although this offer was rejected there was no formal letter of rejection.

18-21 On 18th October, 1990, there was a further meeting between the Department and Mr. Barnett and Mr. O'Malley. This was attended by Mr.

Carroll, Mr. Smart and Mr. Fitzgerald. It appears to have been convened to consider the Roadstone offer. Prior to the meeting the consultants had no notice of this development. They assumed that the meeting had been convened to consider, and to discuss, their earlier formal advices. It was not until part of the way through the meeting that they learned the main purpose of the meeting and the terms of the Roadstone offer.

18-22 The meeting took the form of a round table discussion. Mr. Barnett gave his view that without planning permission the minerals had no value. From the evidence, the Tribunal is left with the impression that it was felt that planning permission would be highly problematical for any potential purchaser and was likely markedly to affect any offers that might be made. The better the prospect that a potential purchaser would get planning permission, the higher his offer was likely to be. Access was deemed to be key to planning. Any purchaser able to avoid having to apply for planning permission to obtain access enjoyed a real advantage. Mr. Barnett thought it unlikely that without planning permission anyone would offer more than £400,000.00 though because of their obvious access advantage he felt that Roadstone might offer £600,000.00. It would appear that at this stage of the discussion the officials disclosed the terms of the Roadstone offer. At £1.1 million, if the condition was dropped, it was very close to Mr. Barnett's estimate of the value of the deposit with planning permission. The conditional element also closely reflected his value of the deposit without planning permission. The result of the discussion seemed to be that if Roadstone could be induced to drop the condition relating to planning permission and to pay full value at £1.3 million or close to that sum then its interest should be cultivated. It would appear that from that point onwards the officials targeted or focused on Roadstone on the basis that having regard to the planning difficulties likely to be encountered by a stand alone purchaser, Roadstone as the entity with the best access facilities, was the interested party most likely to make the highest offer.

18-23 This targeting or focusing on Roadstone was rationalised by the Department in a paper on 25th October, 1990. The paper, authored by Mr. Carroll, sought the Minister's approval to confine negotiations to Roadstone and also his approval to sell provided a price of at least £1.25 million could be agreed. Mr. Gillespie and Mr. Fitzgerald approved the contents of the paper. It contained a brief description of what the officials perceived to be the main elements of the project up to that time, namely the reservation of part of the Blessington lands to the Office of Public Works, the Geological Survey of Ireland Valuation Report, the Consultants' Report and an account of the level of interest by potential purchasers. In describing the level of interest the material part of the paper is as follows:

"Some general interest has been expressed in the acquisition of this property but only one party — Roadstone — has made any meaningful approach. Following three separate meetings with the Managing Director of Roadstone a formal offer for the property has now been made and a copy is attached."

The paper then rehearsed the arguments for and against a private sale to Roadstone concluding with the recommendation that negotiations should be confined exclusively to Roadstone “*at [that] stage to see what emerges*”.

18-24 Two particular aspects of this paper were examined in the course of the evidence. First, the omission of any specific reference to Mr. Johnston and the characterisation of his interest as less than meaningful; secondly, the omission to mention the response to the Parliamentary Question or the fact that a similar response to a number of other individuals may have deterred them from making offers.

18-25 Whether Mr. Carroll was justified in classifying Mr. Johnston’s interest as “*not meaningful*” is of obvious significance in endeavouring to establish the precise manner in which the disposal was conducted. The Tribunal’s particular interest however is in whether this judgement was in any way connected with any improper intervention, or indeed any intervention at all, on the part of Mr. Haughey, either direct or indirect on behalf of Roadstone. Mr. Carroll’s judgement appears to have been based on his own dealings, and presumably on the record of Mr. Smart’s dealings, with Mr. Johnston. With two exceptions, he does not appear to have made any inquiries concerning Mr. Johnston’s record in business and specifically no inquiries directed to ascertain whether what had been stated by Mr. Johnston in his own introductory letters concerning his career in business was accurate or not. The two exceptions refer to inquiries addressed both to Mr. Barnett and to Mr. O’Malley. It would appear that Mr. Carroll canvassed in general terms with Mr. Barnett and Mr. O’Malley their knowledge of Mr. Johnston. Mr. Barnett stated in evidence that he had never heard of Mr. Johnston until the latter’s name was mentioned at the meeting. Mr. O’Malley, however, stated that he had heard of Mr. Johnston and that as far as he could judge, Mr. Johnston was familiar with the sand and gravel business.

18-26 Whilst in the paper of 25th October, 1990, it was stated that the consultants doubted that any offer remotely close to the Roadstone offer of £700,000.00 without planning permission would be made from any other source, it would appear that neither the extent of Mr. Johnston’s interest nor the details of his dealings with the Department had been conveyed to either Mr. O’Malley or Mr. Barnett. Nor had any views been canvassed with them as to the identity of, financial strength of, or degree of interest of, any of the other parties who had shown an interest in purchasing the land. Nor, in as much as access was deemed to be the defining characteristic of the purchaser, or the type of purchaser, identified as likely to make the most attractive offer, was there any consideration of the question of whether similar or any access was enjoyed by any of the other interested parties.

18-27 From the evidence it would appear that Mr. Carroll was impressed by what he perceived to be Roadstone’s keener appetite for the purchase

of the lands. In evidence, he distinguished between Mr. Johnston's level of interest and Roadstone's level of interest on the basis that, as far as he was concerned, Mr. Johnston had made it clear that he was not interested in a property that did not have planning permission, with the inference that as this property had no planning permission, he therefore had no interest. At the same time by 2nd November, 1990, some twelve days or so before the Minister ultimately approved of the paper of 25th October, 1990, Mr. Johnston had written to Mr. Carroll indicating in the most express terms that he was prepared to take on board all the planning risks involved. When Mr. Carroll was queried as to whether this ought to have converted Mr. Johnston's approach into a meaningful one, Mr. Carroll drew a significant distinction between Mr. Johnston and Roadstone on the basis that there had been no actual offer from Mr. Johnston but merely an expression of an intention to make one. Mr. Carroll drew a number of other distinctions between the extent to which Roadstone had engaged with the Department up to that point and the more limited engagement promoted by Mr. Johnston. In fairness to Mr. Carroll he was not suggesting that he had a recollection that these distinctions formed the precise basis of his thinking at the time and he agreed that he was putting them forward as a rationalisation. This judgement ought to be viewed in the context of what the officials viewed, rightly or wrongly, as a private sale. Whether one agrees with the judgement or not, it does not seem so inappropriate or unusual as to warrant further inquiry as to the rational basis for it. One way or another there was no evidence that it was prompted by any improper intervention by Roadstone or any political or other intervention improper or otherwise, direct or indirect, by Charles Haughey on behalf of Roadstone.

18-28 In the paper of the 25th October, 1990, Minister Robert Molloy had not been informed that one of his predecessors in office, Mr Burke, in an answer to a Parliamentary Question, had stated that the lands in question would be put up for public tender. Nor had he been informed that similar statements had been made in response to expressions of interest by a number of other parties including in one case a joint approach by two interested parties by whom a figure of £1 million had been mentioned, either as an offer or, more likely, as an indication of funds available to purchase. The effect of the paper was wholly to exclude any interested party by whom reliance had been placed on the response to the Parliamentary Question together with, any of the individuals to whom official responses had been given mainly in writing, indicating that the lands would not be sold save by public tender. Mr. Johnston was in a different category in that he had not relied on any indication that the property would not be so sold, whether that indication was parliamentary or otherwise. Mr. Molloy's response to the paper ought to be judged in the light of his state of knowledge at the time. As he had no information other than what was contained in the paper his approval of the paper on 14th November, 1990, whatever effect it had, cannot be viewed as a direction on his part to confine negotiations to Roadstone to the disadvantage of Mr. Johnston or anyone else. From the evidence of Mr. Molloy, it seems clear that had he been aware of the

response to the Parliamentary Question he would not have authorised a course whose objective it was to confine negotiations to Roadstone and to approve closing, if possible, at a specific price in the teeth of a commitment to make a public offer. Mr. Carroll quite frankly conceded that the response to the Parliamentary Question was material to the paper presented to the Minister.

18-29 Mr. Fitzgerald, the Assistant Secretary in the Department, agreed that the confining of negotiations to Roadstone in accordance with the paper of 25th October, 1990 conferred a benefit on that company. The question therefore remains whether the omission to mention the Parliamentary Question (or similar statements made to other interested parties) in the paper to Mr. Molloy was prompted by any intervention, direct or indirect, by Mr. Haughey on behalf of Roadstone. Mr. Loughrey, Secretary General in the Department at the time of the sale, in evidence to the Public Accounts Committee on 11th of February, 1999, when the Glen Ding disposal was being considered, had suggested that this omission was due what he termed a “*corporate loss of memory*”. In his evidence to the Tribunal, he drew attention to the developments which had taken place between 1987 when the Government policy to dispose of surplus assets was adopted and the date of the sale. In 1987 the Forestry Service, which had direct responsibility for the Glen Ding lands, was part of the Department of Energy. By January, 1989, the Forestry Service had been hived-off to a Semi-State body, Coillte. This resulted in the loss, through transfer or early retirement, of a substantial number of officials conversant with the Department’s affairs. In the same period, there had been a number of changes in the political leadership of the Department. Between 10th March, 1987 and 24th November, 1988 Mr. Ray Burke was the relevant Minister, the Minister for Energy. He was succeeded by Mr. Smith who held office from 24th November, 1988 until 12th July, 1989. Mr. Smith was succeeded by Mr. Robert Molloy who held office as Minister from 12th July, 1989 until 11th February, 1992. Therefore the Minister dealing with the disposal in 1990 had not even been in Government at the time of the Parliamentary Question.

18-30 The officials dealing with the disposal in 1990 were Mr. Fitzgerald, Mr. Carroll and Mr. Smart. Mr. Fitzgerald joined the Department in May of 1980 but was new to the details of the disposal from in or about July, 1990. Mr. Carroll joined the Department in February, 1990. He was the official directly responsible thereafter for managing the disposal on a day to day basis. Mr. Smart, who acted in a non-managerial role, had however been involved with the project from an early date and had been in the Department all through the period of the changes that occurred between 1987 and 1990. It is of interest that in a memorandum prepared by Roadstone representatives at a meeting of 10th May, 1990 three officials were mentioned, namely Mr. Gillespie, Mr. Carroll and Mr. Smart. Mr. Smart was described as the link with past exercises.

18-31 Mr. Smart was responsible for a letter dated 12th of June, 1989, to Mr. Breathnach responding to expressions of interest in which he had repeated the formula contained in the response to the Parliamentary Question of October, 1988. From the wording of this letter it seems reasonable to assume that Mr. Smart would have been conscious of the response to the Parliamentary Question. However, his position in the Department appears to have been very much a subordinate one and this may account for the absence of any indication that he had drawn these matters or their significance (if he perceived it) to the attention of either Mr. Carroll or Mr. Fitzgerald, not to mention the Minister. Moreover, he does not appear to have been involved in the preparation of Mr. Carroll's memo to the Minister dated 25th October, 1990. (Nor was it copied to him although no doubt it formed part of the file).

18-32 It seems clear that at the time of the paper of the 25th October, 1990 Mr. Carroll was unaware of the Department's response to the individual expressions of interest, other than Roadstone and Mr. Johnston, indicating that the sale would be by public tender. Mr. Carroll was well ware of the fact that in the ordinary way sales of public property, in particular valuable property of the kind under consideration in this Chapter of the Report, were normally conducted by public tender advertised in the press. He recognised that there was scope to deviate from this standard procedure provided however that any such deviation had the prior approval of the Department of Finance. That he was conscious of the fact that the disposal in this case involved a deviation from the standard procedure is borne out by his having alerted the Department of Finance in the course of his negotiations with Roadstone and obtained their approval prior to closing with Roadstone. He recognised, however, the clear distinction between a deviation from standard procedure with the prior approval of the Department of Finance on the one hand, and a deviation from a prior parliamentary commitment on the other. The Department of Finance could not by its approval have authorised a private treaty disposal in the teeth of a parliamentary commitment not to sell save by public tender. Mr. Loughrey also accepted that the Department of Finance approval could not have had such an affect. The only explanation Mr. Carroll could offer for the omission to inform the Minister or for proceeding otherwise than in accordance with the parliamentary commitment, was that, by that stage, by the time of the decision to sell, the parliamentary commitment was not fresh in anyone's mind. In other words it had been forgotten. This was not a case of loss of corporate memory as referred to by Mr. Loughrey but merely a lapse of memory on the part of at least one official and perhaps a number of other officials, albeit officials critically involved in the process. This is not to say that loss of corporate memory may not have played some role in that no doubt had there not been the clear-out of departmental staff, as described in evidence by Mr. Loughrey, nor the rapid change in Ministers, the memory of the response to the Parliamentary Question might more readily have been recovered within the Department by someone other than Mr. Carroll and

thereby incorporated in the paper to the Minister or otherwise brought to the attention of the Minister so as to inform his deliberations.

18-33 Whilst it is difficult to understand how in the ordinary way experienced officials could have failed to appreciate the significance of a commitment embodied in a response to a Parliamentary Question or failed to alert the Minister at the material time, the question for the Tribunal is whether such omissions are explicable by such a lapse of memory or whether they are explicable only on the basis of improper political interference. From the evidence there appeared to be an ambition within the Department to bring this matter to a close at an early date and to reel in what was probably a highly lucrative contract, one which, if concluded, was likely to confer a significant benefit on the public finances and to reflect creditably on the officials and on the Department involved. Understandably, this may have blinded the officials to the wider implications of the manner in which the disposal was conducted. Roadstone had a strong, and indeed legitimate motivation, to close by private treaty. The same of course goes for Mr. Johnston. However, there is no evidence of any approach to the Minister nor any basis upon which it would be legitimate to speculate that there could have been interference so as to deflect the Minister or the Department from the parliamentary commitment.

18-34 Political intervention undoubtedly occurred in relation to the later dealings of the Department with Mr. Johnston. To understand this it will be necessary to examine both the events leading up to the conclusion of the deal with Roadstone and the Department's contacts with Mr. Johnston during the same period. Following the approval by the Minister of the course proposed in Mr. Carroll's paper of 25th October, 1990 (and further following the rejection of Roadstone's initial conditional offer), there was a meeting between representatives of Roadstone and the Department's representatives on 23rd November, 1990. Attending for Roadstone were Mr. MacAodha and Mr. Breathnach. In attendance for the Department were Mr. Fitzgerald, Mr. Carroll and Mr. Smart. At the meeting, the Department indicated that offers conditional on planning permission would not be entertained and that they expected to receive in or about £1.5 million for the property. Roadstone agreed to drop the planning condition thus converting their initial offer into an offer of £1.1 million unrelated to the grant of planning permission but this did not satisfy the Department.

18-35 Roadstone withdrew but agreed to consider the Department's asking price and a further meeting was arranged for 5th December, 1990. On that date Mr. Dempsey and Mr. MacAodha for Roadstone met with Mr. Fitzgerald, Mr. Carroll and Mr. Smart. After some negotiation the Department dropped its bottom line to £1.3 million and eventually the parties closed at £1.25 million subject to the approval of the Cement Roadstone Holdings Board on the Roadstone side and, on the Department's side, to Ministerial approval. Regardless of the conditions formally attached to the parties' agreement, both sides believed that they

had concluded a deal and that the further approvals on either side were no more than a formality.

18-36 It should be noted that whilst the object of the paper of the 25th of October, 1990 was to secure the imprimatur of the Minister to enable the officials to close with Roadstone if the price was *right*, the officials continued, if not to negotiate, at least to maintain contact with Mr. Johnston. While there was nothing inappropriate in this conduct it may be that ultimately it led to a degree of confusion in the conclusion of the sale from which some of the questions concerning the sale ultimately stemmed. On 5th December, 1990, the date upon which the Department effectively closed with Roadstone, Mr. Johnston had an appointment to meet another Department official in order to inspect the Glen Ding site. It would appear from his own evidence, and from the documents provided by the Department, that shortly after this inspection, that is, either on the Wednesday 5th or Thursday, 6th December, he made telephone contact with the Department with a view formally to putting an offer to the Minister. He dealt with Mr. Smart, as Mr. Carroll at the time was unavailable. Although a meeting was fixed for the following week, the arrangement, by reason of Mr. Carroll's absence, was necessarily a tentative one. By Tuesday, 11th December, the Minister had signified his approval of the agreement reached with Roadstone. In the course of a phone call to the Department on the 12th of December, 1990, Mr. Johnston was informed by Mr. Carroll that agreement had been reached with another party for the sale of the land. Mr. Johnston felt he had been misled by the Department and that he had not had the opportunity that he believed had been promised to him, to place his offer before the Minister in advance of any decision by the Minister to sell the property to any party. Through an intermediary he brought the matter to the attention of the Minister. He also instructed his solicitors to write to the Department. On 12th December, 1990 Messrs. McGreevys wrote to Mr. Carroll on behalf of Mr. Johnston. Messrs. McGreevys complained that the lands had been sold by the Department knowing that their client wished to make an offer and without having afforded him the opportunity of putting that offer before the Minister. The letter contained a threat of proceedings.

18-37 It has proved difficult to establish the precise details of the Department's dealings with and concerning Mr. Johnston in this period. While there is no note of any meeting between the Minister and the officials involved, from documents provided by the Department it would appear that on 12th December, 1990 the Minister was informed that he would be receiving a telephone call from Mr. Johnston (in fact the call was made by an intermediary on behalf of Mr. Johnston). The Minister sought the advice of the Assistant Secretary, Mr. Fitzgerald to ascertain whether at that stage his approval of the agreement with Roadstone had been communicated to that company. He was informed, as was the fact, that there had been no communication with Roadstone. It would appear therefore that the Minister believed that he was still at liberty to deal with Mr. Johnston.

18-38 Resulting from Mr. Johnston's approach the Minister directed that his officials meet with Mr. Johnston to enable him to put forward an offer for the Glen Ding lands. A meeting was arranged for the 13th December, 1990. Establishing what transpired at this meeting entailed resolving a number of significant conflicts in the evidence. The documents provided by the Department contained two contemporaneous memoranda in which reference is made to this meeting. One of these was prepared by Mr. Fitzgerald and is dated 14th December, 1990. It deals with the meeting itself but also deals with certain events prior to, and other events subsequent to, the meeting. Addressed to the Minister, it refers to the threat of legal proceedings contained in a letter from solicitors acting for Mr. Johnston and the advice of the Chief State Solicitor. The memo also records the Chief State Solicitor's advice to see Mr. Johnston and take, without comment, an offer for consideration by the Minister. The account of the meeting itself is as follows:

"I saw Mr. Johnston yesterday evening, accompanied by Mr. Carroll. Mr. Johnston tabled two offers as attached, and a Bank draft for £80,000.00. He refused to take back the Bank draft. I told him I would place the offers before the Minister for his decision. Mr. Johnston said he wanted to be able to put his offer on the table; he had made his 'best shot' and would like an early decision. If he is unsuccessful he accepts the situation."

The memo concludes with Mr. Fitzgerald's recommendations as to how the Minister should proceed thereafter in dealing with Mr. Johnston's offer. The material part of the memorandum is as follows:—

"I recommend rejection of Mr. Johnston's offer as falling far short of Roadstone's but to defer informing him for a few days to give Roadstone an opportunity to clarify theirs. If Roadstone cannot secure formal Board approval before end of next week, Mr. Johnston's offer should then be rejected."

18-39 The Department's files also contain Mr. Carroll's memorandum of the meeting. This memorandum is as follows:

Mr. Fitzgerald, Assistant Secretary and the undersigned met Mr. Brendan Johnston, Johnston Industries at 2.30pm on Thursday 13th December to receive his offer for the Department's lands at Deerpark, Blessington.

Mr. Johnston handed his offers in a sealed envelope. The offers were made in the name of his Solicitors, McGreevy's and details are on file. Mr. Johnston indicated that he was making his best offers ("his best shot") and that the offers reflected the fact that the property was landlocked and that planning approval would be difficult to get. He said though that he was prepared to wait ten years if necessary to get planning approvals.

Mr. Fitzgerald suggested that Mr. Johnston should take back the bank draft which accompanied his unconditional offer but he refused stating that the draft reflected his serious intent. Mr. Johnston asked for a speedy response and said that if his was not the highest offer he would wish the Minister luck in selling to another party.

Mr. Fitzgerald undertook to put Mr. Johnston's offers before the Minister for his decision."

18-40 In evidence in describing what transpired at the meeting, Mr. Fitzgerald recalled telling Mr. Johnston that his offer was way off the mark. He indicated that he distinctly remembered Mr. Johnston's flabbergasted reaction of shock and disbelief when told that his bid was not the highest "*by a long shot to use a sporting expression*". He stated that he felt that Mr. Johnston had been given as full an opportunity to bid for the property as had been afforded to Roadstone. While he agreed that unlike Roadstone Mr. Johnston had not been informed of the Government's asking price, this, he stated, was because Mr. Johnston had not inquired. In evidence Mr. Carroll had no recollection that Mr. Fitzgerald had used such language or that (as Mr. Fitzgerald had stated in evidence) Mr. Johnston was flabbergasted when informed that his offer was not the highest. Mr. Carroll stated that while he could not remember the precise words used he was in no doubt but that Mr. Johnston had been left with a clear impression that his offer was insufficient and that the only other offer the Department had received was a much higher one.

18-41 Mr. Johnston disputed this account of the meeting stating that neither Mr. Fitzgerald nor Mr. Carroll told him that his offer was "*way off the mark*" or made any statement to that effect. Instead Mr. Johnston in his evidence asserted that on receiving his two offers Mr. Fitzgerald said "*I will make sure that the Minister gets these offers*". Mr. Johnston did concede however that he could have described his offers as his "*best shot*". Mr. Johnston also said that he was neither shocked nor flabbergasted at the meeting and that he did not know at the time that he was way off the mark by "*a long shot*". In evidence, he stated that unlike Roadstone, he had never been informed of the Government's asking price; nor had he been informed that his offer was insufficient. While in a memorandum of intended evidence made available to the Tribunal, he asserted that he had inquired at the meeting as to the Government's asking price, in evidence he agreed that this request had not been made at the meeting but rather many months previously in the course of his dealings with the Department.

18-42 Mr. Fitzgerald was queried to explain the discrepancy between his testimony and the recommendation that nothing would be said at the meeting. His response was "*I did make a comment, despite that advice, if you like, to the effect that the bid, when I saw the bid, was so far off the mark that I felt that Mr. Johnston ought to know, and that was the purpose of my remark*". He was queried to explain the apparent inconsistency between his testimony that Mr. Johnston was made well aware that his offer was "*way off the mark*" and his (Mr. Fitzgerald's) note that Mr. Johnston telephoned the following day inquiring whether his offer had been accepted or not. His attention was also drawn to the fact that his recommendation to the Minister that the communication to Mr. Johnston of the Department's rejection of his offer should be deferred, appeared to be inconsistent with his own evidence that Mr. Johnston had been left in no doubt at the meeting that his offer had been rejected; more particularly in light of the fact that Mr. Johnston had not been informed of the rejection of his offer until in or

about 20th December, 1990. These inconsistencies, between the evidence that Mr. Johnston was left in no doubt that his offer was well wide of the mark, and the memoranda of the meeting were not satisfactorily explained in the course of the evidence.

18-43 Although Mr. Johnston had no contemporaneous note of the meeting, his solicitors referred to it in a letter to the Department on 17th December, 1990 in which they stated in part as follows:

“Our client informs us that he furnished the offer letter to Mr. Carroll and Mr. Fitzgerald together with a bank draft representing a deposit in the sum of £80,000.00.

Apparently Mr. Fitzgerald stated at the meeting that the Department had received one other offer for the lands in question and our client naturally presumes that the acceptance by Mr. Fitzgerald of his offer and deposit is indicative of the fact that our client’s offer was indeed the larger.”

18-44 On 21st December, 1990 after the rejection of their client’s offer, Messrs. McGreevys wrote to Mr. Fitzgerald, referring in part to the same meeting, as follows;

“Our client is extremely surprised that his unconditional offer for the lands has been rejected. As you are aware this offer was handed to you by our client at a meeting on 13th inst. At that meeting you informed our client that only one other offer for the lands had been received. If our client’s offer was not the larger of the two, we fail to see why it was accepted and forwarded to the Minister as this would have been a futile exercise. It would appear therefore that his offer was the larger. If this is the case our client finds it incredible that you now state that his unconditional offer is now unsuccessful. On Friday, the 14th instant, our client telephoned you and said that he would personally collect his bank draft that day if his offer was not accepted. Our client did not subsequently hear from you until your letter under reply bearing handwritten date of the 20th instant and quite naturally assumed that his offer had been accepted.”

The content of these letters may be thought to suggest that following the meeting, Mr. Johnston was left with a clear impression of the Department’s response to his offer; that as there was only one other offer and that as his (Mr. Johnston’s) was later in time and had not been rejected, it was in fact the higher of the two offers. However, when queried as to the apparent inconsistency between his evidence, that on the 13th December, 1990, following the meeting he did not know how his offer was being treated, and the content of the letter of 17th December, Mr. Johnston was unable to provide a satisfactory response. It may be that his solicitors were endeavouring to lay the foundations for a case for their client on the basis of the facts concerning the meeting, as relayed to them by Mr. Johnston. At the time, if as had been suggested Mr. Johnston had been informed in no uncertain terms that his offer was insufficient, it is hard to understand why this was not so stated in either the Department’s response to Messrs. McGreevys of the 17th December, 1990 or the Chief State Solicitor’s response in their letter of the 21st of December, 1990, which such a response would have been obviously and directly in point.

18-45 The memo of the 14th December, 1990 suggests that Mr. Molloy was aware of the posture which it was proposed to adopt at the intended meeting with Mr. Johnston and the approach that was to be taken in dealing with the offer following the meeting. In evidence, Mr. Molloy had no memory of the memorandum of 14th December, 1990. He had not initialled this memorandum as was his usual practice in approving or otherwise addressing recommendations from his officials. It was initialled by his then private secretary as follows:— “*Noted by Minister*”. At the time Mr. Molloy appears to have been out of the country on Government business. Unless, therefore the document had been faxed to him (in which case presumably a return fax would have contained his initials or comments in his own handwriting), the likelihood (again he had no memory) is that the general effect or thrust of its contents, but perhaps not the detail, was brought to his attention over the telephone. Had Mr. Molloy been made aware that, at the meeting of the 13th of December, 1990, Mr. Johnston had been informed that his bid was “*so far off the mark by a long shot*” he could hardly have been convinced of the sense of a recommendation that informing Mr. Johnston of the rejection of his offer ought to be deferred. On the basis of the limited evidence of Mr. Molloy’s knowledge of the Department’s dealings with Mr. Johnston it is unlikely that he was alive to the extent to which there appears to have been an asymmetry between the treatment of Mr. Johnston on the one hand and Roadstone on the other.

18-46 In endeavouring to determine what transpired at the meeting and to resolve the conflict between the various witnesses, the question is whether the recollection of witnesses ought to be preferred to the available contemporaneous records. This material, in the form of the memoranda and correspondence mentioned above, most particularly the respective minutes of the meeting prepared by Mr. Fitzgerald and Mr. Carroll, seem to the Tribunal to contain the best guide as to what transpired. Apart from the fact that the two minutes were contemporaneous, that they had been prepared by two experienced officials, they were written at a time when having regard to the earlier threat of proceedings and the intervention of the Minister, the Tribunal would be entitled to assume a special sensitivity on the part of the officials to take particular care to keep an accurate note. Had an exchange of the kind described in evidence occurred, where Mr. Johnston was left in no doubt that his offer was way off the mark, as a matter of probability this would have been noted.

18-47 Moreover, the conduct of both Mr. Fitzgerald and Mr. Johnston on the day following the meeting is consistent with the account of the meeting contained in the two minutes and consistent only with Mr. Johnston not having been told that his offer was wide of the mark. Specifically, his inquiry the following day as to whether his offer had been accepted is inconsistent with having been told the day before that it was wide of the mark. Likewise, it is inconsistent that Mr. Fitzgerald, having recorded that inquiry, should have failed to record once again his earlier communication to Mr. Johnston that his offer had been wide of the mark. The Tribunal concludes that the

meeting was conducted more or less along the lines recorded in the minutes prepared by Mr. Fitzgerald and Mr. Carroll; that Mr. Johnston's offers were received and opened and that he was informed that they would be placed before the Minister; that he was not informed that his offer was well wide of the mark.

18-48 The Department's dealings with Roadstone were calculated to extract the maximum price from the company and to that end there was the type of engagement normally associated with negotiations between a buyer and a private seller with the seller naming his price and the buyer making an offer, and the parties moving toward a compromise figure. In a private treaty sale, it is exclusively a matter for the vendor as to how he should approach any potential purchaser and as to what treatment, equal or otherwise, is afforded a particular purchaser. In the case of the Glen Ding lands however the situation was complicated by the instruction from the Minister to his officials to meet with Mr. Johnston so as to afford him an opportunity to make an offer. This was the culmination of a degree of confusion originating in the Department's management of the disposal from the time the Minister approved the recommendation of 25th October, 1990, to confine negotiations to Roadstone. Having secured the Minister's approval to negotiate with Roadstone, the continuance of dealings with Mr. Johnston was bound to involve at least the risk that he might form the impression, certainly after the 5th December, 1990, that he was being given an opportunity to examine the site with a view to putting in an offer. Mr. Johnston seems to have regarded the process, at least by December of 1990, as either a tender process or as something akin to a tender process. This appears from his having prepared his offers in advance, in writing, and having arranged an appointment with a view to formally delivering them either to officials, or as he would have preferred, to the Minister; also from his having enclosed a deposit with his unconditional offer. This was also borne out by his ostensibly unfavourable comparison of the process with tender processes to which he had been accustomed in England. That he seemed to regard the process as a tender process was not the result of any misrepresentation on the part of any official but could have been avoided had he been informed that the Department was actively negotiating with another potential buyer and that it reserved the right to close with that buyer without reference to him. While there was, therefore a degree of asymmetry in the treatment of Roadstone on the one hand, and Mr. Johnston on the other, this was not prompted by any ambition on the part of officials to afford Roadstone a free run; nor is there any evidence that it was prompted by any interference by Mr. Charles Haughey. Rather, it appeared to stem from a failure on the part of the Department, when conducting intensive negotiations with Roadstone, to appreciate that there was at least a risk that the impression could have been created in the mind of another potential purchaser, in this case Mr. Johnston, that the Department would within reason hold its hand to enable him to make his offer.

18-49 In as much as there was political intervention, it came, without impropriety, from Mr. Molloy, not Mr. Haughey, and with the object of facilitating not Roadstone but Mr. Johnston. Looking at the overall dealings of the Department with Mr. Johnston on the one hand, and Roadstone on the other, it is reasonable to conclude that Mr. Johnston came too late with a concrete offer; that by that stage the officials, having more or less tied down a deal with Roadstone, were understandably anxious not to lose what they undoubtedly correctly regarded as a good price from a solid purchaser. At best their dealings with Mr. Johnston could be described as unenthusiastic. From the point of view of the officials, they had after all provisionally closed with Roadstone on the basis of the approval signified by the Minister in response to the paper of the 25th of October, 1990. On the face of it, the Minister's direction to the officials to deal with Mr. Johnston was in the teeth of his earlier approval of the recommendation of the 25th of October, 1990, confining negotiations to Roadstone. On closer examination however it will appear that the Minister's direction was probably the only reasonable one at the time. The Minister's approval of the paper of the 25th of October, 1990, was made without any knowledge on his part of the extent of the officials' dealings with Mr. Johnston up to that date. Nor had he been made aware, following his approval of the recommendation contained in that paper, of the officials' continuing contacts with Mr. Johnston. More significantly, in the memorandum dated the 10th of December, 1990, in which he was requested formally to approve a provisional agreement with Roadstone he was not informed that Mr. Johnston had intensified his contact with the officials, had examined the lands and had been in contact with the Department with a view to making an appointment to make an offer.

18-50 It appears to the Tribunal that Mr. Johnston viewed the process as somewhat akin to a tender process and sought an opportunity to present his offer. His primary concern was that a decision to sell the lands would be taken without his having had an opportunity to put in an offer. The Minister's direction to his officials was to afford him that opportunity. Their dealings with him did not replicate their dealings with Roadstone. Whilst as has already been indicated, there may have been a lack of enthusiasm on their part in their dealings with Mr. Johnston on 13th December, in meeting him and in receiving his offer and undertaking to relay it to the Minister, he had been provided with the opportunity he had requested. It was the judgement of the officials not to intensify their negotiations with Mr. Johnston. This obviously raises a question, whether a higher price might have been achieved, if the officials, in the course of their dealings with him, had entered into intensive negotiations. Judging the matter both with the benefit of hindsight, and having had regard to the evidence of what transpired at the time, there is no reason to suggest that this was an unreasonable judgement, or a judgement that they were precluded from making. In this context the tardiness with which Mr. Johnston's offer was ultimately concretised must be viewed as a significant factor.

WERE THE LANDS SOLD AT AN UNDERVALUE?

18-51 It remains to consider the question whether the conduct of the disposal and effectively the restriction of the Department's dealings to Roadstone and Mr. Johnston, or as ultimately proved to be the case, to Roadstone alone, resulted in a sale at an undervalue. Since the sale there has been media and other speculation suggesting values for the land of up to £70 million. The Tribunal is aware that interested parties have suggested that the lands may even have been worth in the region of £100 million. Although examining the price obtained for an asset many years ago is extremely difficult, it was felt to be important to ascertain whether there was any validity in the proposition that the lands may have been sold at a gross undervalue — for such it would have been at £1.25 million against any such valuation of £10 million/£20 million/£30 million/£40 million upwards. There is no evidence of any such sale at an undervalue. Had there been evidence of a sale at a gross undervalue, the Tribunal would have found it necessary to embark on a much wider inquiry as it had been urged so to do by various interested parties.

18-52 In approaching the question of value the Tribunal would have found it extremely valuable to have been able to compare the price obtained for Glen Ding with the sale prices of similar lands in or around the time of the Glen Ding sale, that is, 1990. The Tribunal had embarked on a private examination of just such a sale effected in 1997 but due to difficulties in assembling evidence felt unable to make a comparison in public since it would have presented a distorted view of the 1990 sale although one which, it must be said, would have favoured the price achieved by the Department. In another case brought to the Tribunal's attention in the course of its private investigations, the proposed evidence was insufficiently substantial to be adduced at public sittings.

18-53 The Tribunal had the benefit of the evidence, of Mr. Christopher Lockwood BSc MRICS MIQ, Partner in the Minerals, Waste and Recycling Department of GVA Grimley, an international property consultancy, who examined the *modus operandi* adopted by the Department and whilst clearly he had reservations regarding what he saw as the failure of the Department to retain the services of a professional marketing expert, such as a member of one of the large firms of estate agents operating in Dublin (and if necessary internationally), he gave his opinion that the price obtained was in the correct order. He suggested that in at least one respect a different approach might have been taken in relation to the manner in which the asking price was set once the Department had conclusively determined to target Roadstone but, even in those circumstances, it seems unlikely that the price achieved would have been significantly higher.

18-54 Fundamental to any conclusions on the issue of value is the question of the quantum of the reserve of sand and gravel at Glen Ding. The Tribunal, and indeed the Department in the course of the disposal, had the benefit of the Geological Survey of Ireland Report upon which Mr.

Barnett's analysis was based. As the Geological Survey of Ireland is independent not only of Cement Roadstone Holdings and the sand and gravel industry but also of the Department itself, there would appear to be no room for any speculation that its Report was influenced by any inappropriate outside entity or for the suggestion that it was conducted other than in accordance with standard principles.

18-55 In reliance on the Geological Survey of Ireland Report, Mr. Barnett, as the Tribunal has already mentioned, calculated that within an 83 acre area defined for extractive purposes there was approximately 6.744 million tonnes of sand and gravel. This compares with a Geological Survey of Ireland total of 7.4 million cubic metres of sand and gravel in the 180 acres approximately which comprised the balance of the Blessington lands after the 1970s sale. To compare tonnes and cubic metres, it was necessary to apply a conversion factor. The Tribunal proposes to rely on the conversion factor of 1.6 tonnes to the cubic metre as applied, in evidence, by Mr. Christopher Lockwood. Applying the conversion factor of 1.6 tonnes/cubic metres to the Geological Survey of Ireland estimate of 7.4 million cubic metres, a figure of approximately 11.84 million tonnes of sand and gravel was arrived at, which, after deducting 20% for fines, provided a net workable tonnage of 9.47 million tonnes for the 180 acre area. While the Geological Survey of Ireland Report had drawn attention to the likely restriction of the workable reserve due to the pressure of environmental and other factors, it did not seek to quantify the impact of restrictions on the extent of the workable reserves. However, in evidence, Dr. Peadar McArdle, of the Geological Survey of Ireland, confirmed that, within acceptable levels of difference, the Geological Survey of Ireland agreed with Mr. Barnett's quantification of the sand and gravel deposit within the 83 acre area he had defined for extractive purposes, at 6.744 million tonnes. In other words, Geological Survey of Ireland agreed with his estimation of the quantum of sand and gravel in the defined area having regard to the results of the overall analysis conducted by Geological Survey of Ireland. In the course of evidence, Mr. Lockwood indicated in what is clearly a gross, but nevertheless useful cross-check, that the ratio of sand and gravel to acreage on the basis of 9.47 million tonnes in the 180 acre area produced for the 83 acre area, a pro rata tonnage of 4.37 million tonnes. This is obviously less than Mr. Barnett's 6.744 million tonnes but had the figure been higher than Mr. Barnett's figure then the Tribunal might have been obliged to inquire further. It is also of significance that in a recent planning application by Roadstone covering an area of 23.9 acres (an application which was refused) a gross reserve based on a geophysical survey conducted by BMA Geoservices Limited was described as 2.329 million tonnes. Mr. Lockwood suggested that if 13% was deducted for fines, the worst loss recorded by Roadstone since 1960 but obviously far less than the 20% suggested by Mr. Barnett, the reserve is reduced to 2.026 million tonnes or 84,780 tonnes per acre, a figure which compares favourably with Mr. Barnett's assessment of 6.744 million tonnes over 83 acres, or 81,253 tonnes per acre.

18-56 In his evidence, Mr. Lockwood distinguished between the initial quantification of sand and gravel and the valuation of the extractive area based on a sale to a stand alone entity, that is, a sale to a purchaser who would not have enjoyed the access advantages enjoyed by Roadstone. Once Roadstone were targeted as the entity most likely to make the best offer, the Department should have sought a review of the calculations of both the size of the reserve and the projected sales per annum upon which the value of the reserve was based. This is because in the case of a sale to Roadstone, as opposed to a stand alone entity, the extractive area would have been larger since, provided that they had planning permission, Roadstone would have been able to work through the eastern boundary of their existing pit, thereby increasing the reserve by approximately half a million tonnes of sand and gravel.

18-57 Mr. Lockwood took the view that in arriving at a figure for the projected annual sales of sand and gravel, sales of 500,000 tonnes per annum would have been more appropriate in the case of a site operated by Roadstone, as opposed to a stand alone site operated by another entity. Taking account of the potentially greater quantum of sand and gravel in the reserve and the opportunity to operate the reserve at a higher annual extractive rate, this according to Mr. Lockwood would have given a potentially higher range of values at £1.16 million in the case of a sale without planning permission and £1.68 million in the case of a sale with planning permission. Even on the basis of those higher figures however it will be obvious that the price achieved by the Department was still within the range of relevant values. In concluding that the price achieved was within the range of achievable values, the Tribunal is fortified by what it would regard as highly valuable comparable evidence relating directly to the circumstances of the sale itself; that is to say, not prices obtained for comparable lands but comparable offers made for the same lands.

18-58 It is of significance that earlier in the process there had been an expression of interest from a combination of Tracey Enterprises (Dundrum) Limited and Mr. Michael Kavanagh with a figure of £1 million, perhaps not as an offer but as an expression of interest, and presumably for a much larger area than that which was ultimately sold. This nevertheless was a sum which appears to justify the sale as being well within the order of achievable values. Even more noteworthy is the similarity between Mr. Johnston's offers both his conditional offer, and his unconditional offer, and the valuations proposed by Mr. Barnett and perhaps even more significantly the initial offers put forward by Roadstone.

18-59 Of further import is the evidence given by Mr. Johnston concerning what was recognized on all sides as the pivotal issue in relation to the value of this property namely, the availability of, or the prospect of obtaining, planning permission. It will be recalled that Mr. Johnson in evidence indicated that it was his view that permission to extract was obtainable either through the planning process, or by the exploitation of the mineral

exploration legislation. The Tribunal found that the reliance placed by Mr. Johnston on the exploitation of aspects of the minerals resources legislation was unconvincing. However, the Tribunal's view is in this context beside the point since, if, as Mr. Johnston has contended and the Tribunal has no reason to suggest that he was being other than sincere in this, the minerals were readily extractable under the mineral exploration legislation, it is nevertheless significant that his confidence in this approach was insufficient to encourage him to withdraw the planning condition attached to his higher offer.

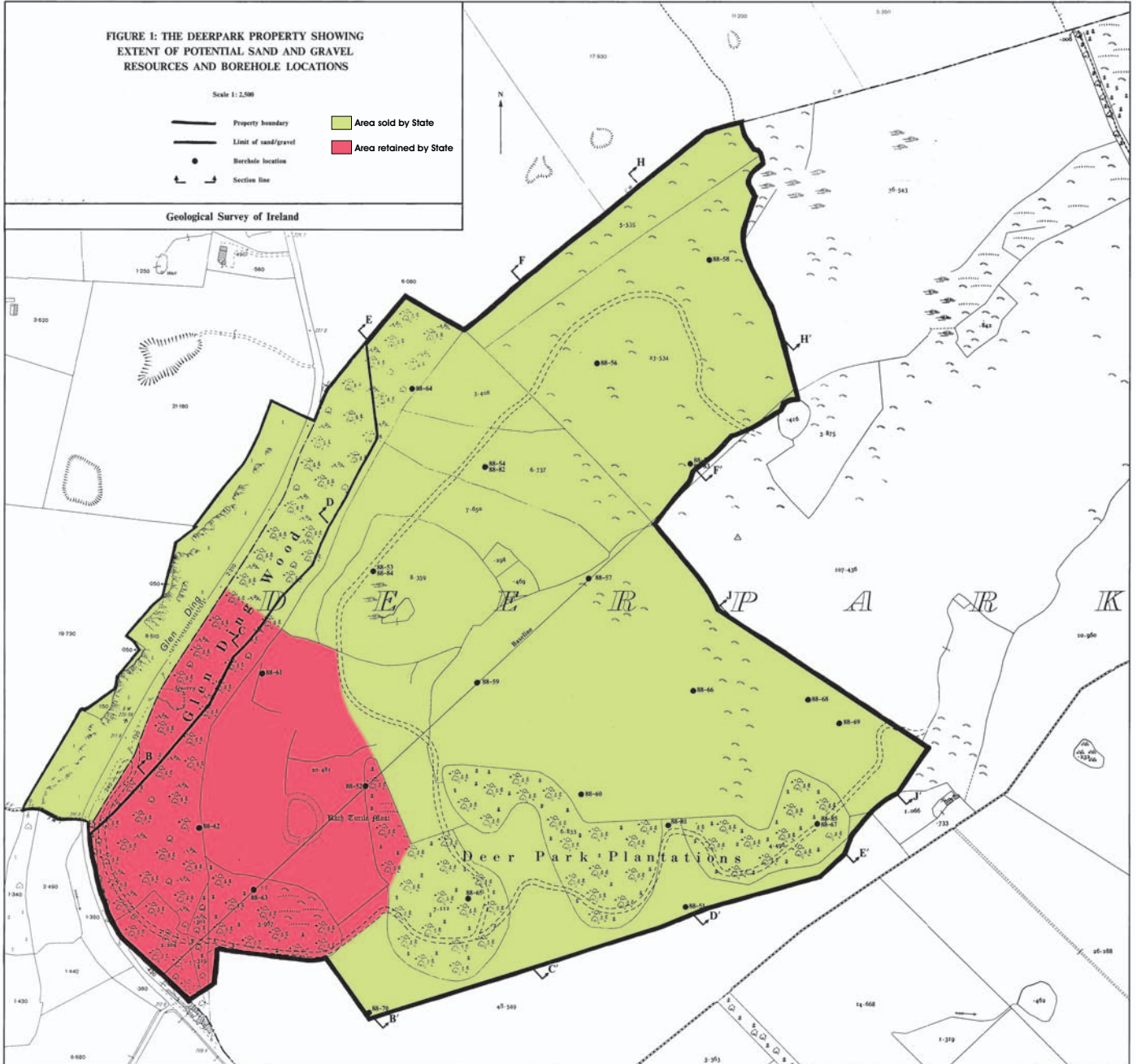
18-60 Lastly, it is of significance that Mr. Johnson in making his bid believed that he was at least to some extent partaking in a tender process as opposed to a negotiation. Therefore, it must be assumed that his bid was not in the nature of an opening bid but rather a figure which, based on his calculations, he believed was likely to be the highest offer.

CONCLUSIONS

18-61 On the face of it, the juxtaposition of the relationship between Mr. Charles Haughey and Mr. Desmond Traynor on the one hand and between Mr. Desmond Traynor and Cement Roadstone Holdings on the other warranted the examination of the sale of the Glen Ding lands in 1990 in particular, in circumstances where those lands were sold by private treaty notwithstanding an earlier parliamentary commitment that they would not be sold save by public tender.

18-62 From the Tribunal's examination of the transaction it concludes that there was no connection, directly or indirectly, between Mr. Charles Haughey and any aspect of this disposal, nor any connection between the operation of the Ansbacher accounts and any aspect of the disposal, the deviation from the parliamentary commitment was due to an administrative lapse. The decision to conduct the disposal by way of a private treaty sale involved dealings with two potential purchasers, Roadstone and Mr. Brendan Johnston of Johnston Industries. Whilst on the face of it there appeared to be a certain asymmetry between the Department's dealings with Mr. Johnston on the one hand and Roadstone on the other on closer examination this did not prove to be the case. Whilst undoubtedly there were differences in the manner in which the Department dealt with Roadstone and Mr. Johnston, these stemmed from a degree of perhaps regrettable administrative confusion but were not prompted by any desire to afford any one potential purchaser an improper advantage over another. The officials in dealing with the disposal, as they saw it a private treaty disposal, were entitled to make a commercial decision to prefer one potential purchaser over another. In circumstances where the price achieved was within the range of achievable value for the land, there is no reason to criticize that preference.

Map 1



HOW REVENUE TAXED (PART 1)**19-01** Term of Reference (j) requires the Tribunal to inquire:—

“Whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry and Mr. Charles Haughey of the funds paid to Michael Lowry and/or Garuda Limited trading as Streamline Enterprises identified in Chapter 5 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (e) above, and the gifts received by Mr. Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) above.”

In brief, therefore, the task of the Tribunal on foot of this term of reference was to examine and report on the Revenue treatment of payments or gifts identified by the McCracken Tribunal as having been made to Mr. Haughey and Mr. Lowry, and also of payments or gifts to both those named individuals found by this Tribunal as coming within the other terms of reference respectively applicable to each.

19-02 In its earlier period of public sittings, the Tribunal examined in some detail the nature of Revenue’s relationship both with Mr. Haughey and Mr. Lowry in the context of dealings had with each prior to payments or transactions examined by this Tribunal, which included the payments or gifts found to have been made to each on foot of the McCracken Report. Then in March and April of 2006, the Tribunal heard evidence from a number of Senior Revenue officials, which both updated where applicable any relevant dealings with both taxpayers regarding the McCracken Tribunal findings, and in particular addressed what was planned and done by Revenue, along with the resultant outcome, in relation to matters arising from evidence heard at this Tribunal.

19-03 Although those latter sittings were held in regard to the taxation of both Mr. Haughey and Mr. Lowry in close succession, it is premature to detail what transpired in regard to Mr. Lowry, or to assess his treatment by Revenue, until the relevant evidence and conclusions regarding any payments or transactions involving him have been set forth, which will be attended to in Part 2 of the Tribunal Report.

19-04 Dealing then solely in this Chapter with the relationship between Revenue and Mr. Haughey, a summary of what transpired may conveniently be divided into matters known to Revenue prior to the inquiries of this Tribunal, and those not so, a distinction which is marginal in a small number of instances but which is generally valid.

REVENUE DEALINGS WITH MR. HAUGHEY AS TO INCOME, PAYMENTS OR GIFTS KNOWN PRIOR TO THE TRIBUNAL

19-05 In examining Mr. Haughey’s relationship with the Revenue Commissioners prior to the disclosures made in the course of the

McCracken Tribunal, the Tribunal was seeking to ascertain whether aspects of those dealings might have alerted Revenue to the existence of the payments discovered by the McCracken Tribunal and by this Tribunal and if so, whether, during those years, Revenue deployed fully, properly or in a timely manner, the powers available to them in seeking to collect taxation from Mr. Haughey.

Income Tax

19-06 It was in general terms acknowledged at the outset of Revenue evidence that, although theoretically every Irish taxpayer in receipt of income should by law furnish an annual return to Revenue, it would render the whole collection system inoperable if this in practice had to be done by the majority of individuals whose sole income consists of wages or salary from employment, and whose allowances and net income received are regulated by the PAYE system. Whilst in strict theory a form of Revenue fiction, it makes unanswerable sense that such persons should be and are tacitly exempted from filing annual returns, so that Revenue may focus its attention upon those who are remunerated differently, or who receive additional income to wages or salary.

19-07 With regard to Mr. Haughey's history of filing annual returns for Income Tax, it transpired that he had for several years made returns in relation to his farming activities through Messrs Haughey Boland up to the 1979/1980 tax year; as of 14th December, 1979, a circumstance doubtless related to his having become Taoiseach at that time, he informed Revenue that he had ceased to carry on farming activities, and had transferred his business in that regard to his daughter, Mrs. Eimear Mulhern. Whilst he had been engaged in farming, he had through his said agents furnished Revenue with figures suggesting that very large losses had been sustained by him in the course of those farming activities, in respect of which refunds were sought of Income Tax deducted at source from his public service entitlements. After considering this request, Revenue declined to make any refunds as sought, although a much smaller refund was made to him by reason of matters unconnected with those farming activities.

19-08 From the tax year 1980/1981 and thereafter until Mr. Haughey left office, returns were not furnished, so it may be said that, for that period, he implicitly conveyed to Revenue that his only source of income consisted of his State salaries and pensions. It may equally be said that, as Revenue took no action to secure the filing of returns, they implicitly accepted that this was the position. During the entire of those years therefore, the full extent of the Income Tax paid by Mr. Haughey was the tax deducted at source from his Public Service earnings.

19-09 It was also not until late 1991, whilst Mr. Haughey was still Taoiseach, that Mr. Christopher Clayton, then Chief Inspector of Taxes, set about seeking the outstanding returns of income in respect of the

preceding years. This was prompted by a view, also alluded to by other Revenue officials, that Mr. Haughey was someone who was very important in Irish society, it was unsatisfactory for him not to have made returns, and probably had some regard to what had transpired in relation to the collection of Capital Gains Tax from Mr. Haughey in the late 1980s and which is addressed at a later point in this Chapter. It was acknowledged by Mr. Clayton that Mr. Haughey had been singled out amongst PAYE earners in this regard, and that his position may have been unique.

19-10 The outstanding tax returns were not all completed until the end of November, 1993. The returns were filed by Mr. Pat Kenny, as Mr. Haughey's Tax Agent but were each individually signed by Mr. Haughey. The position that had been conveyed implicitly over the preceding years was confirmed by the contents of the returns in that Mr. Haughey disclosed no source of income apart from his State entitlements. Despite the unease which had prompted Revenue to seek those returns, including the perceived discrepancy between Mr. Haughey's lifestyle and his State income, no steps were taken by Revenue to evaluate those Returns or to pursue matters further. Revenue accepted the returns at face value and took no action until events unfolded in the course of the evidence heard by the McCracken Tribunal.

Capital Gains Tax

19-11 Two instances of Capital Gains Tax arose, each of which has already been referred to in the Chapter dealing with Mr. Haughey's banking relationship with the Dame Street Branch of Allied Irish Banks, albeit in the different context of being measures taken by Mr. Haughey to reduce his indebtedness to that Bank at different times. The earlier of these (although later in coming to Revenue attention) was the sale of Rath Stud, a farm at Ashbourne, County Meath, which was disposed of by Mr. Haughey in early 1977, giving rise to a taxable gain of approximately £50,000.00. The other was the £300,000.00 that was paid to Mr. and Mrs. Haughey by the Gallagher Group Limited at the start of 1980, which was expressed in the somewhat remarkable agreement then entered into to have been paid by way of a non-refundable deposit on a sale of lands, and which was applied towards funding the settlement of Mr. Haughey's indebtedness to Allied Irish Banks.

19-12 The circumstances surrounding that agreement and its terms have already been set forth in the said Chapter. In 1984, some dealings took place between the Receiver of the Gallagher Group, Mr. Crowley, and the Chairman of the Revenue Commissioners, Mr. Pairceir, in which the former sought to ascertain if the latter was prepared to fund an application for the appointment of a Liquidator with a view to seeking to cross-examine the Directors of the Gallagher Group as to the actual circumstances in which the £300,000.00 was paid. Had the contemplated proceedings on all aspects been successful, in showing that the purported basis for the

payment was in effect no more than a sham, the position would have inured to the benefit of Revenue as preferential creditor. Mr. Pairceir met with Mr. Crowley and his Solicitors and Counsel, and was given access to the legal advice that had been furnished. Having considered the position, he came to the administrative or management view that, notwithstanding the undoubtedly curious features of the agreement, the course proposed was hazardous and uncertain and he felt that Revenue was not justified in embarking upon it. Nonetheless, the receipt of the £300,000.00 by Mr. Haughey appeared to constitute a taxable capital gain and in this regard, he advised the Chief Inspector of Taxes, Mr. Christopher Clayton.

19-13 By this time, the other taxable gain in relation to Rath Stud had already come to Revenue attention. As with the Gallagher payment, no declaration or return in that regard had been made by or on behalf of Mr. Haughey, and the matter had only come to the attention of Mr. P Donnelly, another Revenue official, when dealing with Mr. Haughey's tax agents, Messrs Haughey Boland, in relation to the furnishing of statements with regard to Mr. Haughey's farm income during the period between 1975 and 1979. It was then noted that, although no return had been made by or on behalf of Mr. Haughey, there appeared to have been a gain in the vicinity of £50,000.00 when Rath Stud was sold in 1977. Accordingly, when Mr. Clayton assumed the responsibility of recovering whatever taxation was due on the Gallagher payment, the available Revenue papers also indicated that there appeared to be an undisclosed liability in relation to the Rath Stud transaction.

19-14 Before Mr. Clayton arranged for assessments to be raised, he entered into a comparatively lengthy exchange of correspondence with Mr. Pat Kenny of Messrs Haughey Boland, himself a former Revenue Official, in which he sought to direct Mr. Kenny's mind in the direction of the Gallagher payment without specifically referring to it. In evidence Mr. Clayton said this was in part motivated by his concern that there might have been yet further instances of capital taxation outstanding on the part of Mr. Haughey, and he did not feel an explicit reference to the Gallagher transaction was warranted. In any event, commencing with a letter to Mr. Kenny of 21st June, 1984, in which he inquired whether Mr. Kenny was dealing with all Mr. Haughey's Capital Gains Tax affairs for all years up to 1984, what might be viewed as an extended game of cat and mouse ensued over several letters, with Mr. Clayton dropping hints as to his projected subject matter without specifically naming it. Mr. Kenny's evidence was to the effect that he was unaware of the Gallagher transaction, and went to Mr. Haughey on a number of occasions seeking instructions as to what was likely to be involved. Mr. Haughey initially made no reference to the Gallagher transaction, and it was only latterly that he adverted to it and in fact furnished a copy of the agreement to Mr. Kenny. Notwithstanding what earlier evidence had indicated was the central involvement of the late Mr. Michael McMahon in preparing this document, it appeared that no copy of,

or reference to the document was in any of the papers held by Messrs Haughey Boland. The correspondence had other features that were scarcely typical of exchanges between a Senior Tax Official and an Accountant, including one of Mr. Kenny's initial letters being headed "*Re. An Taoiseach*", and Mr. Clayton in contrast at one stage substituting for the name of Mr. Haughey in his correspondence that of "*P Murphy*", a course he attributed to particular concern for sensitivity and confidentiality.

19-15 Ultimately in 1986, Revenue assessments issued for an aggregate sum for taxation on the two transactions of £102,330.00 of which £89,700.00 was attributable to the Gallagher transaction. In discharge of this indebtedness, £50,000.00 was paid on 15th July, 1986, and £25,000.00 was paid on 27th July, 1987. Each of these two payments was funded by debits to the Haughey Boland No. 3 account, the bill-paying service for many years operated for the benefit of Mr. Haughey. The balancing payment, which was not funded from any Haughey Boland account, was not made until January of 1988. Despite the considerable number of years that had elapsed between each transaction and the payment of tax due, which in the case of the sale of Rath Stud was some eleven years, and despite the fact that Mr. Haughey had omitted to make returns, no amount was levied or sought by way of either interest or penalties.

19-16 In evidence, Mr. Clayton and other officials stated that these matters occurred at a period when Revenue as an Agency had problems in the deployment of resources, and was operating less effectively than in more recent times, that delay was then commonplace in liabilities to capital taxation being returned or ascertained, and that accordingly what was done in relation to Mr. Haughey was in no sense uncharacteristic of what transpired in relation to other similar cases at the time. As to his decision to limit Revenue's interest in the Gallagher payment to a Capital Taxation Claim, Mr. Pairceir stated that he shared Mr. Crowley's concerns in relation to the agreement but he was nevertheless influenced by and agreed with the cautionary advice given to Mr. Crowley by leading Solicitors and Counsel, and viewed the risks inherent in instituting and funding the necessary applications to the High Court as exceeding the likely benefits.

19-17 Regarding the Capital Gains Tax paid in relation to the Rath Stud transaction, a question also arose in relation to the basis upon which the relevant tax was calculated. Whilst it is unnecessary to detail the precise statutory provisions, it appears that despite the very considerable delay before the matter came to Revenue attention, Mr. Haughey was permitted to discharge the relevant tax on a basis of the more favourable of two alternative modes of computation, which is an entitlement enjoyed as of right by a taxpayer acting with reasonable punctuality, but which can be exercised only at the discretion of the Revenue Commissioners in instances of lengthy delay. In dealing with this exercise of discretion, Mr. Clayton stated that it was at the time the norm that such transactions were not

addressed with punctuality by taxpayers, and in extending the benefit of the discretion Revenue was exercising a discretion very frequently, if not automatically accorded, and was not showing any partiality in favour of Mr. Haughey.

Residential Property Tax

19-18 In relation to this self-assessment tax, which had been in force during the period between 1983 and 1996, evidence was given by Mr. Fergus Carroll, who had headed the section of Revenue administering this tax. It transpired that Mr. Haughey, through his agents Messrs Haughey Boland, had made punctual returns in relation to this tax for all the relevant years except one, on which occasion he duly paid the limited additional sum for interest occasioned by his delay. The tax was based upon a percentage of the amount by which the valuation of an individual's property exceeded a sum which was fixed from year to year, and was specified in the self-assessment forms sent out to each householder. In the case of Mr. Haughey, the tax was not based on his extensive lands at Kinsealy, but was confined to the dwelling house at Abbeville, with presumably some allowance made for a small amount of amenity lands immediately surrounding it. Although returns were made setting forth valuations from year to year, the successive forms furnished did not complete the required particulars setting forth details of the number of rooms and other features of the property. Mr. Carroll stated in evidence that it would have been sufficient if this had been done on only one occasion, with subsequent references to the position being unchanged, but the particulars were not contained in any of the returns. As responses were obviously material to enable Revenue to consider whether the market value of the property returned from year to year was adequate, this absence was taken up in extensive correspondence from Revenue dating from April, 1986, but despite assurances from Messrs Haughey Boland, the necessary particulars were not furnished. Neither was prompt attention in the correspondence given to inquiries in relation to the ownership of the island Inisvickaullane in respect of which it was ultimately intimated that ownership was vested in the Haughey family company, Larchfield Securities, so that a personal liability on the part of Mr. Haughey or his wife did not arise.

19-19 The absence of particulars in regard to Abbeville gave rise to Revenue invoking the assistance of its associate State Agency, the Valuation Office to inspect the premises, but it appears that such a process of inspection and report as was conducted did not induce Revenue to increase or modify the self-assessed valuations provided. It was only subsequent to the publication of the McCracken Report that Revenue revisited these valuations: exponentially increased valuations were assessed for the years subsequent to 1987, culminating in a sum for the final year of 1996 which more than quadrupled the valuation at that time submitted by Mr. Haughey's agents, and assessments were furnished in

relation to each resultant shortfall. The position may be summarised as set out in the Table below:—

YEAR	SELF-ASSESSED VALUATION	REVISED VALUATION (£)
1983	Self-assessed valuation 250,000.00	No change
1984	Self-assessed valuation 250,000.00	No change
1985	Self-assessed valuation 250,000.00	No change
1986	Self-assessed valuation 250,000.00	No change
1987	Self-assessed valuation 250,000.00	No change
1988	Self-assessed valuation 250,000.00	Increased to 300,000.00
1989	Self-assessed valuation 262,500.00	Increased to 350,000.00
1990	Self-assessed valuation 262,500.00	Increased to 400,000.00
1991	Self-assessed valuation 262,500.00	Increased to 400,000.00
1992	Self-assessed valuation 262,500.00	Increased to 500,000.00
1993	Self-assessed valuation 262,500.00	Increased to 500,000.00
1994	Self-assessed valuation 262,500.00	Increased to 600,000.00
1995	Self-assessed valuation 272,500.00	Increased to 700,000.00
1996	Self-assessed valuation 295,000.00	Increased to 1.3 million

In his evidence, Mr. Carroll, who had relied upon the Valuation Office in inspecting Abbeville, agreed that in retrospect some of the valuations ascribed to Abbeville seemed a little on the low side, but he pointed out that, for a number of the years involved valuations generally had not prospered, and a property such as Abbeville might then have found difficulty in attracting buyers.

Capital Acquisitions Tax (other than as related to McCracken Tribunal)

19-20 A matter of Capital Acquisitions Tax arose in 1989 when Mr. and Mrs. Haughey disposed of 227 acres of the lands at Kinsealy by way of gift to their four children. Apart from its general significance to the Tribunal's inquiries, what also caused the Tribunal to examine this transaction was the valuation then placed upon these lands, in contrast with the purported valuation of £35,000.00 per acre stipulated in the 1980 agreement with the Gallagher Group, which had been examined by Mr. Pairceir and Mr. Clayton.

19-21 From the information made available to the Tribunal by Revenue, it appears that the 227 acres in question were transferred to the four children on 15th March, 1989. Ms. Iris O'Donovan, an Assistant Principal Officer in Revenue, became aware of this transaction when she received papers on 14th November, 1989 from the Stamp Duty Branch in a context of the likelihood of resultant Capital Taxation arising. It appears that the Stamp Duty Branch had received a valuation of the 227 acres from Messrs Haughey Boland on behalf of the family in the amount of £750,000.00, (the equivalent of £3,304.00 per acre), and had referred this valuation to the

Valuation Office for its opinion. The Valuation Office increased the valuation to £1.2 million (the equivalent of £5,586.00 per acre), whereupon that increased value was submitted by Messrs Haughey Boland for Capital Acquisitions Tax purposes, and the Revenue proceeded to assess each of the four children on a basis of that valuation. With regard to Mrs. Eimear Mulhern, Mr. Haughey's daughter and one of the four donees, Mr. Christopher Clayton had in 1985 become aware that she appeared to have had free use of lands at Abbeville for her business of running the Stud Farm there, and to have also received interest-free loans from Mr. Haughey. He informed the Capital Taxation Branch that Mrs. Mulhern could be liable for Capital Acquisitions Tax in these circumstances, and she was later assessed on a basis of each of these matters having been in the nature of gifts, which affected her liability threshold in relation to her portion of the larger 1989 transaction.

19-22 It was not suggested on behalf of the Tribunal that in fixing a valuation for the Kinsealy lands at the time of the 1989 disposition, Revenue should have adopted the basis of valuation set forth in the 1980 agreement at £35,000.00 per acre, but merely that the sheer magnitude of the discrepancy should have alerted Revenue to possible aspects of irregularity, particularly given the involvement of Messrs Haughey Boland at both stages. In response, Ms. O'Donovan stated in that evidence that the 1980 matter had been handled by the Office of the Chief Inspector of Taxes and had not been referred to the Capital Taxes Division, so that she and her colleagues were unaware of that background. Mr. Clayton stated that there was no necessity to have alerted the Capital Taxes Division to what had transpired in 1980, that the figure ascribed in the 1980 agreement could not properly be regarded as a basis for a subsequent valuation, and that the professional assistance of the Valuation Office had properly been relied upon in respect of the 1989 transaction.

Capital Acquisitions Tax (as related to McCracken Tribunal)

19-23 Following the evidence and Report of the McCracken Tribunal, it quickly became apparent to Revenue that an urgent response by way of effective taxation measures was required in relation to the "*Dunnes Payments*" there identified as having been paid to Mr. Haughey. No disclosure of any of these payments had previously been made by or on behalf of Mr. Haughey, and, apart from unspecified prior media reports, Revenue had been unaware of any of these payments until their existence was uncovered by that Tribunal. It was realised within Revenue that not only was it necessary to recover such tax as was due on these payments as a matter of urgency, but that in addition any question of criminal culpability arising had to be addressed. The latter had not historically been a major part of Revenue activity but a new and more systematic approach to the need for criminal prosecutions in appropriate cases had been apparent since in or about 1996.

19-24 With these considerations in mind, and conscious of the difficulties that had in the past arisen due to lack of communication between different branches of Revenue, a Joint Team was assembled from personnel in both the Capital Taxes Division and the Chief Inspector's Office, reporting directly to the Chairman of Revenue, Mr. Dermot Quigley. Much preparatory work was undertaken in relation to the various transactions, which Mr. Quigley described as almost unique in complexity. Revenue action was initiated on 28th August, 1997 when Mr. Brian McCabe, one of the Revenue team, wrote to Mr. Kenny of Messrs Haughey Boland, stating that his client had received substantial gifts yet had made no returns or payments of tax, and inquiring why this should be the position. Mr. Kenny responded to the effect that he was no longer tax agent to Mr. Haughey, and that this role had now been assumed by Mr. Paul Moore.

19-25 The correspondence was then taken up with Mr. Moore, and the dealings which led to ultimate resolution were set in motion. On 10th December, 1997, Mr. McCabe furnished notice of aggregate Capital Acquisitions Tax assessments in the sum of £1,164,739.00. Mr. Moore on 7th January, 1998 appealed against the assessments, indicating that there had been no chargeable dispositions falling within the Capital Acquisitions Tax Acts, as the identities of the disponers and the dates of any dispositions could not be ascertained. Nevertheless, he indicated that he was continuing to attempt to ascertain the relevant identities and dates.

19-26 Ongoing dealings took place between Mr. McCabe and Mr. Moore, and there were also dealings between the Investigation Branch and Mr. Haughey's representatives, in the course of which Mr. Haughey was made aware of potential criminal liabilities. A payment on account of £100,000.00 was made by Mr. Haughey on 24th June, 1998. The appeal against the assessments was heard on 29th July, 1998, and although the decision was not delivered until the following December, meetings continued to be held between the Revenue team and Mr. Haughey's advisers. When the Appeal Commissioners delivered their reserved decision, it was in favour of Mr. Haughey, in terms of finding a nil assessment. Dissatisfaction with this outcome was expressed by Revenue, which was the procedure whereby Revenue signified an intention to appeal. The decision was appealed to the Circuit Court, and Revenue set about making meticulous preparations for that appeal.

19-27 Negotiations between the sides continued and intensified; it was intimated on behalf of Mr. Haughey that there remained an anxiety to settle the matter, but concerns were expressed on a number of occasions as to the repercussions that such settlement might have on any possible criminal proceedings. These concerns were addressed by Revenue during meetings held in March 2000: conscious of the duty to recover the tax involved, it was stated on behalf of Revenue that a settlement would merely amount to an acceptance that tax was due, and would not constitute an admission to Revenue that Mr. Haughey had knowingly or wilfully failed to

deliver returns on time. Indeed, on the general issue of a possible prosecution for failure to make returns, Revenue indicated that due to evidential difficulties it was felt insufficient grounds for prosecution arose. However, when Mr. Haughey's advisers queried what view might be taken by other agencies, Revenue responded that it could not bind the Director of Public Prosecutions, and could not be seen to be trading a financial settlement in return for not bringing charges.

19-28 This degree of reassurance seemed sufficient to enable resolution, and a settlement was finalised in a written agreement drawn up on 3rd April, 2000. By the terms of this agreement, Mr. Haughey accepted liability for a Revenue debt in the sum of £1,009,435.00 and undertook to discharge this sum in full not later than 1st October, 2000, in default of which interest would thereafter accrue. It was specified that the agreement related only to the instances of Capital Acquisitions Tax set out in the Report of the McCracken Tribunal, and had no application to any other potential liabilities. Further, Revenue were entitled to comment publicly upon the terms of the agreement in a Press Release, reflecting the high level of public interest as to what transpired on foot of the relevant findings in the McCracken Report.

19-29 Before the settlement was finalised, it was approved by the Board of Revenue and Mr. Quigley indicated in evidence the exceptional degree of care that had been given both to the preparations for the appeal and the negotiations. Whilst Revenue felt it had prepared a strong case for the appeal, it was nonetheless conscious that it had lost before the Appeal Commissioners, so that the matter could not have been said to be free from risk. At the same time, the level of public interest and scrutiny was such that only modest discount could be allowed in relation to the assessments initially made. Mr. Quigley felt that the settlement arrived at fairly reflected these considerations, and brought certainty and finality to a complex and uncertain process; whilst a considerable sum in respect of interest for the full period of the transactions was foregone, what had been achieved still represented the entire of the tax due, £507,663.00 plus a sum almost equal to 100% interest in respect of that tax.

19-30 As to the earlier instances of taxation set forth in this Chapter, it was the general tenor of a number of Revenue witnesses that the statutory powers then enjoyed by Revenue in relation to the affairs of a taxpayer such as Mr. Haughey were very significantly less than they have since become; it was acknowledged that liaison and the pooling of knowledge in relation to a taxpayer's affairs between the different branches of Revenue then left a considerable amount to be desired, a shortcoming that again had since been substantially rectified, but it was also pointed out that many of the matters in question arose at a time when Revenue experienced significant resource difficulties, which inevitably impacted significantly upon the speed and effectiveness of collection in a proportion of individual cases. When questioned by Tribunal Counsel in relation to the lifestyle enjoyed by Mr. Haughey appearing to be incompatible with an individual in apparent

receipt only of public service income, an aspect frequently adverted to by media (and a book of press cuttings in this regard was kept by Revenue) the view within Revenue was that it was assumed that any such seeming discrepancy was explained by borrowings undertaken by Mr. Haughey.

REVENUE DEALINGS WITH MR. HAUGHEY AS TO PAYMENTS OR GIFTS ARISING AT THE TRIBUNAL

19-31 In the work undertaken by Revenue with a view to taxation of the Dunnes payments to Mr. Haughey identified at the McCracken Tribunal, there was some degree of overlap with the initial stages of Revenue inquiries referable to this Tribunal, and these will be referred to shortly. However, the principal preparations and actions undertaken by Revenue which gave rise to a substantial settlement concluded with Mr. Haughey on 18th March, 2003 were those reviewed in the public sittings of March/April, 2006. In its private investigative work prior to those sittings, the Tribunal was furnished by Revenue with relevant documentation on foot of an Order for Production made by the Tribunal, and statements were also made available by Senior officials within Revenue. The making of that Order for Production in no sense indicated any want of voluntary co-operation on the part of Revenue, but was necessitated by reason of the rights of confidentiality which Revenue is obliged to respect in regard to the affairs of any taxpayer. In fact, as with other matters related to Revenue considered by the Tribunal, the co-operation, professionalism and courtesy shown by officials at all levels within Revenue and its legal advisers in response to numerous inquiries were irreproachable, particularly on the part of an agency to which confidentiality is an intrinsic requirement, which has been greatly appreciated by the Tribunal.

General investigations made following McCracken Tribunal

19-32 The initial testimony heard by the Tribunal in December, 2000 and early 2001 included evidence from Mr. Stephen Tracey, the senior Inspector of Taxes in the Investigation Branch, that on 21st July, 1997 a Special Projects Group was set up in response to matters arising at the McCracken Tribunal, in particular in regard to the affairs of Mr. Haughey. That body set about assembling information regarding all of Mr. Haughey's financial affairs extending beyond those directly pertaining to the Dunnes Payments identified by the McCracken Tribunal. Information was sought in the course of correspondence with Mr. Haughey's tax agents, and an Order of the High Court pursuant to S.908 of the Taxes Consolidation Act, 1997, was obtained which led to documentation in regard to Mr. Haughey's financial affairs being provided by Guinness & Mahon and Irish Intercontinental Bank.

19-33 Mr. Brian McCabe, Principal in the Capital Taxes Branch, also testified in relation to dealings with Mr. Haughey's tax advisers on matters wider than those arising from the McCracken Tribunal. In particular, Mr.

McCabe referred to a statutory notice issued by Revenue on 10th December, 1997 pursuant to s.36 (7) of the Capital Acquisitions Tax Act, 1976, which required Mr. Haughey to deliver within 60 days details of all other gifts or inheritances taken by him from any source during the period between 2nd June, 1982 and the end of 1988. Extensions of time were allowed to enable Mr. Desmond Peelo, a Forensic Accountant engaged by Mr. Haughey to respond. A memorandum from Mr. Peelo was then furnished to the effect that Mr. Haughey had left the management of his finances to the late Mr. Desmond Traynor, and was accordingly not in a position to offer any assistance on the source of unexplained amounts as between his income and expenditure. Following discussions had by Revenue with its legal advisers, a meeting took place with Mr. Moore and Mr. Terry Cooney, tax agents to Mr. Haughey, on 5th August, 1998, but neither at this nor in subsequent correspondence continuing up till March, 1999 was it felt by Revenue that any fresh or substantial information had been elicited, and Mr. McCabe stated in evidence that the responses received at that time consisted largely of information regarding Mr. Haughey's affairs that was already in the public domain as a result of the early public sittings of this Tribunal, to which Revenue had had access.

Initial steps taken by Revenue following completion of money trail evidence

19-34 Following the settlement already referred to earlier, officials of Revenue continued to monitor the evidence emerging at public sittings of the Tribunal. The initial intended strategy was to proceed on that basis until all relevant evidence had been heard and findings made public, and then to take action to secure any emerging tax liabilities. However, this course began to change in or about July, 2001, when it became evident that the “*money trail*” evidence of the Tribunal relating to Mr. Haughey was approaching a conclusion, at which time the accumulated evidence had made it clear that Mr. Haughey would have to face issues of significant further tax liabilities. It was also the position, as is set forth in the wording of Term of Reference (j) quoted at the start of this chapter, that the Tribunal was required to address the manner in which Revenue taxed Mr. Haughey in respect of relevant payments emerging not merely at the McCracken Tribunal but also at this Tribunal, which obviously was a further factor in inducing a change of strategy.

19-35 Accordingly, an intensive analysis of how best to proceed in relation to Mr. Haughey's further tax liabilities commenced in July, 2001, with the legal position being exhaustively researched, independent legal opinion being in addition sought, and with consultation with the Board of the Revenue Commissioners both formally and informally. The overriding issue for Revenue was whether the funds of which the Tribunal had heard evidence should be assessed to Income Tax under the Taxes Consolidation Act, or to Gift Tax under the Capital Acquisitions Tax Acts. The former head of tax would have given rise to a more considerable liability to tax, and

would have had additional consequences in terms of interest, penalties and publication.

19-36 To advance matters with Mr. Haughey and his advisers, information was sought on a number of fronts. In addition to the procedures already set in being by Mr. Tracey and by Mr. McCabe in late 1997, an up to date Statement of Affairs was sought from Mr. Haughey on 21st August, 2001; this request was delivered by hand to Mr. Haughey at his home in Kinsealy, with a copy being furnished to his tax agent. This comprised a detailed document in a statutory form in which Revenue requests a taxpayer, usually one under investigation, to furnish very detailed information regarding all his financial affairs and all his assets and liabilities. In response to what was undoubtedly a significant step in this regard on the part of Revenue, Mr. Haughey's tax agents initially responded that their understanding had been that further direct inquiries by Revenue would be deferred until the Tribunal had completed its investigations and Report and reference was also made to the poor state of Mr. Haughey's health. It was nonetheless agreed on 1st November, 2001 by the tax agents that a Statement of Affairs would be prepared and provided, and that Mr. Desmond Peelo had been instructed in this regard.

19-37 The Investigation Branch of Revenue had continued its inquiries in relation to third party financial institutions, and had requested Mr. Haughey's agents to furnish what are known as Forms 62BD and 62BSD in respect of a large number of financial institutions. These forms, which apply respectively to Banks and Building Societies, are used by Revenue to enable the provision of financial information in relation to accounts held by a taxpayer. As with requests for the provision of a Statement of Affairs, this is also a procedure primarily invoked by Revenue when a taxpayer is under investigation.

19-38 By early 2002 substantive responses to all the foregoing requests for information were outstanding, and matters were coming to a head. Senior level case meetings were held within Revenue in February and March, 2002, and Mr. Haughey's tax agent had requested a meeting with Revenue to explain the difficulties encountered in completing the Statement of Affairs which had been due on 18th January, 2002. It was decided to meet with the agents, and intensive consideration was given to how the collection of tax might best be progressed. At an internal senior level meeting held on 15th March, 2002, it was agreed that the best way of proceeding was to enter into discussions with Mr. Haughey through his agents with a view to settlement. On the crucial issue of whether to proceed by way of Income Tax or Capital Acquisitions Tax, Revenue had conducted its own researches and had also received an unequivocal legal opinion. Each pointed emphatically to a conclusion that it would be difficult in the extreme to make a credible assessment to Income Tax under the Taxes Consolidation Act, 1997, since under both statute and case-law Income Tax must be shown to arise from some activity which could be regarded as a

source of profit or gains. It accordingly became clear that if a negotiated settlement was to be achieved, it would have to be on foot of Capital Acquisitions Tax, so Revenue set about preparing detailed Capital Acquisitions Tax calculations covering all payments in relation to which the Tribunal had heard evidence, with a view to those calculations then informing the negotiating position of Revenue. It was also then noted by Revenue that there were possible prosecution options open, including prosecution for failure to complete the Statement of Affairs, and to file Capital Acquisitions Tax Returns in respect of gifts received.

Meetings between Revenue and Mr. Haughey's agents

19-39 Revenue officials and Mr. Haughey's agents met for the first time on 29th April, 2002. The Revenue delegation was headed by Mr. Norman Gillanders, Assistant Secretary assigned to the Capital Taxes Division in the years 2001 to 2004, and with him were Mr. McCabe, Mr. Tracey and Mr. Robert Harrington. On behalf of Mr. Haughey, Mr. Moore, Mr. Cooney and Mr. Peelo attended. At the meeting it was accepted on behalf of Mr. Haughey that there were major tax issues outstanding, and that he was willing to address them. It was made clear on behalf of Revenue that substantial and meaningful progress would have to be made, otherwise Revenue would be obliged to proceed with assessments in order to bring Mr. Haughey's tax affairs up to date. It was also proposed on behalf of Revenue at the meeting that an obvious starting point for purposes of negotiations would be to arrive at a baseline figure in relation to Mr. Haughey's taxable receipts for the relevant years.

19-40 Further similar meetings were held on 6th June, 2002 and 4th July, 2002; little by way of progress in a context of proposals emerging from Mr. Haughey's agents appears to have arisen at either meeting, and on the latter occasion the Revenue officials furnished Mr. Haughey's agents with a draft Expenditure Schedule. It was acknowledged in evidence on behalf of Revenue that this was prepared on a basis of being a "*worse case scenario*" from Mr. Haughey's viewpoint, and was designed to be an indicator to Mr. Haughey's agents of the scale of the tax issues faced by Mr. Haughey, with a view to speeding up their deliberations. The schedule computed Mr. Haughey's expenditures for the years from 1977 to 1997 in excess of £9 million.

19-41 On 6th September, 2002, Mr. Gillanders met with Mr. Peelo at the latter's request. At that meeting Mr. Peelo indicated that Mr. Haughey was prepared to settle the case for £2 million (€2.539 million), indicating that Mr. Haughey was dying, was anxious to resolve matters urgently, and that his lack of knowledge of his financial affairs made negotiations on his behalf difficult. Mr. Gillanders responded to Mr. Peelo that it was highly unlikely that this figure would be acceptable, but he acknowledged in evidence that it at least provided a basis for further negotiations.

19-42 Following that meeting, and with a view to further negotiations, Mr. Gillanders prepared a detailed analysis of Mr. Haughey's potential liability in a context of maximum and minimum figures that Revenue might hope to recover, and also addressed possible strategies for Revenue to adopt in the course of negotiations. From the memorandum prepared, it would appear that Revenue considered that the maximum expenditure figure that could be contended for in relation to the years in question was £9.9 million (€12.57 million) which would give rise to a potential tax liability of £6.5 million (€8.25 million), assuming that interest was capped at 100% of the Capital Acquisitions Tax liability which would have been computed at that time at 40% of the value of the gifts. However, Mr. Gillanders and his colleagues did not consider that this maximum figure was attainable, given some likely instances of double counting and other discounting factors likely to be advanced on Mr. Haughey's behalf, and they considered that a sum in the region of £3.25 million (€4.126 million) to £3.8 million (€4.825 million) was more realistically achievable.

19-43 Prior to a further meeting between the two sides on 8th October, 2002, Mr. Gillanders forwarded to Mr. Peelo a refined Expenditure Schedule in respect of Mr. Haughey for the years 1977 to 1997, which he indicated was seen by Revenue as forming the agenda for further discussions. Prior to the actual meeting, Mr. Gillanders spoke to Mr. Moore and Mr. Peelo, setting out the intended approach on the part of Revenue. He indicated that Revenue needed to negotiate on the facts of the case as set out in the revised Expenditure Schedule, that they would be fair and rational as regards dealing with double counting of amounts received by Mr. Haughey, and that if negotiations failed, Revenue would begin a process of formulating and issuing assessments to Capital Acquisitions Tax.

Conclusion of settlement

19-44 The ensuing meeting was lengthy and detailed. Some clarification was provided by Revenue at the outset regarding the Expenditure Schedule in terms of how its contents were arrived at and also in relation to the matter of double counting. Detailed discussions then followed on an item by item basis in relation to the matters contained in the Expenditure Schedule, and this exercise appears to have given rise to what Revenue officials in evidence described as a core Expenditure Schedule of £6.9 million (€8.761 million). The tax consequences of that core figure were then discussed, with Revenue officials indicating that at the then prevailing tax rate this appeared to give rise to a liability of approximately £2.76 million (€3.504 million). With interest capped at 100%, this would increase the liability to approximately £5.5 million (€6.98 million). The meeting then adjourned for lunch and at its subsequent resumption Mr. Gillanders joined Mr. McCabe, Mr. Tracey and Mr. Cleary.

19-45 Negotiations continued following which what was expressed to be a final offer on Mr. Haughey's side was made at £3.85 million (€4.888

million). It was agreed that this figure would be put to the Board of the Revenue Commissioners. Following discussions with his senior colleagues, Mr. Gillanders contacted Mr. Peelo by telephone and indicated that, whilst Revenue would not be prepared to settle the case for the sum offered, it would be prepared to settle for the increased amount of £3.94 million (€5 million), subject to the necessary legal agreements and securities being put in place. On 15th October, 2002, Mr. Peelo contacted Mr. McCabe and confirmed that Mr. Haughey, having discussed the matter with his children, was agreeable to settling his liabilities to Revenue for that increased amount.

19-46 Following further discussions in regard to the mechanics of the settlement, a formal written agreement was concluded between the parties on 18th March, 2003. The agreement provided for payment of the agreed sum by Mr. Haughey out of the proceeds of sale of Mr. and Mrs. Haughey's property at Abbeville, Kinsealy, and its several terms included provision of security by Mr. and Mrs. Haughey together with a guarantee by Mrs. Haughey and each of the four children of Mr. and Mrs. Haughey, in addition to provision for interest if the agreed sum was not paid by a specified date, a reservation of rights on the part of Revenue in relation to further sums that might become due and owing by way of tax, and provision for an agreed press release, which was issued on the same day as the settlement, indicating its essential terms. The agreed amount was duly paid to Revenue out of the proceeds of sale of Mr. and Mrs. Haughey's property on 1st September, 2003.

Evidence of Revenue officials

19-47 In their evidence heard in March, 2006, Senior officials of Revenue set forth the internal preparations and dealings with Mr. Haughey's agents of which the foregoing is a summary. The most senior individual involved was Mr. Norman Gillanders, Assistant Secretary of the Revenue Commissioners. He described how his colleagues had in the first instance monitored relevant evidence heard at this Tribunal concerning Mr. Haughey with regard to both payments made and expenditure incurred, dated these, and then assembled schedules of receipts and expenditures, whilst taking legal advice on a continuous basis. Having examined the legal position very thoroughly, it appeared beyond doubt that the payments in question could not be regarded as income, since they in no sense pertained to any employment, letting or investments, from which earnings could have been derived. However the public might say tax had to be due, Revenue could only enforce such tax obligations as fell within prescribed legal categories, and the legal advice received was unequivocally at one with their own views: it was Gift Tax under the Capital Acquisitions Tax Acts, or nothing. Nor was the concept of Gift Tax in itself simplistic, as in each instance it was necessary to know the donor, the donor's domicile, the date of the gift and where the property was situate when given. On the apparent facts of the payments received, this was not going to be an easy task and might

be adequately proved only in a limited number of payments. The risks inherent had been graphically illustrated in the initial outcome with regard to the payments which emerged at the McCracken Tribunal. Regard was also had to the fact that the money trail evidence heard in relation to payments at this Tribunal was at least as complex as any heard at the McCracken Tribunal.

19-48 Mr. Gillanders confirmed that the initial figures prepared by Revenue were emphatically a “*worse case scenario*” from Mr. Haughey’s point of view, and that their production reflected the course of negotiation that Revenue had consciously embarked upon. He never for a moment believed that tax and interest would be attained on anything like that top figure, and felt confident as to fulfilling proofs only of gifts in the aggregate vicinity of £2/2.5 million.

19-49 As to interest, Revenue was entitled under the relevant legislation to “*cap*” this at 100% of the tax due and this is what had been done in the earlier settlement resulting from the McCracken Tribunal. Capping at 100% had become an established practice in Revenue procedure under the Capital Acquisitions Tax Acts, and this course had only been departed from in one instance, in relation to which adverse criticism had been expressed by a leading tax practitioner. Despite the large amounts involved in Mr. Haughey’s case, and the period of time for which he had enjoyed the payments in question, it was not felt that this strongly established practice should be departed from in his case; perhaps more pertinently, it was also the case that Revenue was negotiating with senior and able tax practitioners and, given the views that had been formed, the last thing that Revenue wanted was uncapped interest becoming in effect a deal breaker, and resulting in the other side leaving the negotiating table. What in any event would be recouped from a process based on Gift Tax would be less than one based on Income Tax, but that was not a matter of Revenue’s choosing.

19-50 Regarding any possibility of publishing Mr. Haughey’s name in the periodic list of tax defaulters, Mr. Gillanders stated that it was entirely clear in law that publication only arose in situations where the monetary penalties incurred by taxpayers exceeded 15% of the tax due; Capital Acquisitions Tax legislation at the time did not provide for tax-g geared penalties, so that only a series of non-filing penalties in an aggregate far beneath that 15% aggregate threshold could be levied. Publication accordingly did not arise, and this was not a matter of discretion, but Revenue had in any event stipulated that, due to the public interest that had occasioned a similar course in the previous McCracken-related settlement, a press release should again be published in regard to the principal basis of agreement.

19-51 Mr. Gillanders stated that he had brought the proposed terms of settlement before the Board of the Revenue Commissioners for approval.

Having bargained a figure that was almost double the opening offer which had been made by Mr. Peelo, and being conscious of Revenue's frailties in a contested hearing, he had conveyed that Revenue was "*on a very sticky wicket*" and duly obtained approval.

19-52 Mr. Brian McCabe, then Principal Officer in the Capital Taxes Division of Revenue, also testified. He had already been prominently involved in the early McCracken-related settlement with Mr. Haughey. His primary involvement was in the preparation of the initial draft Expenditure Schedule, and also its later more refined form, which proved central to the negotiations that later ensued. He acknowledged that the initial form was "*fairly worked up*", and constituted an opening position. Rather than the sum of close to £10 million initially referred to, a more conservative figure would have been in the vicinity of £6 million, and it was felt in Revenue that a realistic figure would lie somewhat between those extremes. He referred to various payments and benefits dealt with at this Tribunal as having been received by Mr. Haughey, each of which are addressed in detail elsewhere in this part of the Report, and described the ongoing course of negotiations with Mr. Haughey's agents, including the manner in which aspects such as double counting and credit for money paid on foot of the McCracken-related settlement were addressed.

19-53 In the revised figures, a sum for expenditure of almost £6.9 million emerged, which with tax at 40% gave rise to a liability of £2.76 million, added to which was a like sum for 100% interest, giving rise to a total of £5.5 million. Being fully mindful of the weaknesses in the Revenue case if required to contest matters fully, and having already "*got a bloody nose before the Appeal Commissioners*" in the earlier McCracken-related dealings with Mr. Haughey, Mr. McCabe viewed the €5 million settlement, with the accompanying terms that were finalised, as a satisfactory outcome from the Revenue standpoint.

19-54 He acknowledged that, as in any settlement or compromise, there was something for both sides, and he suspected that Mr. Haughey's advisers were also happy. From their viewpoint the tax liability had been limited to the specified figure, with interest confined to the same amount, any risk of higher assessments resulting from Income Tax had been avoided, as were tax-gear penalties or publication as a tax defaulter; the "*pegging*" of interest at 100% was also of benefit to Mr. Haughey in the sense that, if Revenue had won at a contested hearing before the Appeal Commissioners, they would then have been entitled to full interest. But for Revenue the benefits of the settlement were very clear, including certainty in recovering a high proportion of the potential full liability in a case that had many elements of hazard, an outcome that he thought ought to satisfy Tribunal scrutiny, provision for future taxation of further matters that might separately emerge, a press release confirming the eventual basis upon

which matters had been resolved, and firm provisions in the written agreement to secure payment of the agreed sum.

19-55 Mr. Stephen Tracey, a Principal Officer within Revenue primarily concerned with investigation for potential prosecutions, and a person already involved in earlier dealings with Mr. Haughey, also testified. He dealt with certain of the procedural dealings already set forth in earlier evidence, in particular in relation to the Statement of Affairs, and it seems unnecessary to detail these. Regarding an aspect that had also been mentioned in the evidence of Mr. Gillanders, he acknowledged that it would have been normal in an investigation of such depth to have sought a personal interview with the taxpayer, but agreed with Mr. Gillanders that, given the degree of information that had been obtained, what had been contended in relation to Mr. Haughey's health, and the observation that Revenue officials had made of him at Tribunal hearings, little was to be gained by insisting on this.

19-56 The last witness on behalf of Revenue was its Chairman, Mr. Frank Daly, who provided an overview of the position adopted by Revenue in relation both to Mr. Haughey and Mr. Lowry. With regard to Mr. Haughey, Mr. Daly acknowledged that it was something of a paradox that the lengthy lapse of time and, high degree of concealment on the part of Mr. Haughey in effect weakened Revenue's position rather than his. Following much preparation it was clear that, however Revenue might have preferred a higher yield from Income Tax, it was Capital Acquisitions Tax or nothing, and even in that sphere there were very real difficulties in sustaining assessments. Accordingly Revenue was weakened and on the back foot, and the only realistic course lay in negotiations. Fitting evidence heard at the Tribunal into the Tax Code had proved to be extremely difficult in this instance. He agreed with earlier evidence from his colleagues that these factors necessarily conditioned the manner in which Mr. Haughey's advisers were approached. They were able and experienced professionals, and it would have been ineffectual and probably counterproductive to have waved a big stick at them. In assessing the settlement overall, he felt that the contrast between the €5 million that had been achieved, with inbuilt guarantees of payment which avoided any collection problems, and the much lesser sum that was likely to be the best outcome procured from lengthy and uncertain litigation, spoke for itself. He concluded his evidence by referring to some matters pertaining to possible recommendations within the Terms of Reference: these are also the subject matter of more detailed written submissions from Revenue, and will be addressed in Part Two of the Tribunal Report.

19-57 In Mr. Daly's experience, the Haughey case was unique in the degree of secrecy and structures surrounding his finances, all designed to keep matters from the gaze of the Revenue. He agreed that Revenue's

approach to Mr. Haughey and his advisers would have been less conciliatory if its hand had been stronger.

ROLE OF MR. HAUGHEY'S ACCOUNTANTS

19-58 A final aspect which is pertinent to the manner in which Mr. Haughey was taxed by Revenue relates to the circumstances in which Mr. Haughey's accountants, Messrs. Haughey Boland, combined the functions of being his tax agents with furnishing a bill-paying service to him for a substantial number of years until early 1991. Whatever the regard that was or should have been given by Revenue to aspects of Mr. Haughey's lifestyle, it is beyond doubt that no returns or relevant information whatsoever were ever furnished to Revenue by or on behalf of Mr. Haughey in relation to the many taxable payments and gifts received by him between the start of 1979 and the initial disclosures that gave rise to the establishment of the McCracken Tribunal, and subsequently this Tribunal, in 1997.

19-59 During those years, and for an appreciable time previously, the same firm of accountants was conveying to Revenue a position in relation to Mr. Haughey as a full time public representative whose income and earnings were limited to his public service salary and other entitlements (save for farming and stud activities which ceased upon him first becoming Taoiseach in late 1979), whilst at the same time administering on a monthly basis the payment of what, by any standards, were immensely large outgoings, funded otherwise than by those public service entitlements, which in any event would have been utterly inadequate to discharge them. Some consideration must accordingly be given to what may seem the very disparate countenances presented by different divisions of the same accountancy firm.

19-60 Both elsewhere in this Part of the Report, and in the McCracken Report, further reference is made to the manner in which this bill-paying service was operated on behalf of Mr. Haughey by Messrs. Haughey Boland prior to the processes of merger and amalgamation in 1986 and 1991, which saw that firm emerge as the enlarged entity known as Deloitte & Touche. Mr. Paul Carty, Managing Partner of Deloitte & Touche since 1991, and previously a senior partner of Haughey Boland, confirmed in early 1999 public sittings the essential *modus operandi* of the service. A division of Haughey Boland known as the business service division would from the early 1960's onwards receive on a monthly basis from Mr. Haughey's secretary a list of bills and invoices which had been approved and required payment, whether in relation to the farm, the stud, the household or otherwise. The business services division would then calculate the total amount due for each month, and cheques would be prepared to discharge the individual items Mr. Haughey's secretary at the time would then be notified of the amount required by Mr. Haughey in aggregate, and within a few days the necessary funds would be received

from Mr. Desmond Traynor, usually by bank drafts, sometimes by cheque, and on occasion by direct transfers to the relevant Haughey Boland Client Account, which was known as the Haughey Boland No. 3 Account. Thereupon the individual cheques would be dispatched and a file or record returned to Mr. Haughey's secretary.

19-61 A separate cheque book was kept for these payments on behalf of Mr. Haughey, and cheques would only be drawn once it was established that there were funds available to meet the amounts due. Both the number of transactions and amounts involved in general terms increased with the passage of time, so that Mr. Haughey's bill-paying requirements accounted for a considerable proportion of the work of the business services division. In relation to the Haughey Boland No. 3 Account, it was uniquely on behalf of Mr. Haughey that such a bill-paying service was undertaken. Mr. Traynor had left Haughey Boland in 1969 but it was his concern that the later processes of the expansion of the firm made it so large as to be unsuitable to operate the service, which led to him raising the matter with Mr. Carty, and later informing him that Mr. Jack Stakelum would provide the service in future. Mr. Carty recalled that some limited services continued to be undertaken on behalf of Mr. Haughey thereafter by the enlarged entity. In his evidence to the McCracken Tribunal, Mr. Carty stated that those involved in the bill-paying service did not know the source of the funds provided to discharge the monthly accounts, other than that they were paid through Mr. Traynor.

19-62 Regarding the services provided to Mr. Haughey by Haughey Boland as tax agents, Mr. Pat Kenny gave evidence at public sittings in December, 2000. Since no waivers of confidentiality had been provided by Mr. Haughey to enable the Tribunal to prepare a statement on behalf of Mr. Kenny and to circulate it to affected persons, Mr. Kenny had initially given somewhat similar evidence in private. Having been employed for some time with Revenue, Mr. Kenny stated that he had commenced his association with Haughey Boland as an accountant in 1975. Having become a taxation partner in the practice, he took over the conduct of Mr. Haughey's tax affairs in 1984 upon the premature death of Mr. Michael McMahon. In the years between 1980 and 1984 he had undertaken some intermittent duties in relation to Mr. Haughey in association with Mr. McMahon, but once he had taken over the conduct of Mr. Haughey's affairs in 1984 he dealt with them exclusively, and no other staff member had any related dealings or involvement. This state of affairs continued until 1997, when what had then become Deloitte & Touche ceased to provide services as tax agent to Mr. Haughey. Reference has already been made earlier in this Chapter to Mr. Kenny's dealings with Mr. Christopher Clayton, and with Mr. Haughey, in which he had sought information in relation to what ultimately transpired to be the substantial Capital Gains Tax liability resulting from Mr. Haughey's dealings with the Gallagher Group Limited in 1980. Mr. Kenny stated that in this regard he only approached Mr. Haughey, and had never contemplated approaching Mr. Traynor, since he did not then have any real

understanding of Mr. Traynor's role in Mr. Haughey's financial affairs. In 1980 the entire workforce of Haughey Boland would have comprised approximately 130 – 140 people, of whom there were probably ten partners.

19-63 Mr. Kenny was somewhat vague in describing his degree of knowledge of the operation of the bill-paying service during the years he acted as Mr. Haughey's tax agent. He initially stated that it was his understanding that the firm probably had undertaken this service, and that it had been put in place some years earlier, and then stated that he may possibly not even have been aware in 1984 that this was the state of things. He acknowledged that he had been responsible for the firm accounts for a period up to 14th December, 1979, and that these accounts had been prepared in the course of the year 1981. He stated that it had not occurred to him to seek assistance from any colleague within the firm who had been handling other aspects of Mr. Haughey's affairs during the period when his correspondence with Mr. Clayton had made it clear that some significant unresolved matter required attention. It was the case that all of Mr. Haughey's affairs in the firm were handled in separate pigeon holes, and that he as a tax partner dealt uniquely with tax.

19-64 When Mr. Kenny finally received information from Mr. Haughey close to the time of the Revenue assessment, acknowledging that the Gallagher transaction was the matter involving Capital Gains Tax considerations, he agreed he had been surprised that Mr. Haughey could not during his earlier inquiries recall a transaction of such magnitude. Nor had Mr. Haughey then informed him that it was his predecessor, Mr. McMahon who has prepared the agreement in question, and this was also a matter of some surprise to Mr. Kenny. No papers relating to the matter had been found in the files of Haughey Boland, and Mr. Haughey had not indicated where he had found the agreement. With regard to the amount of Capital Gains Tax arising, no question of setting-off against the liability any amount paid by Mr. Haughey to the firm as fees relating to the agreement arose, since it had always been the policy of the firm not to charge retired partners for tax advice, and this concession had not been unique to Mr. Haughey. Even if the preparation of the agreement by Mr. McMahon could not really be viewed as tax advice, he would nevertheless not have charged Mr. Haughey.

19-65 As to the discharge of the aggregate liability for Capital Gains Tax, Mr. Kenny stated that he now understood that the initial two payments had been made through the Haughey Boland No. 3 Account, which was the one used for the bill-paying service, although the final payment had not been made in that manner. Mr. Kenny stated that he did not discuss with Mr. Haughey how the aggregate sum of £102,000.00 would be raised by him; when Mr. Kenny had asked Mr. Haughey for this amount, he had stated that he did not have it right away but would raise it as promptly as possible. Mr. Kenny stressed that he had been the tax agent employed in relation to Income Tax and Capital Gains Tax returns on behalf of Mr. Haughey, and

that had been his sole role with him. He again indicated that he had only become aware of how deeply Mr. Traynor had been involved in managing Mr. Haughey's finances at the time of the McCracken Tribunal. On the basis of Mr. Haughey's own evidence relating to Mr. McMahon's involvement in the agreement, Mr. Kenny agreed that Mr. McMahon must have been aware of Mr. Traynor's role since both Mr. McMahon and Mr. Traynor had been involved in preparing the document. Whilst Mr. Kenny had met Mr. Traynor on a number of occasions prior to his death, he had never discussed any aspect of Mr. Haughey's affairs with him. Mr. Kenny had been aware that Mr. Paul Carty had been a member of the firm professionally involved in matters relating to Celtic Helicopters. As to the handing over of the bill-paying service to Mr. Jack Stakelum in 1991, Mr. Kenny stated that he had probably not been "*pronouncedly*" aware of this at the time.

19-66 When Mr. Clayton later sought personal Income Tax returns from Mr. Haughey in relation to a number of past years, a course indicated by Mr. Clayton as having been exceptional in regard to a PAYE taxpayer, Mr. Kenny stated that the only client on behalf of whom he had undertaken such an exercise was Mr. Haughey. He did speculate at the time that in taking this course it may have been the case that Revenue knew something. He agreed that in general terms the taking of this course in relation to a compliant PAYE taxpayer would have been a waste of time and would not have yielded a brass farthing to Revenue. When Mr. Kenny dealt with Mr. Haughey in relation to the content of the outstanding returns, Mr. Haughey never indicated that he might consult usefully with Mr. Traynor, and gave Mr. Kenny no indication that he had been in receipt of any income other than public service entitlements. Insofar as any aspects of Mr. Haughey's lifestyle may have seemed out of proportion to those state earnings, Mr. Haughey had stated to him that this was by reason of borrowings; he was the Taoiseach, a qualified accountant and a qualified barrister, and having regard to the person he was dealing with, Mr. Kenny took the view that Mr. Haughey knew what he was doing.

19-67 In response to Revenue Counsel, Mr. Kenny stated that any detailed knowledge on his part of how the bill-paying service operated probably dated from the time of the McCracken Tribunal. When he had been dealing with Mr. Haughey's tax affairs during the 1980s and 1990s, he had been aware that the firm paid bills for Mr. Haughey, but not of the details or amounts involved. As to Mr. Kenny's belief that the funds for the service had been made available by reason of borrowings, no question of setting-off the interest paid on loans against tax liabilities arose, since Mr. Haughey had ceased to trade throughout the period that he was either Taoiseach or Opposition Leader, and was accordingly not entitled to any tax deduction in respect of interest.

19-68 Mr. Kenny's dealings with Mr. Haughey for tax purposes were based upon meetings held in Mr. Haughey's office; these were fairly spasmodic and did not exceed fifteen minutes in duration, but were

sufficient to enable Mr. Kenny to discharge his responsibilities. In making Income Tax and Capital Gains Tax returns, if a person had substantial assets and capacity to borrow, his lifestyle could be sustained beyond the level of his income. Taking a hard line with Mr. Haughey in relation to this aspect did not arise, since Mr. Kenny was engaged only in relation to PAYE and Capital Gains Tax returns.

19-69 Regarding the Haughey Boland No. 3 Account, any two partners of the firm were entitled to be signatories on that account and Mr. Kenny confirmed that he was an equity partner during the relevant period. However, Mr. Kenny stated that he would only from time to time get a cheque to sign, and would never see the details of what was going through the account in relation to Mr. Haughey. Nor did he ever come to see the bank accounts relating to the bill-paying service. The matter of whether or not there were funds in the account to meet cheques drawn was not of concern to Mr. Kenny: it was a policy of the firm to ensure that a client account did not become overdrawn, and Mr. Kenny assumed that the responsibility in this regard lay with the financial controller of the firm. None of these matters had ever been discussed by Mr. Kenny with Mr. Traynor, Mr. Carty or Mr. Stakelum.

19-70 Given the seniority of Mr. Clayton, it was obviously a serious matter when Mr. Kenny was contacted by him in relation to seeking outstanding tax returns. At that time it would have been the practice of Revenue to place reliance on a reputable firm of accountants, and to take returns at face value unless there was hard information available to justify further scrutiny. Mr. Haughey had never sought advice from Mr. Kenny in relation to any tax issues arising from payments made to him by the Dunne family. Insofar as it now appeared that between 1985 and 1991 approximately £1.4 million had been paid through the bill-paying service, Mr. Kenny stated that he would have had no view on the matter because he would not have known of this at the time. If he had known, he would have attributed it to borrowings, in accordance with what Mr. Haughey had told him.

19-71 In response to Mr. Kenny's own Counsel, he stated that making returns of Income and Capital Gains Tax was the most basic form of return, and any question of Gift Tax fell outside the scope of such returns and related to a separate section of Revenue. What Mr. Kenny had done was to fill in the boxes on the various returns, and inquire of Mr. Haughey whether the information contained was correct. Save for a minor matter in relation to Voluntary Health Insurance payments, Mr. Haughey had so confirmed. It was no function of Mr. Kenny to act as some sort of policeman in relation to Mr. Haughey. Insofar as Mr. Clayton had testified to the effect that he believed the returns made by Mr. Kenny on Mr. Haughey's behalf to have been incorrect, Mr. Kenny had no knowledge in that regard whatsoever until the time of the 1995/96 return, and he assumed a similar position arose in relation to Revenue, since no action was taken on foot of the returns.

19-72 Mr. Haughey considered that he was a compliant taxpayer who discharged all of his taxes as they fell due. He characterised himself as having paid a considerable amount of tax, and observed that PAYE at the time absorbed almost half of his salary. He also cited his payment of Residential Property Tax and Wealth Tax, at an earlier time, as instances of his compliance. As far as Mr. Haughey was concerned he paid all of his taxes, including liabilities for Capital Gains Tax, as they arose, and any perceived tardiness in discharging those liabilities was due to nothing more than bureaucratic delay on his part or, on the part of his agents.

19-73 Mr. Haughey explained in the course of his evidence that he had retained highly competent professional advisers to manage his affairs, including his tax affairs. He had complete trust and confidence in their abilities, and in Mr. Traynor's abilities, and he considered that it was their joint responsibility to ensure that his tax affairs were kept in order. He had assumed that, if any tax liability arose in relation to the funds available to his bill-paying service, those liabilities would have been addressed and dealt with by his agents. The impression with which the Tribunal was left was that Mr. Haughey's view was that any shortcomings in his dealings with the Revenue were not attributable to him and were not his responsibility as he had delegated those matters to Mr. Traynor and Haughey Boland, and was entitled to rely on their competence and expertise.

CONCLUSIONS

Revenue dealings with Mr. Haughey prior to either McCracken Tribunal or this Tribunal

19-74 Whilst aspects of the conduct of Revenue dealings had with Mr. Haughey during this period have to be regarded as unimpressive, the Tribunal is satisfied that Revenue neither sought to nor did in fact extend untowardly favourable treatment to Mr. Haughey, whether by reason of the positions held by him or otherwise. In so concluding, regard is had to the fact that Revenue refused to accede to the far-reaching proposal from Mr. Haughey's tax agents that very substantial alleged farming losses should be credited against tax deducted from his public service income, and also that Mr. Christopher Clayton took the then exceptional course of insisting that outstanding PAYE tax returns in arrear be filed on behalf of Mr. Haughey, whilst he was still Taoiseach.

19-75 With particular regard to the potentially largest transaction during this period, it is accepted that Mr. Seamus Pairceir as Chairman of Revenue, acted in a manner that was rational, understandable, and which had due regard to specialised legal advice made available to him, in declining to embark on the course canvassed by the Receiver appointed to the Gallagher Group in regard to the £300,000.00 payment made to Mr. Haughey, whilst nonetheless instituting the process which led to that payment being taxed as a capital gain.

19-76 As to shortcomings in both the manner and expedition with which the entire of the taxes obtained from Mr. Haughey during this period was recovered, it is accepted that these were substantially attributable to the following:—

- (i) Concealment and non-disclosure on the part of Mr. Haughey.
- (ii) Serious limitations in the statutory powers then vested in Revenue to obtain information in relation to a taxpayer's financial affairs, since substantially addressed in legislation.
- (iii) Serious shortcomings in liaison and communication between different branches of Revenue, which impeded the effectiveness of overall tax enforcement in respect of an individual like Mr. Haughey whose affairs spanned several categories of taxes.
- (iv) As described by Mr. Clayton, a comparative want of effectiveness which then affected Revenue generally, and which led to a high incidence of taxpayers comparable to Mr. Haughey benefiting from delays.
- (v) Disinclination to pursue full potential liabilities in matters of interest and penalties.

19-77 Despite the undoubted mitigating factors noted, there remains evident in many of the relevant dealings a preparedness to let Mr. Haughey's liabilities drift over the course of lengthy and repetitious correspondence, without recourse to interest or penalties where applicable, and a reluctance to confront Mr. Haughey when meaningful responses were not provided by his agents. This appears to have been the case even though individuals of such seniority within Revenue as Mr. Pairceir and Mr. Clayton devoted considerable periods of their time to considering Mr. Haughey. It is understandable that it was not easy at the time to address the contingency of a very powerful political leader whose cooperation and disclosure left a great deal to be desired, but even in retrospect the apparent passivity shown in aspects of the relationship appears inordinate. Examples would include the seeming absence of any inquiry or scrutiny as to the source of payment of the aggregate Capital Gains Tax liability of £102,330.00 assessed in 1986, and the similar absence of any substantive inquiry into the funding of the lifestyle very publicly enjoyed by Mr. Haughey, in each instance involving a taxpayer whose purported sole income during the relevant years was from public service remuneration. On the matter of lifestyle, to which much attention had been accorded in the media, it was noteworthy that a book of related press cuttings was kept by Revenue. Given the gulf between that reputed lifestyle, and the amount of public service income received, the number of years in respect of which that position was apparent, and the extent of the alleged earlier farming losses notified by Mr. Haughey's agents, the response of Mr. Clayton that he ascribed the additional funds required to maintain that lifestyle to

borrowings secured on Mr. Haughey's home and property (a response shared by both Mr. Kenny and Mr. Haughey himself) is not compelling.

Revenue dealings relating to McCracken Tribunal payments

19-78 The response of Revenue in seeking to tax Mr. Haughey in respect of the payments that emerged at the McCracken Tribunal was significantly more thorough, systematic and strategic than what had preceded it. Assembling a joint team of Senior officials from different branches of Revenue, which was directly accountable to the Board of Revenue and its Chairman, made eminent sense and was overdue.

19-79 Notwithstanding an adverse outcome before the Appeal Commissioners, Revenue proceeded to prepare professionally and carefully for an Appeal to the Circuit Court, and when the focus turned to negotiations with Mr. Haughey's tax agents, these were conducted in a capable and balanced fashion. Given that initial outcome, the ongoing elements of risk in contested litigation, and the intense public interest following upon the McCracken Report and attendant publicity, it cannot seriously be doubted that the settlement procured, representing a secured commitment on the part of Mr. Haughey to pay the entire Gift Tax due, plus almost 100% by way of interest, represented a reasonable and satisfactory outcome.

Revenue dealings with Mr. Haughey relating to this Tribunal

19-80 It appears to the Tribunal that the lessons that had been learned within Revenue in preparation for taxing the McCracken-related payments were applied even more capably and professionally in this instance. The main individuals who had previously been involved in the joint team remained, thereby providing high level expertise in relation to the different categories of tax as well as representation from the investigative side in a context of possible criminal connotations; apart from remaining accountable to the Board and Chairman of Revenue, the team was also augmented by including as its head the Assistant Secretary, Mr. Gillanders, and the internal legal research undertaken was reinforced by frequent recourse to external legal advice.

19-81 The decision taken by Revenue that there was no realistic prospect of recovering Income Tax on the payments in question, so that any sustainable assessment had to be based upon Capital Acquisitions Tax, was correct.

19-82 Given the statutory provisions then in force, and the established Revenue practice of capping interest at 100% of the Capital Acquisitions Tax assessed, the decision to confine the interest sought on a similar basis was justified and understandable. It is correct that Mr. Haughey had enjoyed the benefit of many of the gifts for lengthy periods, and that a successful ultimate outcome from contested litigation would have enabled

a higher interest entitlement. But the Tribunal accepts that the risks inherent in such litigation were very real, at least in a context of succeeding in an amount equal or even near to the settlement actually procured. Apart from the initial unsuccessful outcome in regard to the McCracken-related payments before the Appeal Commissioners, it can scarcely have gone unnoticed in the course of Revenue's later preparations, that the prosecution against Mr. Haughey for obstructing the McCracken Tribunal had been deferred.

19-83 It is further accepted that the then absence of provision for tax-gear penalties in the Capital Acquisitions Tax Code precluded the imposition of penalties on a scale which would have entitled Revenue to publish Mr. Haughey's name in any list of tax defaulters. In ensuring as part of the eventual written agreement that the principal details of the settlement were conveyed in a contemporaneous press release, Revenue adequately acknowledged and made provision for the high level of legitimate public interest in the outcome of these dealings with Mr. Haughey. Similarly, whilst an investigation of the magnitude of that conducted into Mr. Haughey's tax affairs would normally have included an interview with the taxpayer in person, its absence in the light of all that transpired, and the reasons given, is not viewed as matter of consequence.

19-84 In the light of the foregoing, and all other matters heard in evidence, the Tribunal is of the view that the actions of Revenue at all stages in regard to these payments were diligent and appropriate, that the general strategy and specific negotiations with Mr. Haughey's agents were ably and astutely conducted, that the amount of the settlement obtained probably exceeded any amount likely to be obtained in contested litigation and justified its acceptance, and that the detailed provisions subsequently incorporated into the written agreement adequately secured and reinforced that basis of settlement.

Mr. Haughey's role and that of his tax agents

19-85 The Tribunal cannot accept that Mr. Haughey's stated position regarding his tax liabilities was sustainable. It was Mr. Haughey who was at all times responsible for the payment of his tax, and for ensuring that his tax affairs were in order. Mr. Haughey was a qualified Accountant who had practised in that capacity for a number of years. His characterisation of himself as a lay person with excessive demands on his time arising from his public positions, who had delegated these matters to a series of professionals whom he was entitled to rely upon, was neither justifiable nor credible.

19-86 It is clear from Mr. Kenny's evidence that in completing the tax returns on Mr. Haughey's behalf in late 1993, he relied on Mr. Haughey for information, and he ensured that each return was signed by Mr. Haughey. Whatever knowledge Mr. Kenny may have had of the extent of the funds

passing through the bill-paying service provided on Mr. Haughey's behalf by his firm, and whatever shortcomings there may have been in relation to inquiries made by Mr. Kenny, the fact remains that Mr. Kenny, as Mr. Haughey's tax agent, was entitled to rely on Mr. Haughey, as the taxpayer, for information regarding the sources of his income, and for information regarding any receipts or transactions that might have attracted capital tax liabilities. While it is perhaps surprising that Mr. Kenny accepted Mr. Haughey's explanation that the discrepancy between his State income and his lifestyle was entirely accounted for by borrowings, that cannot detract from the fact that the responsibility to account to Revenue, and to discharge all tax liabilities as they arose was that of Mr. Haughey, and Mr. Haughey alone.

THE OPERATION OF THE ANSBACHER ACCOUNTS

INTRODUCTION

20-01 From evidence heard and documents led at public sittings, the Tribunal has been able to form an overview of the main features of what has come to be known as the Ansbacher accounts, and also of the style and manner of the operation of those accounts. Reference to the Ansbacher accounts includes all of the off-shore operations carried on by Guinness & Mahon, Mr. Desmond Traynor, and his associates. These were conducted not only in the Cayman Islands but also, to some extent, in the Channel Islands and both of these operations were closely connected.

20-02 A large amount of information came into the public domain concerning the development of the Ansbacher accounts in the course of the evidence given to the McCracken Tribunal, and also from the Report and findings of that Tribunal. It was inevitable that in outlining the operation of the Ansbacher accounts in this Inquiry, there would be some degree of repetition. However, as the Report of the McCracken Tribunal clearly acknowledged, the information available to that Tribunal in carrying out its inquiry was relatively limited. This Tribunal was not mandated by its Terms of Reference to conduct an inquiry into the Ansbacher accounts, or the persons who held funds off-shore in the accounts. The Tribunal's sole purpose in reviewing the accounts was to assist in conducting its own inquiries pursuant to its Terms of Reference, and in particular those inquiries dictated by paragraphs (b) and (c) of its Terms of Reference, which were defined by reference to the Ansbacher accounts. This aspect of the Tribunal's inquiries has also, to a very considerable extent, been superseded by the very thorough investigation undertaken by the Inspectors appointed to Enquire into the Affairs of Ansbacher and whose Report was published by Order of the High Court made on 24th June, 2002.

20-03 In the course of its private inquiries, the Tribunal corresponded with the entities which formed part, at one time or another, of the Ansbacher operation. The response of those entities to the requests from the Tribunal for assistance proved to be unhelpful, and in some cases, more than unhelpful. The manner in which some of the entities forming part of the Ansbacher operation and in particular the entity known as Hamilton Ross, responded to requests for assistance and co-operation, have of themselves formed part of the overall picture which has emerged. It is a feature of the Ansbacher operation, as it evolved over the years from the early 1970s up to the late 1990s, that it became progressively more secretive, until a point was reached where customers of Hamilton Ross found that, notwithstanding their express directions and express authority to provide information to the Tribunal, they were met with a response that was wholly obstructive.

20-04 In seeking to construct an overview of these accounts, the Tribunal was provided with considerable assistance by Guinness & Mahon, by Irish

Intercontinental Bank, by Bank of Ireland Private Banking and by NCB Stockbrokers. These were the banks and financial institutions in the State through which the Ansbacher accounts were operated or were, at times held. The Tribunal also sought and obtained assistance from a number of former employees of Guinness & Mahon.

THE BEGINNING

20-05 The Tribunal heard evidence from former employees of Guinness & Mahon that from in or about 1969, Guinness & Mahon became involved in off-shore finance and off-shore banking, in the Cayman Islands and at a slightly later date in the Channel Islands. The history of the establishment of Guinness Mahon Cayman Trust in 1971 as a bank, initially with a B Licence, which largely limited the bank's activities to transactions with non-residents, and subsequently in 1974, with a full banking licence, was outlined in the Report of the McCracken Tribunal. Guinness Mahon Cayman Trust, from its inception, was a wholly owned subsidiary of Guinness & Mahon, and funds were deposited by Guinness Mahon Cayman Trust with both Guinness & Mahon in Dublin, and with its parent, Guinness Mahon & Company, in London.

20-06 In 1972, Guinness & Mahon developed a Channel Island business, initially in the form of a wholly owned subsidiary trust company, Guinness Mahon Jersey Trust. The following year, a further off-shore subsidiary, Guinness Mahon Channel Islands, was established in Guernsey. It was envisaged that this latter subsidiary would operate as a full bank, and a banking licence was duly obtained. However, due to changes in the economic climate, Guinness & Mahon allowed that licence to lapse. In 1975, a separate trust company, College Trustees Limited, was set up in Guernsey as a subsidiary of Guinness Mahon Channel Islands. As with the Cayman subsidiary, the Channel Islands subsidiaries also placed money on deposit with Guinness & Mahon in Dublin.

20-07 The initial impetus to establish both the Cayman and the Channel Islands businesses was the potential to attract funds from Ireland or from Irish residents. Mr. Traynor was the Guinness & Mahon executive most actively involved in the establishment and operation of the off-shore subsidiaries. Mr. John Collins and Mr. John Furze, both of whom were mentioned in the McCracken Report, were joint Managing Directors of Guinness Mahon Cayman Trust, and were based in the Cayman Islands. While it seems that College Trustees was the main entity by which Channel Islands funds were placed with Guinness & Mahon, at some stage, a considerable portion of the Channel Islands funds under the control of the Guinness & Mahon subsidiaries, was transferred to the Cayman subsidiary.

20-08 While the off-shore operations of Guinness & Mahon were set up so that they could be marketed to Irish residents, it seems clear that their services were also availed of by non-Irish residents, and indeed after

Cayman had become well established, its customer base expanded to the point where at one time, it had a significant US customer base. Some of the initial funds used to set up the off-shore operation and, in particular, the Channel Islands off-shore operation, came from trusts with which Guinness & Mahon had been dealing. Some of these trusts were based in Ireland, and some were based in the United Kingdom. Trust vehicles were not used in every case, and with the evolution of the off-shore activities under the control of Mr. Traynor, a significant amount of activity occurred otherwise than through trust vehicles. The dominant feature of the operation was that Irish funds, or Irish related funds, were placed off-shore through Guinness & Mahon, through Mr. Traynor, and associates of his in Guinness & Mahon, and at a later stage through Mr. Traynor and his associates from outside of Guinness & Mahon.

20-09 In the start-up phase of the off-shore operation and, in particular, where the Cayman Islands were concerned, expert tax advice was obtained and following that advice, a discretionary trust strategy was devised as a means of avoiding capital taxes in this country. It appears the existence of these trusts was not known to the Revenue Commissioners at the time. Whether or not the trusts would have been acceptable to the Revenue Commissioners, the actual operation of some, but not all, of them shared a number of characteristics which suggest that they were operated in an irregular fashion, and served purposes which were either not originally envisaged at the time advice was taken, or which were intended to avoid scrutiny by regulatory or other agencies of the accumulation of funds off-shore, or the passing of funds from Ireland to off-shore locations. These features of the trusts were as follows:—

- (i) Firstly, notwithstanding that the funds purported to be under the control of discretionary trustees, certain individuals had ready access to trust funds on application to Guinness & Mahon in Dublin.
- (ii) Secondly, transactions involving the transfer of funds to the trusts were carried out in, some cases, in such a way as to avoid exchange control.
- (iii) Thirdly, the trusts were at all times operated with a level of secrecy which evolved to the point where eventually a significant part of the business connected with the trusts was conducted under the cloak of a highly irregular operation, carried out in part from Guinness & Mahon, and in part from other locations in Dublin.

20-10 Whether the secrecy with which these operations was cloaked was designed to avoid scrutiny of the trust device, or of the manner in which the funds settled on the trusts were accumulated, is not clear. What is clear is that the directors of the Cayman operation were particularly conscious that they were depending on a market for funds, a significant portion of which they hoped to attract from individuals seeking to evade tax, apart

altogether from the fact that they were also undoubtedly seeking to attract funds from individuals aspiring to avoid tax on a legitimate basis.

20-11 The Channel Islands accounts were operated in the initial stages on the books of Guinness & Mahon as lodgements from Guinness Mahon Jersey Trust or Guinness Mahon Channel Islands, and each account was identified by reference to the name of a company or a trust with which it was associated. In time, and presumably because of Mr. Traynor's desire for greater secrecy, letter codes or number codes were applied to the accounts. Some of these letter codes were less opaque than others. In some cases, they referred to the initials of the individual by whom funds had been provided for deposit offshore, while in other cases they referred to letters which appear to have had no connection whatsoever with the identity of the person by whom the funds had been provided.

20-12 From a very early date, most of the funds placed on deposit, by or through the Cayman off-shore entities, were placed in pooled sterling accounts. In that way any additions to a particular fund, or a particular fund holder's balance, would not be reflected in an individual Cayman account, but rather as a credit to the pooled account. While deposits to the individual Channel Island accounts in Guinness & Mahon would be visible on inspection, an inspection of lodgements to the pooled Cayman account would give no clue as to the identity of the person who provided those funds.

20-13 Lodgements to and withdrawals from these accounts could be made in Dublin in a number of different ways. In every case, the identity of the person by whom lodgements were made or to whom withdrawals were paid, was obscured. This would be done by withdrawing funds in cash, and in the case of the Channel Islands accounts, additional precautions were taken by arranging for the payment of large sums of cash in Dublin, through couriers from the Channel Islands. This would also be done by the device of switching, which has been explained many times in the course of the Report. Briefly, this involved the use of Irish Pound bank accounts, initially held in Guinness & Mahon, and subsequently when the accounts moved to Irish Intercontinental Bank Limited, held in Bank of Ireland, to which Irish Pound funds or effects furnished by customers of Ansbacher Cayman were lodged and, from which the selfsame funds were withdrawn, for provision to other customers of Ansbacher Cayman. These lodgements and withdrawals were reflected in adjustments to the Sterling Memorandum Accounts without any alteration to the overall balances held in the pooled Sterling Ansbacher Cayman accounts. The Tribunal can conceive of no reason why these withdrawals could not have been made by way of payment in the form of cheque payments out of the off-shore accounts, or by way of transfer to other accounts, but for the fact that they would have been likely to draw attention to the identities of the individuals involved.

BACK-TO-BACK

20-14 A feature of the operation of the accounts was the provision of lending facilities to customers on a back-to-back basis. In the course of evidence given to the McCracken Tribunal, reference was made to a Celtic Helicopters loan, which was secured by personal guarantees of Mr. Ciaran Haughey and Mr. John Barnacle. These personal guarantees were in turn secured or backed by a deposit taken from the Ansbacher Cayman general account with Guinness & Mahon. A similar backing arrangement was used to secure a loan of £150,000.00 from Irish Intercontinental Bank to Celtic Helicopters in 1991. It was considered by the Tribunal that investigation of this method of providing security through the use of Ansbacher accounts was likely to enable a fuller understanding of the operation of the accounts, and also to identify individuals who could assist in the Tribunal's inquiries into sources of funds and payments pursuant to its Terms of Reference.

20-15 The provision of security in this way, by utilizing the Ansbacher deposits to back borrowings by Irish residents, inherently also involved a considerable degree of secrecy. As the Report of the McCracken Tribunal established, this type of loan security was provided both during the years that the accounts were held in Guinness & Mahon and in Irish Intercontinental Bank. There was however a significant difference to the manner in which the securities were created and documented, as between Guinness & Mahon and Irish Intercontinental Bank.

20-16 During the years that Mr. Traynor was both a joint Managing Director of Guinness & Mahon and a Director of Cayman, he was in a highly influential position, and was able to exert control over, if not dictate, the terms on which these borrowings were secured, and the extent to which the existence of the additional backing security was recorded in Guinness & Mahon. During the 1970s and up to 1986, when Mr. Traynor ceased involvement with Guinness & Mahon, there was a blanket of virtually complete secrecy surrounding the existence of these arrangements. In practice, the terms of the loans granted by Guinness & Mahon did not record the existence of a backing deposit; no formal arrangements appear to have been made between Guinness & Mahon and Cayman, whereby the deposits were pledged or hypothecated as security for the loans advanced, and no reference was made to the additional security in the facility letters issued by Guinness & Mahon to borrowers.

20-17 Guinness & Mahon's own internal banking documents did not record any explicit reference to the additional security. From the evidence heard by the Tribunal, it appears that the security was created on nothing more substantial than Mr. Traynor's verbal confirmation, and that it was Mr. Traynor alone who had authority to provide that confirmation. The existence of such security in memoranda of the Bank's Credit Committee, which was the body responsible for approving loans made by the Bank, was recorded only by means of coded formulae. The formulae varied from the expression

“*suitably secured*” to “*secured*” to “*unsecured*”, to “*adequately secured*”, and to “*security considered adequate*”. It appears that these variations in the coded formulae used were introduced following the existence of these loans coming to the attention of the Central Bank, and in all probability for the purposes of concealing the creation of further backed loans by Guinness & Mahon.

20-18 The position was very different once the Ansbacher accounts were transferred to Irish Intercontinental Bank in early 1991 and, from that time on, the backing arrangements were put on a formal footing. The security was created by an hypothecation agreement, the backing deposit was held in a separate account, and the additional security was expressly referred to in facility letters issued to borrowers.

20-19 During the years that the deposits were held in Guinness & Mahon, there were considerable fiscal advantages attaching to these backing arrangements. Where the borrower was an Irish resident, as was the case with many of the loans, the borrower would be entitled to write off the interest charged on the Guinness & Mahon loan against certain income or profits that may have been generated. Assuming that the borrower was also the person who had placed the deposit off-shore, then as long as the existence of the deposit was not disclosed, he or she had an opportunity to enjoy the accrual of interest on such deposit without accounting for it to the Revenue Commissioners. In this way, a person could enjoy the benefit of tax relief on the borrowing and, in addition, untaxed income from the deposit.

20-20 These unorthodox and irregular arrangements came to the attention of, and were a cause of concern to, the Bank’s auditors. Whenever the auditors queried either the absence of security, or the nature of such security, they were referred to Mr. Traynor, and it appears that the true nature of the security was then explained by Mr. Traynor, but in terms that could not be disclosed in the bank’s records. By 1986 and subsequently, the auditors had expressed concern to the point that the Bank’s parent, Guinness Mahon and Company, London, sought explanations, and effectively began to insist on the unwinding of the entire Ansbacher operation.

20-21 In addition to attracting the attention of the auditors, aspects of the Ansbacher operation also attracted the attention of the Central Bank of Ireland. There was an exchange of correspondence between the Central Bank and Guinness & Mahon in 1976 and 1978 in connection with issues which arose in the course of on-site inspections by Central Bank officials. In 1976, the then Governor of the Central Bank wrote to the Chairman of Guinness & Mahon following an on-site inspection by Central Bank staff. He indicated that the inspection had revealed that Guinness & Mahon had banking subsidiaries operating in off-shore tax havens, and that the Central

Bank was concerned at the extent of Guinness & Mahon's involvement in this activity.

20-22 Evidence was heard from former officials of Guinness & Mahon that, as in the case of any queries raised by the Bank's own auditors, concerning these arrangements, queries from the Central Bank Inspectors were directed to Mr. Traynor, who explained the nature of the deposit but in so doing, made it clear that he was relying on their statutory obligations of confidentiality and secrecy, so as to ensure that any suspicions they might have concerning the true nature of the deposits were not brought to the attention of other State agencies, and in particular the Revenue Commissioners. Details of the dealings between Guinness & Mahon and the Central Bank are addressed in the next Chapter of this Report.

THE BUREAU SYSTEM

20-23 The Bureau System used to record and administer the Cayman Sterling pooled accounts in Guinness & Mahon was explained in some detail in the Report of the McCracken Tribunal, and has also been mentioned in earlier Chapters of this Report. The Bureau System comprised the Memorandum accounts which recorded the balances of individual Cayman customers or trusts in the pooled Sterling accounts. Deposits made in currencies other than Sterling, which were known as Currency accounts, were not pooled accounts, but solely represented the funds of individual customers or trusts, and were not tracked in any Bureau System.

20-24 The existence of the Bureau System was known to many members of the staff and senior executives of Guinness & Mahon. Access to the system was, however, limited to a small number of members of the bank staff. In the early days of the Ansbacher operation, the keeping of accounts on a manual Bureau System was deputed to the late Mr. Ru Leonard, an official of the bank, and other officials of the bank who reported to him. At one point, one of those officials was Mr. Pdraig Collery. In time, Mr. Pdraig Collery appointed to a more senior position in the bank, and took over the operation of the Bureau System, initially the manual recording of entries on the system, and subsequently the computerisation of the system.

20-25 After Mr. Collery took over responsibility for the system, he supervised the inputting of information to the computer program on which the system operated. There were a number of members of the staff at Guinness & Mahon involved in carrying out this computer work under Mr. Collery's supervision. This work, which annually would take up to the aggregate of approximately a fortnight of the staff members' time, was done on Guinness & Mahon time, and the staff members involved were given no extra remuneration by Guinness & Mahon or anyone else for such work.

20-26 As long as Mr. Traynor was a director of Cayman and joint managing director of Guinness & Mahon, he was in a position to give

instructions to Mr. Collery concerning the operation of the Bureau System by way of internal memoranda within Guinness & Mahon. In 1986, however, Mr. Traynor resigned from the bank, and following his resignation worked initially from offices nearby in Trinity Street, and subsequently, from 1987, on his appointment to the Chairmanship of Cement Roadstone Holdings, from offices initially at Lower Pembroke Street. After he left the bank, the administering of the Bureau System could no longer have been as convenient for Mr. Traynor as it had been when he could direct affairs by the use of internal memoranda within the bank. It now became necessary for him to give instructions to Mr. Collery from an outside location. This was still done by way of memoranda, this time from Lower Pembroke Street as opposed to within Guinness & Mahon premises itself. From the evidence, it appears that many officials of the bank, including many of the senior executives, were aware of the continued existence and operation of the Cayman business within the Guinness & Mahon premises by way of outside instructions from Mr. Traynor.

20-27 The evidence also established that many of the directors of Guinness & Mahon were aware of the existence of these activities, both during Mr. Traynor's association with the bank, and even after he left. After Mr. Traynor took up his position as Chairman of Cement Roadstone Holdings, he was provided with office premises and office facilities at the Head Office of the company, initially at Lower Pembroke Street, and subsequently at 42 Fitzwilliam Square. After the departure of Mr. Collery from Guinness & Mahon in 1989, and until the death of Mr. Traynor in 1994, the entire day-to-day administration of the Cayman operation in this country was conducted from the premises of Cement Roadstone Holdings. The computer system on which the Bureau System was maintained was kept on the premises, and the keeping of records and inputting of information was carried out by Mr. Collery on a weekly basis, usually on a Saturday. This involved the assembly of various memoranda, and other documentary material generated in the course of the week, by Mr. Traynor or by his secretary, Ms. Joan Williams, in connection with the activities of the Cayman operation, and the entry of various debit and credit transactions across the coded accounts kept on the computer system.

20-28 The records kept on the Cement Roadstone Holdings premises were not all kept in electronic form. There was also a significant body of documentary information on files kept by Mr. Traynor and his secretary, Ms. Williams. This information accumulated over a period of time, and by 1994, filled several filing cabinets. However, notwithstanding that a significant amount of paper records was kept by Mr. Traynor, bank statements in the ordinary way were not issued on a regular basis to persons entitled to or who had lodged funds to the Ansbacher operation. Information concerning balances was provided on request to Mr. Traynor, whether by telephone or in written form. There was no long term record of the state of any individuals balance, and in general the state of a balance was not kept in paper form for more than a short period of time. It appears that this was with a view to

minimising the paper record, and in general minimising the potential for scrutiny of the state of balances on the Ansbacher operation.

20-29 When statements were issued, they were usually in the form of an ordinary bank statement, containing the date or the proximate date of credits or debits, and any other relevant particulars. What distinguished these statements from ordinary bank statements was the fact that in general, the identity of the bank, in this case Ansbacher Cayman, did not appear on the face of the statement. Ordinary Ansbacher account statements were used but the name of the bank, account holder, account number and other descriptive details were removed by cutting the upper portion of every relevant page.

20-30 For the most part, the Irish end of the Cayman operation was conducted as if the bank had a Dublin branch. At all times, not only were the records of transactions generated in Dublin, but the primary record was kept in Dublin, and it was only after the creation of a record in Dublin that a copy was sent to Cayman. Although correspondence purporting to contain instructions from Cayman concerning its accounts, either at Guinness & Mahon, Irish Intercontinental Bank or Bank of Ireland Private Banking, actually issued on notepaper containing the Ansbacher (or previously Guinness Mahon Cayman Trust) name and address in the Cayman Islands, most of such correspondence contained a stamped or printed direction, having equal if not greater prominence than the offshore entity, indicating that all correspondence with reference to any such instructions should be directed to 42 Fitzwilliam Square. From the evidence of Mr. Collery, and officials of the various banks mentioned above, it would seem that there was regular correspondence with Mr. Traynor at 42 Fitzwilliam Square, and that instructions were taken from him or from his secretary by telephone from that location.

20-31 Mr. Anthony Barry, former Chief Executive Officer and Chairman of Cement Roadstone Holdings, testified at public sittings on two widely separated dates. Whilst some other matters were touched upon, notably his lack of substantive involvement in the Glen Ding transaction, which is addressed fully elsewhere in the Report, the main content of his evidence on both occasions was the degree of awareness, or lack of it, had by him and other Cement Roadstone Holdings Directors and Executives in relation to the banking operations carried on by Mr. Traynor, Mr. Collery and Ms. Williams at the Cement Roadstone Holdings premises at 42 Fitzwilliam Square.

20-32 Mr. Barry's initial testimony was given on 24th February, 2000. He stated that when Mr. Traynor left Guinness & Mahon in 1986, he was not immediately appointed Chairman or Deputy Chairman of Cement Roadstone Holdings, he had been a Non-Executive Director since the merger between Roadstone Limited and Irish Cement Limited in 1970, prior to which he had been a Non-Executive Director with Irish Cement Limited.

The then incumbent Chairman, Mr. Michael Dargan, had expressed his intention to resign at the 1987 AGM. When that course was approved in advance at an April, 1986 Board Meeting, a resolution was also approved to make Mr. Traynor Deputy Chairman with immediate effect. At a further Board Meeting in May, 1987, Mr. Dargan resigned, and Mr. Traynor was appointed Chairman forthwith. At that stage, it was known that he had resigned his executive position in Guinness & Mahon. When he became Chairman, it was understood that he would hold no other executive positions. Mr. Barry said that he and his fellow Directors only learned of any investigation into Guinness & Mahon which reflected badly on Mr. Traynor through recent documents furnished by this Tribunal. Although Mr. Traynor was a Non-Executive Chairman of Cement Roadstone Holdings, in practice he had greater and more regular input than was normal for such appointment. He was provided with an office, which he attended every working day, and was required to be available to Cement Roadstone Holdings at all reasonable times. It was understood that Cement Roadstone Holdings would have first call in relation to his time and commitment. Once he took no other executive position, it was an unwritten understanding, that like Mr. Dargan, and subsequently Mr. Barry himself, he could use the Chairman's office at Cement Roadstone Holdings for other directorship purposes that were non-executive, along with State and other private matters. By agreement, he brought Ms. Joan Williams with him as his Secretary to replace Mr. Dargan's Secretary, who had been close to retirement.

20-33 The actual operational headquarters of Cement Roadstone Holdings were some distance away in Belgard Castle, Clondalkin, and only the registered office, along with the offices of the Chairman, the Secretary and the Auditor, were at 42 Fitzwilliam Square. While an occasional Board Meeting might be held there, in practice most took place in Belgard Castle.

20-34 To the best of Mr. Barry's knowledge, he and his colleagues had no direct or indirect knowledge of the banking activities conducted by Mr. Traynor from the Fitzwilliam Square office. It was generally known that he was a Non-Executive Director of a bank in the Cayman Islands, but this was not unusual, since he had formerly had a leading role in Guinness & Mahon. Had Mr. Barry known of the banking business, and the illegal activity being conducted in the office, he would have deplored it as a most serious breach of trust. It was known to the Company Secretary, who had her office on a different floor of the building, that Mr. Traynor was visited by non-Cement Roadstone Holdings personnel, but it was assumed this was appropriate. Whilst there was some awareness that post addressed to Mr. Traynor in the context of these other activities was being received, this was not of a scale to attract attention, or need reference to the Board. Having checked the minute book, it seemed that this was never raised with Mr. Traynor.

20-35 After Mr. Traynor's unexpected death on 11th May, 1994, Mr. Barry, who had succeeded Mr. Barry as Chairman, was happy to allow Mr. Tony Traynor remove his father's private papers and computer from the office. This process was left to Mr. Tony Traynor, along with Ms. Williams, and it was known that Mr. Collery had also assisted. From what Mr. Barry had subsequently learned about what was actually going on, he believed that it was outside what was permissible, and that it was wrong of Mr. Traynor to have used notepaper on behalf of the Cayman Bank, indicating that replies should be sent to 42 Fitzwilliam Square. He was of a similar view regarding the storing of information, and the provision of substantial cash payments to customers of Ansbacher Cayman from the Fitzwilliam Square premises.

20-36 Ms. Williams had remained as Mr. Barry's Secretary when he moved to Fitzwilliam Square, combining the functions of Chief Executive Officer and Chairman in the first instance. Mr. Barry now knew from her evidence, and that of Mr. Collery, that the banking business and computer entries were undertaken outside of normal office hours, but this was only from Tribunal evidence, and Ms. Williams had not previously informed him of those matters. If Mr. Barry had known that Mr. Collery had his own key, and had possession of the alarm code for the building, he would have intervened to put a stop to it. Whenever Mr. Barry had had cause to visit Mr. Traynor's office, nothing untoward was apparent to him, and whilst he recalled seeing filing cabinets in the adjoining secretary's office, and that there may have been a computer there on a shelf, he had never seen the latter up and working. He now accepted that the banking work carried on by Mr. Traynor in the offices of Cement Roadstone Holdings was of an executive nature. He had not known that correspondence in the name of Hamilton Ross and Ponciana Fund, signed by Ms. Williams, had issued from what was by then his own office in Fitzwilliam Square in December, 1994 and in January, 1995.

20-37 Ms. Angela Malone, the Company Secretary of Cement Roadstone Holdings, also testified on the same date. As Assistant Secretary from 1990, then Secretary from 1995, she had always had her office at 42 Fitzwilliam Square. Whilst Mr. Traynor was Chairman, she knew that he had other non-executive positions, and it was not unusual that he should conduct these from his Cement Roadstone Holdings office, but her dealings with him related exclusively to Cement Roadstone Holdings matters. Ms. Malone knew that he met with the Secretary of another company, who was known to her, in his office, and that other persons unconnected with Cement Roadstone Holdings called to meet with him. The front door of the premises was locked, on an intercom, and being on a different floor, she saw little of who came and went. She had little contact with Ms. Williams until October/November, 1994, when Ms. Williams also began to work as Secretary for her. After Mr. Traynor died, she assumed that Ms. Williams was merely tidying his effects from her adjacent office.

20-38 As to Mr. Pádraig Collery, Ms. Malone recalled having been told that, if she was working late, she might meet a person named Pádraig doing some work for Mr. Traynor. She was not informed of his surname, and she understood that he had a key and security access, as had the cleaner. As this was authorised by Mr. Traynor, she paid little heed to it. About twelve people worked in 42 Fitzwilliam Square, all with keys for daytime access, but only those who worked late had the extra deadlock key for entrance after hours. Ms. Malone put away any papers that were sensitive each night, but observed no additional security on account of Mr. Collery's presence. If Mr. Traynor trusted him, that was enough assurance for her. She understood he operated the non-Cement Roadstone Holdings computer in Mr. Traynor's area. Mr. Collery was the only stranger to Cement Roadstone Holdings who had access to the premises. Perhaps she would view it differently now, but at the time she had no concerns. Mr. Traynor was of high standing in the business community, and she assumed he was not doing anything that might conflict with the interests of Cement Roadstone Holdings.

20-39 Mr. Barry again testified on 11th May, 2006. Reverting to the earlier issue of the state of knowledge of the Board and its members of the activities carried on by Mr. Traynor regarding the operation of accounts of Ansbacher Cayman and Hamilton Ross from the Fitzwilliam Square offices, Mr. Barry acknowledged that, as was known to the Tribunal, he was the holder of an Ansbacher account. In about 1989, he had wished to use foreign currency income by way of dividends and expenses, to assist two of his children who were based abroad. He asked Mr. Traynor for advice, probably in 42 Fitzwilliam Square, and Mr. Traynor offered to arrange matters for him. Thereafter, from time to time, he gave Mr. Traynor foreign currency cheques for lodgement to the account. All that consisted of earnings, as opposed to expenses, were declared and included in his tax returns at the time.

20-40 The total sum lodged by Mr. Barry between 1989 and Mr. Traynor's death was in the vicinity of Stg.£50,000.00 to Stg.£55,000.00. He either gave cheques personally to Mr. Traynor, or else sent them through the internal mail to the Chairman's office in Cement Roadstone Holdings. He also asked Mr. Traynor to arrange a small number of withdrawals. From time to time, he obtained from Mr. Traynor a note of his balance; this was on unheaded paper, and was sent from his office to Mr. Barry's at Belgard Castle. As far as Mr. Barry was concerned, Mr. Traynor was only doing him a personal favour in informally facilitating him. It never occurred to him that any Cement Roadstone Holdings colleague also had a banking relationship with Mr. Traynor, and he had only learned to this effect from subsequent inquiries. Nor did he until then know of Mr. Traynor's use of the premises for a banking business generally.

20-41 Naturally, in hindsight, Mr. Barry had asked himself why he was so unaware: he could only say that banking affairs were a private matter, and

were not discussed with others. Likewise it was not unusual for a Non-Executive Chairman to use office facilities for personal, social or other non-executive purposes, such as furnishing Mr. Barry with a personal note in relation to his account balance. He did not know of any other Cement Roadstone Holdings colleague who had an account with Mr. Traynor, or of any use of the Chairman's office beyond what he had stated. What was done was entirely inappropriate, but at the time he would have regarded Mr. Traynor as proper and of high integrity, and never suspected what was afoot.

20-42 Mr. Barry testified that he had never been aware of Mr. Traynor's financial relationship with Mr. Haughey, and no one at the time had ever mentioned this to him. As to the Ansbacher Inspectors' finding that eight Directors of Cement Roadstone Holdings (including Mr. Barry and Mr. Traynor himself) were clients of the Guinness & Mahon Cayman subsidiary, Mr. Barry could understand how it might seem incredible that none appeared to be known to any other but, he had not known of any other Cement Roadstone Holdings colleagues' relationship with Mr. Traynor, and in Boards beyond Cement Roadstone Holdings, he had never discussed personal banking arrangements with fellow Directors.

A NOTE TO JOHN FURZE

20-43 While the Tribunal did not have access to information directly from the Cayman Islands, or from any official of Ansbacher Cayman or Hamilton Ross, the Tribunal received very considerable assistance in its understanding of the operation of the Ansbacher accounts from a document entitled "*A Note to John Furze*". This document, the provenance of which is addressed below, consisted of a fairly detailed account of a presentation made by Mr. Furze in connection with the services offered to Irish residents by Ansbacher Cayman.

20-44 The document was brought to the attention of the Tribunal as forming part of the personal papers of Mr. Kyran MacLaughlin, then Managing Director of the firm of Davy's Stockbrokers. The document was not produced to the Tribunal by any State Agency, State body or any Authorised Officer or Inspector. Mr. Kyran MacLaughlin, who gave the Tribunal access to his other personal papers, informed the Tribunal that he was not the author of the document. From his other papers, the Tribunal formed the view that the author of the document was Mr. Raymond McLoughlin, the then Managing Director of James Crean & Company, a publicly quoted industrial holding company. On being contacted, Mr. Raymond McLoughlin readily confirmed that this was the case, co-operated fully with the Tribunal in private investigations, and gave evidence at public sittings on 18th February, 2000. He confirmed that the document consisted of a note made by him of a meeting that he had had in Guinness & Mahon with Mr. Furze, following initial contact from Mr. Traynor. He had prepared

the document for the purpose of sending it to Mr. Furze for confirmation that its contents were accurate, but in the event, he did not do so.

20-45 Among the topics addressed in the note were off-shore discretionary trusts, the advantages offered by Cayman as an off-shore location over the Channel Islands, and the potential for the concealment of customers' financial affairs from taxation authorities. The document graphically conveyed some of the essential features of the off-shore arrangements made available to Irish residents by Mr. Traynor and his associates, both in their clandestine nature and their consequences in terms of Irish tax obligations.

20-46 The Note focused on five aspects of the services offered by Ansbacher Cayman. It addressed the mechanics of the trust arrangement, including the parties to the trust, the manner in which clients' affairs were conducted, the tax regime in the Cayman, the safeguards taken to secure confidentiality, and the advantages and disadvantages of the discretionary trust model.

The mechanics of the Trust arrangement.

20-47 The note commenced with a number of definitions relating to Discretionary Trusts, a description of the documents required to be executed in order to establish the trust, and the parties to the arrangement. The discretionary trust was defined in the following terms:—

"Discretionary trust is one in which discretion in relation to decisions affecting the property or its transfer to potential beneficiaries are legally at the discretion of the Trustees, and where the Client abdicates all legal control in relation to such decisions from the point at which the Trust arrangement comes into being".

The definition of itself was unremarkable, and it was only on the issue of the parties to the trust arrangement that the procedure contemplated appeared to depart from orthodox trust arrangements. In the ordinary course, there are three parties or sets of parties to a discretionary trust: the settlor, who provides the property to be held on trust, the trustee, who holds the legal interest in the property and has a discretion as to how the property should be applied amongst the beneficiaries, and the beneficiaries themselves, in whose favour the trustee may apply the property. In the case of the Cayman discretionary trusts, as explained in the document, the Irish resident client was not the settlor, as would be the case in an orthodox arrangement, but instead the funds were settled by an executive or administrator who gave effect to the steps necessary to bring a trust arrangement into being.

20-48 The Note recorded that the trust would be established in Cayman and was subject to the trust laws of Cayman. As a senior businessman, Mr. Raymond McLoughlin acknowledged that for an Irish customer embarking

on such an arrangement, this would necessarily have involved exchange control considerations at the time.

20-49 The Note detailed that the client had no legal control over the decisions of the trustees, but that in practice the trustees accepted the wishes of the client as expressed in a supplemental document, known as a letter of wishes, provided that doing so was not in contravention of the applicable trust law. At the time of the creation of the trust, the settlor, that is, the administrator or executive who formally settled the trust property, renounced his right to replace the trustees in favour of the client. Because the trustees acknowledged the wishes contained in the letter of wishes, and as the day-to-day instructions of the client or somebody operating under the client's instructions were accepted, it was possible for the client to give instructions to the trustees regarding the allocation and transfer of the property held by the trust.

20-50 Since the trustees could not legitimately appoint any part of the property held by the trust to any person other than those within the beneficiaries specified in the trust, the Note cautioned that it was important, at the time of the establishment of the trust, that the Irish resident client arrange with the settlor that all parties to whom he anticipated he might wish to transfer funds at any time in the future, both before and subsequent to his own demise, should be included. In order to secure maximum flexibility in this regard, it was recommended that the beneficiaries under the trust should include any person, whether corporate or individual, who had at any time subscribed a sum of \$10.00 to the International Red Cross, and had delivered a certificate of subscription in that regard to the trustees.

The manner in which a client's affairs were conducted

20-51 The Note recited that in practice the trustees would not act otherwise than in accordance with the instructions of the client, or such person as was nominated by the client. It acknowledged that clients were commonly reluctant to commit instructions to trustees in writing, and therefore it was quite usual that instructions would be given and accepted by telephone. Telephonic recognition of the client's voice by an executive acting on behalf of the trustees would ordinarily be a sufficient safeguard, but if the client or person acting on behalf of the client was not known to the executive, that person might be asked to provide an identification number or a passport number. It was noted that initially communications would be directed to Mr. Furze himself, but in due course instructions would be furnished to one of three or four people who worked with him.

20-52 The Note stated that the Cayman Islands were a Crown Colony which provided for zero taxation, and that the British Government could not require changes in the taxation code without the consent of the Cayman legislature. Finance and tourism were the two main industries, primarily the former, and there were considerable incentives for the legislature not to

make changes in the existing law. As a location, the Cayman Islands were recommended overall in preference to the Channel Islands, as doubts existed regarding the taxation regime in the latter. The Cayman Islands were also more remote, and enjoyed a more vigorous legislative guarantee of secrecy. Mr. McLoughlin testified that the issue of safeguards to confidentiality was developed in some detail in the course of the presentation made to him, and amongst the principal points which he noted as having been discussed were as follows:—

- (i) A Secrecy Act had been passed in the Cayman Islands, and all officials were bound by its provisions;
- (ii) In practice, it was only very senior officers who were privy to trust documents;
- (iii) No more than two officers in Dublin would be aware of the arrangements;
- (iv) The trust documents were not public or registered;
- (v) The disposition of funds on death did not require probate of a will;
- (vi) There was no record of any kind of the trust arrangements kept in Dublin;
- (vii) The only circumstances in which an interested party might link an individual to a trust arrangement would be if one of the few persons involved made disclosure, or if sight of the trust documentation was obtained, through theft, detection work or by accident.
- (viii) If the client wished to terminate the trust arrangement, he could legally recover all documents, and obtain a certificate from the trustees that no copies had been retained.
- (ix) There were no duplicates of the trust documents kept anywhere outside the Cayman Islands.

Discretionary Trusts: pros and cons

20-53 Under the above heading, which Mr. McLoughlin recalled broadly corresponded with information sheets provided to him at the meeting, in favour of Discretionary Trusts, it was noted that (a) money could be moved, invested or divested simply by a phone call to a contact operating on behalf of the Trustees (unlike a bank which would require documents of authority); (b) on death, effect could be given to a client's wishes without a Will, which would have to be proved, and which is a public document accessible to tax authorities; (c) as assets in a Discretionary Trust were legally not under the client's control or ownership, it was correct to say that the client did not own the assets held, so that there was no breach of Exchange Control, and a bank in Ireland could swear accordingly to the Revenue.

20-54 Against Discretionary Trusts, it was noted that (a) although many footprints could be erased, some persons would know who "*the effective*

client’ was in the case of any Trust, and an error or a thorough investigation could lead to the “*true client*” being identified; (b) if a tax official identified the “*true client*”, it followed that he would know that the trust assets arose through a transfer from that client, and might suspect that these were generated without payment of tax.

20-55 The Note concluded with some brief additional passages on tax, exchange control, risks, fees and costs. Mr. McLoughlin gave evidence that the document was his own and reflected his *modus operandi* of making his own inquiries, and seeking assistance from his own legal and tax advisers, before deciding whether to proceed further. In this instance, Mr. McLoughlin testified that he did not proceed: he could not recall the basis of his actual thinking, but he observed that he would not, in any event, have then been in a financial position to warrant such an arrangement at that time.

20-56 Concluding his evidence, Mr. McLoughlin acknowledged that secrecy in the Cayman Islands was certainly a strong factor in what was being marketed by Mr. Furze and Mr. Traynor, as was the consideration that, whilst it could not be said that a client legally owned assets in a trust, for all practical purposes, he continued to have complete control over them. He accepted that the arrangements proposed were to be kept confidential from Revenue authorities generally, and that there was to be no documentation in Ireland that would disclose the existence of the arrangements.

20-57 It is abundantly evident, and confirmatory of other evidence heard by the Tribunal, that the essence of the arrangements proposed by Mr. Furze and Mr. Traynor was to provide for the maximum possible secrecy in all respects, to guard in every way against disclosure to the Irish Revenue or Exchange Control authorities, and to thereby facilitate tax evasion and breaches of Exchange Control.

20-58 Insofar as the Note assists in an appraisal of the Discretionary Trust arrangements marketed by Mr. Furze, it is clear that, given the references to “*real client*” and “*true client*”, what was contemplated was a distortion of any legitimate use of a Discretionary Trust.

20-59 The evidential significance of the Note related to what was conveyed to Mr. McLoughlin, not to what may have been in his mind at the time of the meeting, but it is nonetheless the position that he decided against availing of what was offered to him, and furnished prompt co-operation with the Tribunal when contacted.

SENSITIVITY TO SCRUTINY BY INVESTIGATORY AGENCIES

20-60 The documentation made available to the Tribunal by Guinness & Mahon concerning the relationship between Guinness & Mahon and

Cayman included two documents dating from 1984, which indicated a particular sensitivity on the part of the directors of Cayman to scrutiny by investigatory agencies, in the first instance in the context of drugs investigations by United States authorities, and in addition, in the context of the consequent potential for Revenue scrutiny.

20-61 The two documents in question illustrated these sensitivities. On the 3rd August, 1984, Mr. John Collins, one of Mr. Traynor's co-directors in Cayman wrote to Mr. Traynor at Guinness & Mahon in Dublin, referring to proposed legislation to be passed in Cayman to give effect to an agreement between the United States and the United Kingdom Governments, including the Government of the Cayman Islands, concerning an International Narcotics Convention. From the letter, it is clear that Mr. Collins apprehended that, although the Convention was designed to obtain evidence to be used in narcotics cases, there was a risk that the Revenue authorities might seek to rely on evidence given in narcotics cases for the purpose of Revenue collection. The final paragraph of the letter evidenced a particular concern on the part of Mr. Collins that the reach of the agreement should not extend to tax evasion, from which it seems reasonable for the Tribunal to conclude that Mr. Collins envisaged attracting funds from that particular sector. While Mr. Collins expressed satisfaction that the conclusion of the Agreement might militate against press comments depicting the island as a drug island, his apprehension that customers seeking to evade tax might be deterred from using the island was shared by Mr. Traynor. In the second document, which was a report to the Board of Guinness & Mahon in Dublin dated 31st October, 1984, Mr. Traynor noted the impact of potential scrutiny under the narcotics convention mentioned by Mr. Collins. He said, "*the decline in new business activity over the last six months, coupled with the almost certain adverse effects of the extraterritorial agreement entered into by the US, UK and Cayman Governments, have given us no option but to adopt a cautious approach in our revised revenue forecasts for the current financial year. It may become necessary to adjust further downwards should there be any material loss of business due to loss of confidence in the secrecy which hitherto existed here*".

20-62 In addition to the back-to-back loans to Irish residents, Guinness & Mahon had also made a series of substantial loans to US residents, secured by Cayman deposits in Dublin. These included loans made to Fernando Pruna and his wife Edulia Pruna of Miami, Florida. These customers were introduced to Guinness & Mahon by Cayman, and their loans were backed by Cayman deposits in Dublin. Loans were also made to a number of associates of Mr. Pruna, and to a company which he controlled. It appears that Guinness & Mahon encountered considerable difficulties in securing interest payments during the currency of the loans and ultimately, Guinness & Mahon took further security over property in Dade County, Florida. To protect this security, the title to the property was transferred into the name of Mars Nominees Limited, the Guinness & Mahon nominee

holding company. The balance due on the borrowings, which amounted to \$700,000.00, was ultimately discharged in June of 1988 when the backing deposit placed by Cayman was released to Guinness & Mahon, although the property remained registered in the names of Mars Nominees following the discharge. In September, 1988, a Grand Jury Subpoena was issued in relation to documents held by Guinness Mahon Cayman Trust, Guinness & Mahon (Ireland) Limited and Mars Nominees Limited, relating to loans made to Mr. Pruna. The Subpoena was issued in the context of criminal investigations which were then being conducted by the United States authorities. Subsequently in March, 1990, Letters Rogatory were issued by the United States District Judge of the Southern District of Florida for transmission to the judicial authorities in this country, in relation to an investigation of an alleged organised criminal drug smuggling operation headed by Fernando Pruna. These Letters Rogatory constituted a formal request that evidence be taken in Ireland to assist in the investigation.

20-63 An indictment was issued by the United States Attorney, charging Fernando Pruna and members of his organisation with crimes, including operating and conspiring to operate continuing criminal enterprises dedicated to the importation of cocaine and marijuana into the United States from 1981 to 1988. On foot of the Letters Rogatory, an Order was made by the High Court in Dublin in November, 1990, that an official of Guinness & Mahon be examined on oath. From inquiries made by the Tribunal with the United States Department of Justice, it has been established that Mr. Pruna was ultimately convicted of certain of the crimes with which he was charged, and served a prison sentence in the United States Federal Penitentiary in Florida.

20-64 While it is clear that neither Mr. Traynor, Mr. Furze nor Mr. Collins were involved in any aspects of the drugs trade, or in assisting the drugs trade, the Tribunal is of the view that the irregular and unorthodox banking methods used by them, involving the anonymity of customers and strict secrecy surrounding the true sources of funds, facilitated this type of activity, and permitted the laundering of monies which may have constituted the proceeds of criminal activity. The matter is all the more disturbing in light of the fact that the Cayman backing deposit which secured the loans to Mr. Pruna and his associates may, at one time, have been deposited in Guinness & Mahon in Dublin in the same accounts, or in accounts held in the name of the same account holder, as funds beneficially held for Mr. Haughey, who was then Taoiseach.

THE LATER YEARS

20-65 It was progressively more difficult to obtain information about the Cayman operation after the mid-1980s. This was due in part to the fact that from that time onwards, Cayman ceased to be a subsidiary of Guinness & Mahon. On 29th September, 1984, Cayman was sold by Guinness & Mahon to Guinness & Mahon Overseas Investments Limited, a wholly owned

subsidiary of Guinness Mahon & Company, London. Three years later, in 1987, it was in turn sold by Guinness & Mahon Overseas Investments Limited jointly to Ansbacher & Company and a management consortium which included Mr. Traynor and Mr. Furze. The deposits of Cayman with Guinness & Mahon diminished significantly from June, 1987, in consequence of both the change in ownership, and the direction from Guinness Mahon & Company, London, that the activities of Cayman in Guinness & Mahon should be wound down. From that time, the deposits were gradually shifted from Guinness & Mahon to Irish Intercontinental Bank. As of 31st August, 1994, the date on which Guinness & Mahon was acquired by Irish Life & Permanent Plc, Cayman had just over £1,000,000.00 on deposit with Guinness & Mahon.

20-66 From 1992 onwards, part of the funds that were held by Cayman were withdrawn from the Cayman accounts in Dublin, and lodged to newly opened accounts in Irish Intercontinental Bank in the name of Hamilton Ross & Company Limited. This entity appears to have been established by Mr. Traynor and Mr. Furze to hold funds, which had been deposited with Cayman, but which were under the direct control of Mr. Traynor and Mr. Furze. From 1995, those funds were held in accounts which were entirely separate from the Cayman accounts. They were controlled by Mr. Furze who by that time had severed his association with Ansbacher Cayman. Funds held for the benefit of Mr. Haughey were deposited within the Hamilton Ross accounts.

20-67 Apart from the difficulties which the Tribunal encountered in obtaining assistance from Ansbacher Cayman and Hamilton Ross, it appears that as a result of an exercise carried out in this jurisdiction following the death of Mr. Traynor, a considerable number of paper records relating to the Ansbacher operation were destroyed. All of the documentary files concerning the Ansbacher operation were removed from Mr. Traynor's former office in Fitzwilliam Square to the offices of Management and Investment Services, under the control of Mr. Sam Field-Corbett, at Inns Court, Winetavern Street, Dublin. In the course of a three day period in his offices, Mr. Furze with the assistance of Mr. Collery, destroyed more than half of the documents.

20-68 As is addressed elsewhere in the Report, following Mr. Traynor's death and the movement of the computerised Bureau System and documentation to Winetavern Street, Mr. Collery continued to operate the Hamilton Ross accounts. He provided all of the services to customers of Hamilton Ross which had formerly been provided by Mr. Traynor, including the receipt of funds from clients for lodgement to their off-shore holdings, and the transmission to clients of funds which they wished to withdraw, either in cash or by bank drafts. He also continued to maintain the memorandum accounts, and to generate and forward statements to Hamilton Ross in the Cayman Islands. Over and above his services to

clients of Hamilton Ross, he was available to deal with the affairs of a single Irish-based client of Ansbacher Cayman.

20-69 Matters proceeded until the disclosure of the existence of the Ansbacher and Hamilton Ross accounts, in the course of evidence heard by the McCracken Tribunal. The funds held in the accounts in Irish Intercontinental Bank were withdrawn and transmitted back to the Cayman Islands, apart from those funds which were separately deposited and pledged as security for borrowings which had been made by Irish Intercontinental Bank and which, at the instance of the Bank, were retained. Ultimately those funds were substantially applied in the discharge of liabilities of Ansbacher and Hamilton Ross to the Revenue Commissioners, and the final small balances were then also remitted back to the Cayman Islands.

THE CENTRAL BANK AND GUINNESS & MAHON

21-01 Both elsewhere in this part of the Report in relation to Mr. Haughey, and in the Second Part of this Report in relation to Mr. Lowry, reference will be found to the role of the Central Bank in matters of exchange control, both generally and in regard to certain transactions involving each of those individuals. In this Chapter, whilst touching upon exchange control, the Tribunal is primarily concerned with the further and broader function of the Central Bank in regulating and supervising licensed banks within Ireland, and in particular Guinness & Mahon (Ireland) Limited during years when Mr. Desmond Traynor was its most prominent and influential Officer. A number of matters that emerged in evidence proved of importance in a context both of enabling the Tribunal to have a fuller understanding of the operation of what are termed the Ansbacher accounts, and of appraising the conduct of the Bank's affairs as primarily directed by Mr. Traynor during a period when he continued to act as Mr. Haughey's principal financial adviser.

21-02 In preparing for the relevant public sittings, the Tribunal was again in receipt of valuable assistance from the Bank under its new ownership, both in producing documents and furnishing essential waivers of confidentiality; in addition, as was the case with the great majority of State agencies from whom assistance was sought by the Tribunal, the Central Bank through both a number of Senior Officers and its legal advisers furnished unflinching prompt, thorough and helpful co-operation. Public sittings were held in March, 2000, and the main focus of what was then heard related to the relationship between the Central Bank and Guinness & Mahon in the years between 1976 and 1982, and in particular with regard to a number of inspections carried out by the Central Bank on Guinness & Mahon during that period, and other associated dealings between them. In the course of further private investigations carried out by the Tribunal after those sittings, it emerged from a portion of the responses made by officials of the Central Bank to further Tribunal queries that differences existed between the officials who conducted a further such inspection in 1988 as to how a matter of concern noted in the earlier reports had been addressed. The respective recollections of the different officials concerned were heard in further public sittings in November, 2000.

21-03 The Chapter will comprise (a) a brief summary of relevant details as to the nature, role and composition of the Central Bank for the functions in question, (b) an account of the course of the relevant inspections and other dealings between the Central Bank and Guinness & Mahon, (c) details of the essential matters heard from the different Central Bank witnesses who had been involved in the 1988 inspection, and (d) conclusions.

21-04 The full title of what was formerly known as the Central Bank of Ireland is now the Central Bank and Financial Services Authority of Ireland

but, for convenience and ease of reference, it is proposed in this Chapter to retain the usage of the “Central Bank”.

NATURE, ROLE AND COMPOSITION OF CENTRAL BANK

21-05 The Central Bank was established by the Central Bank Act, 1942, and is regulated by that Act as amended by a number of subsequent Acts. The Central Bank was established as the National Monetary Authority responsible for the formulation and implementation of monetary policy, management of the exchequer rate and official external reserves, provision of notes and coins, and supervision of banks, building societies, and other financial institutions, and the financial and capital markets. Historically, it had a number of other roles, including safeguarding the integrity of the currency, and regulating credit in the interest of the people as a whole.

21-06 One of the Central Bank’s more active day to day roles since its foundation was as an agent of the Department of Finance, in the administration of exchange control regulations. This was not strictly speaking an original statutory role of the Central Bank, but rather a role which arose as a result of an explicit delegation by the Minister for Finance of his statutory power of administering the exchange control regulations, which themselves were abolished at the end of 1992.

21-07 Apart from exchange control, the Tribunal’s primary concern with the Central Bank relates to its banking supervisory role. This has expanded very considerably with the increase in the type of credit institutions subject to supervision in recent years, and with the increase also of the number of institutions, in particular since the inception of the Financial Services Centre in 1987.

21-08 Banking supervision has been a major part of Central Bank functions since 1971, and the relevant period of examinations of Guinness & Mahon undertaken is from in or about 1976 and through the course of the 1980s. The ultimate responsibility for the supervisory and other roles of the Central Bank rests with the Board, which comprises a Governor and nine Non-Executive Directors. The sole shareholder and therefore the owner of the Bank is the Minister for Finance. The Governor is appointed by the President on the advice of the Government for a term of seven years, and may be re-appointed. Since Ireland’s entry into the European Monetary Union, the Governor is ex-officio a member of the Governing Council of the European Central Bank, and has statutory responsibility for the performance by the Central Bank of functions, powers and duties related to the European Central Bank. The Directors of the Central Bank are appointed by the Minister for Finance for a renewable fixed term of five years. Two of those Directors may be in the permanent service of the State, but the practice of successive Ministers for Finance has been to appoint only one such Director, who is referred to as a Service Director.

21-09 The role of the Governor differs from that of the Chairman of a limited liability company, and from that of most persons chairing incorporated or unincorporated bodies. Whereas the position of Chairman is ordinarily a Non-Executive one, the Governor of the Central Bank is in fact the only Executive Member of the Board of the Bank and, as provided for in the Central Bank Act of 1942, it is the Board's practice to delegate powers to each Governor during the period of his appointment for the exercise and performance of all functions, powers and duties of the Bank, with the exception of those which it would not either be possible or appropriate to delegate. This delegation is on the basis of an affirmation by the Governor that, in exercising the authority delegated to him, he will follow the established practice of consulting the Board as far as possible on all major decisions and matters of policy, and that he will faithfully interpret the Board's attitude to the best of his ability. The position of the Governor is thus similar to that of the Chief Executive of a commercial entity, coupled with the role of an Executive Chairman of a Board of Directors, where exceptionally the Board of Directors delegates to that person most of its powers.

21-10 The management and staff of the Bank are appointed by the Governor, who consults the Board regarding the appointment of the Director General and Secretary, who are the two most Senior Executives next after the Governor. The Director General chairs meetings of a Management Board, which consists of the Secretary, who is the Deputy Director General, and five Assistant Director Generals. This Management Board coordinates the planning, budgeting, resourcing and management review processes of the Bank, and the Director General reports to the Governor on these matters. On this basis, day to day management of the Central Bank is in the hands of the Management Board, subject to the overall control of the Governor. Whilst this structure sets forth the configuration of management at the Central Bank at the time of the relevant Tribunal public sittings, it appears that a broadly similar structure has existed since the establishment of the Central Bank.

21-11 The objectives of supervision by the Central Bank may be classified into two main areas: firstly, protecting the stability of the banking and financial system of Ireland as a whole, which is referred to as macro-prudential issues, and secondly, providing a degree of protection to depositors with individual banks, which is referred to as micro-prudential issues.

21-12 This supervisory process has been described by the Central Bank as being interactive in nature. It entails a dialogue between the Central Bank and the supervised institution in question, and is based on a principle of cooperation with the Central Bank by the Board of Directors and Management of supervised banks. In effect, the Central Bank regards the Board of Directors of supervised banks as having responsibility for the affairs of their respective banks, and expects to be able to place reliance

upon the correctness of information furnished to the Central Bank by the Boards and Management of licensed supervised banks. The supervisory procedures employed are described as being both quantitative and qualitative in nature.

21-13 The principal quantitative procedures that are followed with respect to any supervised bank are in monitoring and review by the Central Bank of compliance with published licensing requirements and standards that relate to matters such as minimum capital and liquidity levels, large exposure to individual borrowers or groups of borrowers, lending to connected parties such as Directors, and similar matters.

21-14 Qualitative assessment is more subjective. However, an informed basis for qualitative judgements is provided by having access to an institution's books, records and key personnel, together with regular review meetings in the course of on-site inspections.

21-15 Accordingly, the Central Bank looks at the financial state and condition of a bank for the purpose of making a quantitative assessment, and the quality of its management, including its integrity, professional standards and standing, for the purpose of a qualitative assessment.

21-16 In the course of carrying out periodic on-site inspections or examinations, Central Bank officials will attend at the premises of a licensed bank with a view to the review of papers and files in the Bank, interviewing of Bank management and staff and, if necessary, Bank Directors, along with the raising of issues with Bank Management and Directors. This may involve extensive debate between the Central Bank and the supervised bank in regard to matters arising in the course of an inspection. On completion of the inspection and, any necessary debate in relation to matters arising, a report is prepared. This is called an Inspection Examination Report; it is prepared for the attention of Senior Management of the Central Bank, and is not normally made available to or brought to the attention of the supervised bank. Nor are such Reports ordinarily brought to the attention of the Board of Directors or Governor of the Central Bank, and the circumstances in which this might from time to time arise do not seem to have been entirely clarified. Following consideration of an Inspection Report, the Central Bank would normally communicate with the Chairman of the supervised bank about any matters of significance which the Central Bank wished to have addressed. Where monitoring of any of these matters is required, there would be an ongoing contact or correspondence between the Central Bank and the supervised bank.

21-17 Two matters arise in conclusion of this introductory summary. Firstly, although matters of exchange control are not the primary concern of this Chapter, it is the case that the Central Bank had no inherent statutory role in the context of exchange control, and that this was a matter remitted by Statute to the Minister for Finance. However, the Minister had power to

delegate this responsibility, and by a letter to the Central Bank in 1965 appointed the Central Bank as his agent to administer exchange control. He in addition delegated to the Central Bank a further power in certain circumstances to sub-delegate to other agents, including the commercial banks. Secondly, it should be noted that in the discharge of functions under the Central Bank Acts, officials of the Central Bank, including the Governor and each Director, were bound by an oath of secrecy until 1989. This was in the following terms: “I . . . do solemnly swear that I will not disclose any information relative to the business, records or books of any bank which may come to my knowledge by virtue of my position as Governor or a Director or an Officer of the Central Bank of Ireland, except to such persons only as shall act in the execution of the Statutes regulating the said bank, and where it shall be necessary to disclose the same for the purpose of any such statute”.

21-18 With the passing of the Central Bank Act, 1989, the taking of this oath ceased to be a requirement on the part of Central Bank personnel, although it is arguable that it continued to bind individuals who had already taken it, and an alternative confidentiality regime was introduced by Section 16 of the 1989 Act. What is in any event clear is that information acquired by Examiners or other officials of the Central Bank in the course of the Examinations or Inspections of Guinness & Mahon considered in this Chapter could not be disclosed to such agencies as the Revenue Commissioners. This confidentiality regime is not unique to Ireland and is a feature of supervisory regimes governing financial regulation in all European Union States and of most international banking regulatory regimes.

INSPECTION REPORTS

1976 Inspection

21-19 The first on-site inspection of Guinness & Mahon by the Central Bank took place in 1976. Mr. Adrian Byrne, Head of Banking Supervision at the time he testified at public sittings, was then one of the Examiners who conducted this inspection. He stated that in the course of the inspection he became aware that Guinness & Mahon regarded the operation of its off-shore subsidiaries as particularly confidential, and every inquiry made was referred by staff to Mr. Traynor. Mr. Traynor explained that there were certain loans made by the bank which had been secured by complex back-to-back arrangements with regard to deposits made in off-shore subsidiaries. Mr. Byrne recalled being given sight of security documents whilst Mr. Traynor was providing some explanation in relation to the nature of the security. At Mr. Traynor’s request, the Central Bank agreed not to note the names of customers involved, although names were noted in later inspections. Mr. Traynor also informed the Examiners that no files or records in relation to these matters had been retained in Dublin lest Revenue was in a position to contend that the security arrangements were managed by

Dublin, and to avoid files coming into the hands of Revenue. As is apparent elsewhere in this Report, this was an untrue account, and it was in Dublin that the relevant accounts and documentation were maintained under the direction of Mr. Traynor. Mr. Byrne stated that the system of memorandum accounts, not forming part of the accounting records of Guinness & Mahon, but recording interests of Irish residents in deposit accounts held with Guinness Mahon Cayman Trust, was concealed from the Central Bank, who had become aware of it only at the time of the McCracken Tribunal.

21-20 During the inspection, the Central Bank indicated concern at the significant level of Guinness & Mahon off-shore activities, of which the main object appeared to be tax avoidance; in fact there was a division of opinion within the Central Bank, with Mr. Byrne amongst those who took the view that what appeared to be disclosed amounted to tax evasion rather than tax avoidance. In any event, Mr. Traynor denied any such objective, indicating that all the off-shore subsidiaries were deposit-taking institutions offering full banking services, and deriving their main income from executor and trustee business. Mr. Traynor also assured Mr. Byrne that no breaches of exchange control were involved, since all the relevant money comprised in the deposits had left Ireland prior to exchange control requirements becoming operative in 1972. Insofar as documentation showed that deposits held by Guinness Mahon Cayman Trust with Guinness & Mahon had increased by £4.7 million to £14.3 million during the preceding twelve months, Mr. Traynor assured the Central Bank Inspectors that the increase resulted from deposits which were sourced in the USA and Jamaica.

21-21 Many other domestic banking issues in relation to Guinness & Mahon were considered by the Inspectors in the course of the inspection, and at a subsequent meeting held with the Directors of the Bank prior to finalisation of the Report, but a significant amount of time and consideration was given to this matter of the Central Bank's concerns at the extent of the Bank's involvement with its banking subsidiaries in off-shore tax havens.

21-22 In the Inspection Report, the structure and function of the off-shore companies as outlined by Mr. Traynor to Mr. Byrne in the course of the examination, was summarised in the following terms:—

“Prior to the 22nd June, 1972, when the Cayman Islands ceased to be part of the Scheduled Territories for exchange control purposes, Guinness & Mahon Dublin arranged for the transfer of funds to a Cayman registered discretionary trust of which Guinness & Mahon Cayman was the trustee. The use of the trust funds was totally at the discretion of the trustees of Guinness Mahon Cayman Trust. A Cayman company was formed, which was controlled by the trust, and a deposit placed in the Cayman bank in the name of the Cayman company. The customer in Dublin whose funds had been transferred would then apply to the Dublin bank for a loan equal to the funds deposited by the Cayman company. Before the loan was advanced, the Cayman company signed an agreement with Guinness Mahon Cayman Trust whereby it agreed to transfer an amount equal to any loss incurred on the loan to a specified Dublin customer to the benefit of Guinness Mahon Cayman Trust. For exchange control and tax reasons, Guinness & Mahon Dublin were expressly excluded from

having any claim on the forfeited funds, but as Guinness Mahon Cayman Trust is a wholly-owned subsidiary of Guinness & Mahon Dublin, the forfeited deposit could, if required, be transferred by way of dividend”.

21-23 In this aspect of the qualitative assessment of the management in Guinness & Mahon, Mr. Byrne acknowledged that he was not in the course of his inspection provided with documentation verifying the several assurances he had been given by Mr. Traynor, but he stated that it was the case that he was placing an enormous degree of reliance upon Mr. Traynor in providing him with relevant information in relation to the Bank. When the matter of loans secured by off-shore deposits was mentioned to office staff of the Bank in the course of the inspection, the response was generally on the lines of “*you should better talk to Mr. Traynor*”, which indicated a degree of information, coupled with a reluctance to impart it and an anxiety that it be canvassed with some higher authority.

21-24 In another portion of the Inspection Report, there was a reference to similar arrangements in relation to funds placed off-shore in the Channel Islands with the Guinness & Mahon subsidiary there; a reference to these funds having been placed abroad in the manner described so as to enable the depositors to avoid tax on both interest and capital in fact involved a handwritten correction, in that the original typed version had referred to enabling the depositors to “*evade*” tax on both interest and capital, but the word “*avoid*” had then been inserted in handwriting in place of the earlier word. Mr. Byrne stated that he thought it was probably Mr. Bernard Daly who made that amendment; Mr. Daly was the Central Bank Official who reviewed the Report that had been prepared by Mr. Byrne with Mr. Kevin Rockett. Mr. Byrne confirmed that his preference at the time had been as set forth in the typed version.

In other portions of the Report, it was noted that the Inspectors were satisfied that a major part of the activities of the off-shore subsidiaries was receipt of funds on which taxation had been avoided, and that Guinness & Mahon were in effect offering a special service assisting persons to transfer funds on which tax had been avoided to off-shore tax havens. It was also stated “*in view of the delicate nature of these matters, we did not pursue the matter further*”.

21-25 Following completion of the Inspection Report, the Governor of the Central Bank wrote to the Chairman of Guinness & Mahon on 9th September, 1976 advising him of a number of points of serious supervisory concern, which included the extent of the Bank’s involvement with its banking subsidiaries operating in off-shore tax havens. It was indicated that the Central Bank was somewhat concerned at the extent of this involvement, and would welcome an opportunity to discuss the matter. Following further correspondence, in the course of which the Chairman of Guinness & Mahon, Mr. John Guinness, furnished reasonably extensive replies to the other matters of concern raised in the Governor’s letter, but in relation to

tax havens merely stated that he was not happy with the Central Bank's understanding of the situation and sought an opportunity to discuss the matter, a meeting was held on 8th February, 1977.

21-26 At that meeting, Mr. Traynor outlined the operations of the Guinness & Mahon subsidiary companies in the Cayman Islands and the Channel Islands. It would appear that the matter of avoidance or evasion was raised by the Central Bank at this meeting, since the minute of the meeting concluded with a reference to Mr. Traynor emphasising that the funds were not placed on deposit for the purpose of tax avoidance or evasion. There was also a reference to Mr. Daly having discussed the matter with Mr. O'Grady-Walshe, then the Deputy General Manager of the Central Bank, on foot of which it had been agreed that they would talk with Guinness & Mahon again concerning the off-shore matter at a later date. A manuscript note that was appended to the minute in addition indicated that the Central Bank should seek copies of the various returns submitted by Guinness Mahon Cayman Trust to the Cayman Supervisory Authority. These were subsequently sought, and the information furnished indicated that most of the money that had been placed with Guinness Mahon Cayman Trust by commercial and private depositors ended up in Dublin or London.

Free resources ratio and 1978 Inspection

21-27 The next on-site inspection of Guinness & Mahon took place in 1978. Prior to its commencement, the matter of Guinness & Mahon backed loans arose in a different context. Under Central Bank regulations, a licensed bank was required to maintain what was called a Free Resources Ratio of approximately 10%. This Free Resources Ratio related to Central Bank standards published in 1975, on foot of which it was required that a licensed bank should maintain a level of capital employed which the Central Bank considered appropriate in relation to its business, ownership and standing. Under the 1975 standards, the Central Bank regarded a Free Resources Ratio of 10% as the norm, although it indicated that it would exercise discretion in determining the specific levels appropriate to the circumstances of banks in different categories. In practical terms what the requirement meant was that, for every £100.00 of loans made by a licensed bank, it should not have not less than £10.00 worth of capital. Ordinarily, a loan backed by a cash deposit would be regarded as a non-risk asset for the calculation of the Free Resources Ratio, in other words, the existence of such loans should not have warranted any increase in the capital of the bank at the 10% rate.

21-28 It was in this context that, at a meeting between the Central Bank and Guinness & Mahon on 25th January, 1978, Mr. Traynor referred to the backed loans which he valued at £4 million, and which were secured by deposits placed with Guinness Mahon Cayman Trust; Mr. Traynor inquired whether the Central Bank would consider these loans as non-risk for the

purpose of calculating the Free Resources Ratio. The matter was considered by the Central Bank, which decided that the backed loans should continue to be regarded as risk assets. This negative response was communicated to Mr. Traynor by telephone on 23rd March, 1978, when he was also advised that Mr. O’Grady-Walsh might wish to discuss the tax aspect of the loans at a later date. In considering Mr. Traynor’s request, a number of memoranda were prepared within the Central Bank, and it appears that the Central Bank concluded that the means by which the loans were secured were designed as a tax avoidance scheme. In a document headed “*Recommendations*”, it was concluded by the Central Bank:

“From the information available, it would appear that the loans were secured by a cash deposit and, as such, form a normal back-to-back arrangement. However, the fact that the bank takes such extreme precautions to keep the existence of the deposits secret from the Revenue Commissioners indicates that the bank might well be a party to a tax avoidance scheme. Should this be the case, and the bank accepts the right of set-off for the purpose of calculating the Free Resources Ratio, the bank would be placed in a very embarrassing position should the Revenue Authorities ever become aware of the situation. It is therefore recommended that the bank does not accept a right of set-off for the purpose of calculating the Free Resources Ratio”.

In the preceding quotation, it appeared clear that the reference to a tax avoidance scheme had first been typed in the document as a reference to a tax evasion scheme, and that this was crossed out, with the word “*avoidance*” being written on the document. In Mr. Byrne’s evidence, he referred to this matter, indicating that the term Free Resources Ratio had in more recent times become referred to as Solvency Ratio. In regard to what induced the Central Bank to refuse Mr. Traynor’s request, Mr. Byrne stated that, whether it was tax evasion or tax avoidance, there was no question but that there was a cloud hanging over these loans; there was also a lack of legal certainty as to whether they were actually back-to-back, because they were held in a discretionary trust under the control of Mr. Traynor, who accordingly had a discretion as to whether he would transfer the funds to meet any losses.

21-29 Mr. Byrne also identified as his, a handwritten sentence that had been added to the passage last quoted in relation to Mr. Traynor’s request. This stated “*if tax implications were to arise, it may be that the non-risk character of the loans in question would change and a risk of loss for the bank would emerge*”. Mr. Byrne agreed that this meant that if a securing amount was found to be the fruits of tax evasion, it might not be possible for the bank to look to it in the event of a default. He stated that in writing the note, he intended to refer to tax evasion, since his observation made little sense in a context of tax avoidance.

21-30 The second on-site inspection of Guinness & Mahon took place in 1978, examining the Bank’s affairs as of 30th April, 1978. Mr. Byrne was not in this instance directly involved in the on-site work, but reviewed the findings of the examiners who did conduct it. As was normal practice with

the Central Bank, a meeting was again held with Guinness & Mahon prior to the Inspection Report being finalised, and this took place on 13th September, 1978. The minutes of the meeting recorded that the Central Bank was not happy at the extent of the Bank's involvement in back-to-back loans, and took the view that the schemes were not in the national interest, so that it was necessary to consider whether to request Guinness & Mahon to wind down these activities. Mr. Traynor indicated that such a request would make him very unhappy: the Bank was not involved in any tax avoidance schemes, and the schemes in question were devised and arranged by the Bank's customers and their financial advisers; the Bank merely informed its customers of the existence of banking facilities off-shore. It appears that Mr. Maurice O'Kelly, who was also at the meeting as one of the Joint Managing Directors of Guinness & Mahon, commented that Bank Managers of the associated banks advised customers to deposit funds in their branches in the UK for the purpose of tax avoidance, and he queried as to whether the Central Bank was also considering taking action in those cases. The Central Bank confirmed that it was unhappy with tax avoidance schemes generally.

21-31 When the 1978 Inspection Report had been prepared, it was like its predecessor kept as a confidential document within the Central Bank, and was not released to Guinness & Mahon. It paid considerable attention to the off-shore activities of the Bank's subsidiaries. In a summary of the main findings on the first page, the first item listed was "*The Bank is participating in taxation avoidance arrangements*". This aspect was also the first matter set forth in the conclusions and recommendations of the Inspection Report. It was concluded that Guinness & Mahon had advanced loans amounting to £5.5 million to customers which were secured by deposits placed with Guinness Mahon Cayman Trust or Guinness Mahon Guernsey Limited, and the assertion was repeated that the deposits formed part of tax avoidance schemes. The Inspectors expressed the view that whilst the provision of advice on tax avoidance within the law might be an acceptable part of the work of a bank, it was not in their view appropriate or ethical for a bank to participate in, as distinct from advising on, tax avoidance schemes. It was suggested that Guinness & Mahon should cease its participation in these schemes.

21-32 The Inspection Report also noted that the creation of a discretionary trust effectively assigned control to the Bank and removed all evidence of the link between deposit and borrower, so that it was not possible to prove that the depositor and the borrower were the same person; through this arrangement, the borrower was able to claim taxation relief on the interest paid on his advance from the Dublin Bank, and presumably did not pay interest on the tax earned on the deposit with the off-shore company. Mr. Byrne expressed the view in evidence that, notwithstanding Mr. Traynor's denials, what had been described undoubtedly amounted to tax evasion,

and that the arrangements made served both to avoid disclosure and to evade tax.

21-33 Following the finalisation of the Inspection Report, a meeting was arranged on 7th March, 1979 for the purpose of discussing Guinness & Mahon's off-shore activities and the Central Bank's concerns in relation to them. Mr. Traynor and Mr. O'Kelly attended for Guinness & Mahon, and Mr. Daly and Mr. Byrne attended for the Central Bank. From the Central Bank minutes, it appears that Mr. Daly acknowledged that much international business was conducted through off-shore subsidiaries, but that the Central Bank's sole concern related to the fact that Guinness & Mahon had advanced loans in excess of £5 million to Irish customers which were secured partly or wholly by deposits placed with off-shore subsidiaries through discretionary trusts. Given the complex manner in which the loans were secured, and the secrecy surrounding the existence of the security, the Central Bank could see no logical reason for the arrangements other than to assist customers to avoid tax, and reiterated its view that it was not appropriate for Guinness & Mahon to be engaged in such a significant way in tax avoidance schemes. Mr. Traynor responded that discretionary trusts of a similar type were used for a large number of legitimate reasons, in particular by multi-national companies as a means of transferring assets from one county to another and in Ireland as a legitimate method of reducing estate duty liabilities. He repeated an earlier remark that no new loans had been granted since 1972 where deposits held in the Cayman Islands formed part of the security, and stated that the introduction of new exchange control regulations would effectively end the provision of loans backed by deposits held in the Channel Islands. It seemed that the Central Bank accepted an assurance given by Mr. Traynor that the level of loans was likely to be reduced in the future, and the minutes noted that in the light of Mr. Traynor's assurances the Central Bank did not then wish to pursue the matter further.

21-34 A number of further meetings appear to have taken place between the Central Bank and Guinness & Mahon over the remainder of 1979 and 1980. Without detailing all that then transpired, it would appear that little attention was given to ascertaining whether or not Guinness & Mahon were complying with Mr. Traynor's assurances in relation to reduction of the activities complained of. Some discussion took place in relation to the Bank's loan portfolio, and some details were furnished of the largest loans that had been made by the Bank, but despite increases in the level of lending, references to substantial new loans being backed by deposits, and other matters which might reasonably have induced the Central Bank to wonder as to the accuracy or sufficiency of relevant information supplied, and the value of Mr. Traynor's assurances, few if any further inquiries were made. Indeed it seems that the interest on the part of the Central Bank in the off-shore activities that had been foremost in its concerns when reporting in 1988 thereafter dwindled and largely ground to a halt.

1982 Inspection

21-35 The third on-site inspection of Guinness & Mahon took place in 1982, and the Inspection Report was prepared on a similar basis to its two predecessors. Despite the priority given to the off-shore activities in the 1978 inspection, no reference whatsoever to these matters appeared in the summary contained in the 1982 report. It seems that in its dealings with the Central Bank in regard to the 1982 inspection, Guinness & Mahon had distinguished between back-to-back loans and what were described as offset loans, described by Guinness & Mahon as involving loans granted on the security of deposits held in the Cayman Islands, mainly to USA residents. Mr. Byrne did raise the matter at a meeting held on 12th January, 1983, to discuss the outcome of the 1982 inspection, referring to Mr. Traynor's 1979 commitment to reduce the Bank's involvement in back-to-back lending. It seems that Mr. Traynor stated that there had been no increase in the level of that type of lending, and that he would provide a list of loans under that heading to the Central Bank. Guinness & Mahon have not proved able to identify any list which might have been provided to the Central Bank by Mr. Traynor; nor has the Central Bank been able to produce any such list.

21-36 However, officials of Guinness & Mahon, having conducted further examination of documents in their possession, furnished the Tribunal with material which seemed to indicate that other measures may have been taken by Mr. Traynor after 1978 to withhold from the Central Bank information which would have pointed to the existence of backed loans. On foot of this material, evidence was heard in relation to an internal memorandum, dated 23rd August, 1982, from Ms. Deirdre Devane, an Official of Guinness & Mahon, to Mr. Pat O'Dwyer, Loans Officer of the Bank, asking him to provide information which had been requested by the Central Bank, including details of the twenty highest loans. In response, by a memorandum of 26th August, 1982 from Mr. O'Dwyer to Ms. Devane, Mr. O'Dwyer enclosed a schedule outlining the twenty highest loans, but further indicating that as agreed he had "*intentionally omitted back-to-back situations*". In evidence, Mr. O'Dwyer stated that he assumed that the agreement mentioned was one made in the course of his work, and could only have been made following a conversation had with Mr. Traynor. This of course was not made known to the Central Bank, any more than was the operation and nature of the memorandum accounts maintained in Dublin. Nor was the 1989 internal audit report which was prepared at the instance of Guinness Mahon & Company London into the operation of the Ansbacher accounts in Dublin and this highlighted these features disclosed to the Central Bank. Indeed it will be recalled that Mr. Traynor had at an early stage assured the Central Bank that no such documentation was kept in the premises of Guinness & Mahon in Ireland. Some element of deflection or diversion to ongoing Central Bank inquiries may in addition have been provided by the abandonment in late 1978 of the expression "*suitably secured*" as an effectively coded indication of an off-shore backing deposit

securing on-shore borrowing by Irish residents, and its replacement by “*security considered adequate*” or similar expressions to denote the same type of arrangement.

21-37 Regarding the contents of that 1989 Internal Audit Report, Mr. Byrne stated that it set out in detail the system used, and contained some of the starkest findings one could expect to find; had the Central Bank known of this, it would have clearly had to act very strongly in relation to these matters. But they knew nothing of what had been termed “*the bank within a bank*”, and he thought it unlikely that any supervisory system could have detected these background arrangements without candid assistance. He would have expected the persons involved to have come to the Central Bank with something as serious as had subsequently been disclosed. In hindsight, he acknowledged that he and his colleagues should probably have pressed Mr. Traynor harder on access to documents, but nonetheless this was a substantial person in the banking community whom they had trusted; whilst there were strong suspicions, and some like himself had believed that evasion was involved, it was another thing to prove this. Put by Tribunal Counsel that all that was needed was good reason, and that this did exist, Mr. Byrne responded that he did not disagree and that this was an option, but they had taken the course of accepting that the loans in question would be run down. Although Mr. Traynor’s reputation in accountancy and financial circles had been high, it was also the case that from other aspects of the examinations conducted, the Central Bank did not regard Mr. Traynor very highly as a banker, since he did not appear to be running the Bank well from a prudential viewpoint. Although there were some isolated indications of reductions in loans, Mr. Byrne agreed that there had been no reduction overall, and that some increases in loans had been very marked, and this should have produced more action on the part of the Central Bank. He was in no doubt that untruthful information had been forthcoming from Mr. Traynor. The matter should not have been dropped after the priority that had been given to it in the earlier inspections.

21-38 As to action that might have been taken, the Central Bank was of course precluded by its own confidentiality regime from making any disclosure to the Revenue Commissioners, but it would nonetheless have been empowered as the licensing authority to impose conditions on continued banking activities by Guinness & Mahon, either in regard to the off-shore activities complained of, or the ongoing role of Mr. Traynor. The fact that the Central Bank had been unsuccessful in High Court litigation involving Irish Trust Bank not long prior to these matters, when conditions which it sought to impose were successfully challenged on procedural grounds, may have inculcated a measure of caution. Mr. Byrne agreed with Counsel for the Revenue Commissioners that it was the effect of the statutory scheme that responsible State officials from the Central Bank had concluded that Guinness & Mahon were actively facilitating conduct that was questionable fiscally over years, yet could not tell the Revenue Commissioners anything about it.

Loan to Mr. O'Reilly-Hyland

21-39 A further matter which arose in the context of the on-site inspections conducted by the Central Bank concerns the fact that in the 1982 Report there was a reference to certain specific loans backed by Cayman deposits, although the aspects that had concerned the Examiners in the previous two Reports were not considered further. One of these loans was identified as being to Mr. K P O'Reilly-Hyland. Mr. O'Reilly-Hyland was at that time a Director of the Central Bank, having been appointed in that behalf in 1973, and then re-appointed for a further five year term in 1978. In evidence, Mr. O'Reilly-Hyland stated that it had not at any stage been brought to his attention by the Governor or by any other Official within the Central Bank that his borrowings had arisen in the context of an Inspection Report, either with reference to earlier off-shore concerns or otherwise. Neither did any person from Guinness & Mahon bring the matter to his attention. Mr. O'Reilly-Hyland testified that at the time of his first appointment, he had drawn the matter to the attention of the late Mr. George Colley, then the Minister for Finance and the person who had been instrumental in his appointment; he had explained to him clearly that as an underwriting member of Lloyds, he had significant financial exposure, and had sought to protect this by the establishment of an off-shore trust. This had been in a context that, if Lloyds had made him bankrupt it would have had a negative impact on the Central Bank and he had thought it his duty to tell the Minister that he had protected his family and himself against this contingency; it was not because of the existence of the off-shore trust in itself, but because of its role in protecting against underwriting exposure. Insofar as he had not at the time been informed of any connection on his part with an activity that had caused the Central Bank to express misgivings, Mr. O'Reilly-Hyland stated that he thought that he should have been informed immediately.

21-40 In the evidence of Mr. O'Grady-Walshe he stated that he did not recall seeing the documentation referring to Mr. O'Reilly-Hyland's loan arrangements, but he thought it probable that this had come to him. He stated that he imagined that it should have raised questions within the Central Bank. As to whether it was taken further than himself, he stated that he did not know, but was confident that it was highly probable that he had spoken to the Governor and the General Manager about the matter. On the face of matters, it related to a possible involvement on the part of Mr. O'Reilly-Hyland with matters connected with tax avoidance. He thought it unlikely that the overall view of the Central Bank would have been impacted upon by the possible connection on the part of Mr. O'Reilly-Hyland. Whilst he thought he had brought the matter to the attention of the Governor or other very senior Central Bank personnel, it would not have been his function to bring it to Mr. O'Reilly-Hyland's attention.

21-41 Mr. Charles Murray, Governor of the Central Bank at the time of the events in question, stated that Mr. O'Reilly-Hyland's loan had not been brought to his attention at the time although he later acknowledged it was

possible that Mr. O’Grady Walshe had mentioned it to him and he had forgotten this. He was asked in evidence whether the matter in relation to Mr. O’Reilly-Hyland ought to have been brought to his attention as Governor. He responded that to suggest it ought to have been brought to his attention was putting it too strongly, as the matter was one of nuance and judgement, but he would have preferred to have been informed, if only so that he could have alerted the Minister in the context of the individuals possible reappointment. If he had been informed, it would have been up to him to decide whether or not to inform the other members of the Board, but he doubted very much whether he would have informed them. He disagreed with Mr. O’Reilly-Hyland’s assertion that the Central Bank should have alerted him to the matter having arisen, describing this as “*outrageous*”.

EXCHANGE CONTROL

21-42 Mr. Philip Dalton, formerly an Authorised Officer of the Central Bank a person who had already testified and rendered assistance to the Tribunal in matters relating to exchange control, gave evidence as to the exchange control implications for Irish resident Guinness & Mahon customers who availed of the back-to-back loan facilities that were examined in the 1976 and 1978 Examination Reports. During the relevant years, the Irish exchange control regime was binding in respect of applicable transactions or arrangements involving either the Cayman Islands or the Channel Islands as the off-shore locations involved. He had reviewed the relevant extract from Examination Reports, but these of course had been prepared without knowledge of the existence and detailed workings of the Bureau System in Dublin. In Mr. Dalton’s view, the description of the security for the borrowing arrangements in the 1976 report indicated to him that Guinness & Mahon as lender was not intended to have any direct claim on or legal relationship with the depositor of the funds in Guinness Mahon Cayman Trust; accordingly the necessary element of a commitment by the borrower in Ireland to a non-resident did not arise, and exchange control would not have been needed. However, he also stated that, if the advance of funds to the borrower was conditional upon Guinness & Mahon having a claim on the deposit by or with Guinness Mahon Cayman Trust in the event of default by the borrower, and this would result in the borrower having a commitment to a party outside the Scheduled Territories, then exchange controls would have applied. It appeared to be the essence of Mr. Dalton’s view that, if the Irish borrower agreed to the scheme whereby the Cayman Bank could take the deposit placed off-shore in the event of a default in repayment of the loan and then remit that amount to its parent company, Guinness & Mahon, a commitment was thereby made, on foot of which exchange control would have been required.

EVIDENCE OF MR. RICHARD ROBINSON

21-43 When the evidence that has been related thus far was given in March of 2000, the Tribunal was under the impression that the Bureau

System had only come to the notice of outside agencies, in this instance meaning Guinness Mahon & Company in London, by virtue of the findings of the Internal Audit Report published in 1989. Between then and the resumed public sittings the following November, documentary evidence came to light indicating that as early as October, 1985, and probably at an even earlier date, the operation of the system was being discussed by Mr. Traynor with an Executive Director of Guinness Mahon & Company in London, one Mr. Bruce Ursell, who had been associated with that London Bank since 1974. He was also a Director of Guinness & Mahon in Dublin since in or about February, 1983.

21-44 On 17th October, 1985, Mr. Ursell sent a letter from his bank in London to Mr. Traynor in Dublin. The relevant portion of the letter read as follows:—

“Dear Des,

Further to our conversation last week, I confirm that we would be very pleased for you to continue in the role of Chairman of Guinness Mahon Cayman Trust for a period of at least three years from the end of your employment at Guinness & Mahon.

We would be agreeable to you moving into the office previously occupied by Don O'Connor, and having a computer terminal wired up to tap into the Cayman bureau.

We would also be agreeable to you taking your secretary with you and bearing the cost of this.

It is understood that with regard to these last two items that it is likely that you will have an alternative office location within a period of twelve months, and at that time it is very likely that the cost of both the secretary and the office will drop away.

We will pay you a salary of £12,500.00 per annum for this. In addition I understand you will receive a similar sum in Grand Cayman. We will also pay the cost of your telephone.

All of the above is subject to review of twelve months on both sides.”

Evidence of this letter was given by Mr. Richard Robinson, a Banker and Director of Guinness & Mahon (Ireland) Limited, amongst whose books the letter had been contained. At the time the letter was written, Mr. Traynor was both Chief Executive and Deputy Chairman of Guinness & Mahon (Ireland) Limited, having been appointed on 11th December, 1969; in addition he was a Director of Guinness Mahon & Company London, having been so appointed on 25th July, 1978. He further held the position of Chairman of Guinness Mahon Cayman Trust. Mr. Traynor resigned both his London and Dublin directorships on 30th April, 1986 and 2nd May, 1986 respectively, and on 1st October, 1986 Mr. Ursell replaced Mr. Traynor as Deputy Chairman of Guinness & Mahon in Dublin. Mr. Robinson agreed that, whilst it had previously been thought that the London and Dublin Directors had become aware of the operation of the Bureau System in Dublin only as a result of the 1989 Internal Audit Report, the contents of the letter suggested otherwise.

REMAINING EVIDENCE AS TO INSPECTIONS

21-45 As to the balance of the evidence heard in March, 2000, Mr. Murray (Governor at the time, and formerly Secretary of the Department of Finance) agreed that if tax evasion on the part of Guinness & Mahon had been the finding of Central Bank inspections, it would have been necessary to insist on the removal of Mr. Traynor from his position, and perhaps much else. He acknowledged that, from all the information now to hand, there were clearly breaches on the part of Guinness & Mahon. As to the evidence that had been given by Mr. Byrne, Mr. Murray testified that he was surprised at what Mr. Byrne had stated. The matter was a very important one for both the Central Bank and Guinness & Mahon, and if Mr. Byrne's view was that tax evasion had been involved, or if the record in that regard had been changed, he should have pressed the matter by bringing it to a more senior member of staff; Mr. Murray also felt that the supervisor in relation to that Report should have expressed Mr. Byrne's view separately, so that the issue would have come up squarely, in which case it would doubtless have been brought to Mr. Murray as Governor. Questioned as to whether the Inspectors had been tentative, or may have given too much credit to Mr. Traynor, Mr. Murray acknowledged some reservation, but stated that avoiding a banking collapse had been a dominant consideration on the part of the Central Bank; some element of having to accept the lesser of two evils may have been involved, although he acknowledged that the ideal in inspections was to obtain full access to all relevant materials, and a reluctance in that regard should have put the officials on guard. But regard still had to be paid to the assurances given by Mr. Traynor, and the fact that Guinness & Mahon was a long established and respected Bank, along with the fact that it was usual that some faults would be found in the course of an inspection. The letter to the Bank Chairman signed by him on 9th September, 1976 had not been drafted by Mr. Murray, since he had not been involved in the inspection, and he did not recall any other letter in regard to an inspection having gone out under his name. He surmised that the staff had thought the matter serious enough to warrant a letter from Governor to Chairman.

21-46 Mr. O'Grady-Walsh, Deputy General Manager of the Central Bank at the time, laid particular stress upon what he considered the paramount obligation of the Central Bank to safeguard the banking system, by ensuring against the collapse of banks and protecting depositor's funds. He viewed what had emerged as regards the off-shore matters in relation to Guinness & Mahon as serious, but not sufficient to call into question the fitness of Mr. Traynor to run the Bank. He recalled the meeting at which Mr. O'Kelly on behalf of the Bank had in effect stated that all the associated banks were advising customers on a broadly similar basis. It seemed to him that Mr. Traynor was skilful, adroit and tough, but at the time he felt that he was not someone who would go outside the law. Had it been that tax evasion had been sufficiently proved against Mr. Traynor in respect of the activities in question, he acknowledged with some hesitation that it would

have been necessary to have sought his removal. Similarly, if Mr. O’Grady-Walshe had known of the operation of the Bureau System, he would likewise have sought Mr. Traynor’s removal, but he had no knowledge whatsoever of this at the time. The mere fact that the Central Bank had expressed the view that the type of activity in question was contrary to the national interest was not of itself sufficient to call into question Mr. Traynor’s fitness to run the Bank. Mr. O’Grady-Walshe was also cross-examined with some vigour by Counsel for the Revenue Commissioners. Among a number of matters put to him in a context of suggesting an insufficient response on the part of the Central Bank to the off-shore matters, it was suggested that it was clearly conveyed that customers were not paying Irish tax on their Cayman deposit accounts whilst at the same time availing of tax relief in regard to the loans thereby backed, which would seem to indicate the hallmarks of tax evasion rather than avoidance. Mr. O’Grady-Walshe responded that this was not a sphere in which he had expertise, but that the senior person in the relevant department, for whom he had the highest regard, had taken the view it was avoidance rather than evasion. As to the Irish Trust Bank case, in which the Central Bank had previously sought to impose conditions in relation to the person who was in effect the proprietor of that bank, Mr. O’Grady-Walshe took the view that the facts in that instance were completely different to those pertaining in relation to Mr. Traynor, and had left the Central Bank in no doubts about that person’s unsuitability.

21-47 Mr. Maurice O’Kelly, who had been one of the Joint Managing Directors, and latterly Managing Director, of Guinness & Mahon, referred at the start of his evidence to having suffered a serious stroke, as a result of which his memory of events was considerably impaired, and in relation to which he had made a medical report available to the Tribunal. He stated that Mr. Traynor and himself had been very close, having been articled as Accountants together, and he trusted Mr. Traynor’s integrity. Mr. Traynor had in fact persuaded him to join the Bank in 1971, and initially he had been one of three Joint Managing Directors, attending to the corporate side of management. As to the Bank’s off-shore subsidiaries, he stated that he had been broadly aware that discretionary trusts were involved, but he had not been aware of the back-to-back loan system until 1978, and until that time thought that a reference to “*suitably secured*” merely meant that the Bank was satisfied with the standing and integrity of the borrower. Whilst an Accountant, he had not been a Tax Accountant. When it was put to him that the operation of the Bureau System effectively amounted to running a second set of books, he responded that he had only known of this in recent times, and eventually acknowledged that it was an inappropriate practice. As to his reference to what was done by other banks in the course of the meeting with the Central Bank on 13th September, 1978, Mr. O’Kelly stated that he was simply saying that there should be a level playing field, and that the associated banks had been up to the same matters. He accepted that it would be inappropriate, though not unethical for his Bank to assist in tax avoidance. Given his position, he stated that he should have been made

aware of the operation of the Bureau System, as should the Central Bank. He stated that he would not denounce Mr. Traynor.

21-48 As with Mr. O’Grady-Walshe, Mr. O’Kelly was also cross-examined in critical terms near the end of his evidence, in this instance by Counsel for Irish Life & Permanent Plc, which had acquired the Guinness & Mahon entity. As to it only having been in 1978 that he had learned that “*suitably secured*” meant that a loan had off-shore cash backing, he stated that he had been disappointed to learn of this. He had not investigated who had put in place this cash backed scheme, even though he had been a Chartered Accountant and since 13th May, 1976 the sole Managing Director of the Bank. It was put to him that he had known the essential dealings from the beginning, to which he responded that he had thought that the reference merely meant that the customer was good for the amount borrowed. It was further suggested to him that these matters had been perfectly clear from the use of codes and references to Cayman deposits since 1972, and that he had signed credit committee minutes approving loans to Irish borrowers in which the initials GMCT had been included in brackets after “*suitably secured*”, but Mr. O’Kelly reiterated that he had not been aware of these matters.

21-49 Ms. Sandra Kells also gave evidence in relation to her detailed examination of the books and records of Guinness & Mahon potentially referable to the Central Bank inspections. She found no record or minute in these of any of the various meetings held with Central Bank officials, and had had to act on the basis of the minutes or memoranda prepared by Central Bank officials. Reference was made to the letter of 1st September, 1978 from Mr. O’Grady-Walshe to Mr. Guinness, indicating that the Bank had advanced loans in excess of £5 million secured by off-shore deposits, and that this was viewed as calculated to reduce tax liabilities, and was inappropriate and contrary to the national interest. In this regard, Ms. Kells stated that it appeared from the records of the Bank that the actual level of loans then so secured was well in excess of £5 million, and she agreed with Tribunal Counsel that what had been divulged to the Central Bank for inspection purposes did not accord with the true records of the Bank, and that at least three substantial loans had been excluded. Ms. Kells also confirmed that it appeared that, despite Mr. Traynor’s 1979 assurances to the Central Bank that the level of back-to-back loans would be reduced, and that a list of such loans would be provided, a full review by her of all Guinness & Mahon files had not located any such list, or any correspondence or documents relating to such.

CENTRAL BANK DIFFERENCES ON 1988 REPORT

21-50 As stated at the outset of this Chapter, further inquiries pursued by the Tribunal with Central Bank officials prior to the resumed public sittings in November, 2000 elicited pronounced differences, relevant to the matters that have already been set forth, between persons involved in the 1988

inspection of Guinness & Mahon. Specifically, a detailed statement prepared by the most junior of the Examiners involved in that inspection, Mr. Terry Donovan, raised a number of matters of potential importance with which his colleagues in the course of that examination proved substantially in disagreement.

21-51 It was arranged that Mr. Donovan would be facilitated with legal assistance to enable his recollection of events to be presented to the Tribunal at public sittings as cogently as possible, and that the other persons involved in 1988 would also testify. This proved to be the first occasion in the course of the Tribunal that divergent versions in relation to the same set of events were heard in immediate succession, in a manner having some similarities to civil litigation in the Courts, and fairness to those concerned required that greater time and latitude be allowed in the course of the evidence, and particularly in cross-examination, than had been the case in previous public sittings. However, the overriding matter for consideration by the Tribunal was whether or not Mr. Donovan had been deterred or discouraged by senior colleagues within the Central Bank from pursuing further and more detailed inquiries into the matter of loans to Irish customers by Guinness & Mahon backed by off-shore cash deposits, which as has been seen had already occupied much attention and provoked differing responses within the Central Bank. A detailed recital of all matters heard in evidence would extend this Chapter to unwarranted lengths, so that what follows is a considerably abridged summary of the principle matters heard.

Evidence of Mr. Terry Donovan

21-52 Having indicated that he had been released from his statutory obligation of confidentiality by reason of a consent to disclosure furnished by Guinness & Mahon, Mr. Donovan stated that questions about the back-to-back loan arrangements in Guinness & Mahon were raised by Central Bank Officers with Guinness & Mahon management in the course of the 1988 on-site inspection, and this had not been reflected fully in the Inspection Report. He prefaced his evidence by saying that it was important that its content should not be taken out of context, and that more significance should not be attached to it than warranted. Having been an inexperienced and untrained member of Central Bank staff, with no prior involvement in on-site inspection of banks, he felt that what had happened in relation to the Guinness & Mahon inspection had made a particular impression on him. Since he now knew that information then new to him in relation to back-to-back loans was not new to other Central Bank officials, these matters may not then have had the same significance for those other officials as they did for him.

21-53 He was aware that the reason that he had been contacted by the Tribunal was because his name appeared on the cover of the 1988 Guinness & Mahon Inspection Report, although he did not at any time have

any supervisory responsibility for Guinness & Mahon, and his involvement in 1988 was limited to the matters he had initially set forth in his statement. Due to lapse of time, some details were difficult to recall.

21-54 In January, 1988, he was transferred by the Central Bank from its Currency Centre to the Banking Supervision Department in Dame Street, having then Senior Executive Service grade, which was considered equivalent to Banking Examiner. He had qualified as a Certified Accountant in 1985. Not long after his arrival in the new department, he was informed by the Manager, Mr. Brian Halpin, that it was policy to send newly arrived Examiners on the first available on-site inspection as part of training. Rather than await an inspection scheduled for some future time, Mr. Halpin directed him to join an on-site inspection that was already in progress in Guinness & Mahon. Despite Mr. Donovan seeking time to prepare and study relevant files, Mr. Halpin stated this would not be necessary and he should proceed without delay to the Guinness & Mahon premises, where his colleagues were expecting him and all files would be available.

21-55 On arrival, he found the inspection in progress, conducted by Mrs. Ann Horan as the Examiner in charge, with the assistance of Ms. Elaine Byrne, Bank Examiner. On being instructed by Mrs. Horan to analyse some of the Guinness & Mahon accounting statements, Mr. Donovan found that they included a reference to “*hypothecated deposits*” and/or “*hypothecated loans*”, which were terms he had not previously encountered. On querying the meaning of the terms, he was advised by Mrs. Horan to raise this, along with any other information requirements, with Mr. Martin Lanigan-O’Keeffe, the main person in Guinness & Mahon dealing with the information requirements of the inspection team. Mr. Donovan recalled having a number of short discussions on the matter with Mr. Lanigan-O’Keeffe, probably in the presence of Ms. Byrne. From Mr. Lanigan-O’Keeffe’s responses to him, he understood that the terms referred to back-to-back loans indirectly secured by monies held in the Cayman Islands. Whilst unable to recall or indeed understand all that Mr. Lanigan-O’Keeffe stated, Mr. Donovan then formed the view that it was possible that he was not providing full information to the Central Bank. Whilst Mr. Lanigan-O’Keeffe had stated that no risk to Guinness & Mahon could arise from these arrangements, Mr. Donovan found this difficult to accept, and promptly expressed to Mrs. Horan the view that the matter should be explored further. He was neither then aware nor made aware of any prior consideration to related matters given by the Central Bank. Having unrelated work to do on the inspection, he nonetheless kept the issue in mind, and started preparing a handwritten record of the points made by Mr. Lanigan-O’Keeffe, and the potential issues that arose.

21-56 On going to Mr. Lanigan-O’Keeffe on an unconnected matter, Mr. Lanigan-O’Keeffe reverted to the topic, and inquired whether his previous explanation had been satisfactory. On Mr. Donovan giving a negative response, Mr. Lanigan-O’Keeffe sought to offer reassurance; Mr. Donovan

stated that the matter needed to be investigated further. Mr. Lanigan-Keeffe then suddenly telephoned Mr. Michael Pender, then the General Manager of Guinness & Mahon, and arranged for Mr. Pender to meet Mr. Donovan immediately on the matter. Mr. Donovan sought to defer this so that he could confer with Mrs. Horan but Mr. Lanigan-O’Keeffe insisted that the meeting proceed at that time. Mr. Donovan was then brought by Mr. Lanigan-O’Keeffe to Mr. Pender’s office. In the course of a brief meeting, Mr. Pender said he understood that Mr. Donovan had been querying the operation of the back-to-back loans; mentioning Mr. Des Traynor, a name which then had no particular significance for Mr. Donovan other than perhaps as Chairman of Cement Roadstone Holdings, he said that the relevant details had already been explained to Mr. Adrian Byrne of the Central Bank by Mr. Traynor. Mr. Pender recommended that Mr. Donovan discuss the matter with Mr. Byrne before deciding whether to proceed further.

21-57 Mr. Donovan stated that he was by then confused and concerned, not having the experience to assess the information received, but had formed the view that the management of Guinness & Mahon regarded the matter as serious and sensitive. On leaving Mr. Pender’s office, he went to Mrs. Horan, and sought guidance as to how he should proceed. She expressed surprise that he, Mr. Donovan, had met Mr. Pender, but did not otherwise comment on his inquiries. She advised him to raise the matter with Mr. Adrian Byrne, then Deputy Manager of the Banking Supervision Department, as the person to whom Mrs. Horan reported, declining Mr. Donovan’s suggestion that she herself should raise the matter with Mr. Byrne, or that they should do so jointly.

21-58 Accordingly, on returning to the Central Bank, he raised the matter with Mr. Byrne. This was after lunch on the same day, and only himself and Mr. Byrne, with whom he had not previously had a serious business discussion, were present. On relating all the matters that had earlier transpired to Mr. Byrne, Mr. Donovan recalled that Mr. Byrne expressed surprise that he, rather than Mrs. Horan as the Examiner in Charge, had discussed the position with the Bank General Manager in such circumstances. He indicated that Mr. Donovan should not take part in any further such meetings in Guinness & Mahon unless so directed. On mentioning to Mr. Byrne that he was in the course of reviewing Guinness & Mahon file material concerning back-to-back loans, Mr. Byrne gave his agreement to Mr. Donovan completing that work. Mr. Donovan could not recall whether Mr. Byrne had confirmed having an earlier meeting on the matter with Mr. Traynor on the lines of what Mr. Pender had referred to, but he might have done so. However, Mr. Byrne did not provide any information based on what he had learned in relation to the back-to-back operations.

21-59 When Mr. Donovan completed his review of Guinness & Mahon file material relating to individual back-to-back loans, it seemed to him that there were inconsistencies between information provided from different

sources within the Bank. He had recently become aware that only one reference to this work seemed to have been included in the 1988 Inspection Report, which was the reference to the loan account relating to Mr. K O'Reilly-Hyland. During the inspection, Mr. Donovan had not been aware that Mr. O'Reilly-Hyland was a former Central Bank Director, and the account then had no particular significance for him other than as indicative of inconsistency in the information provided to the inspection team. He believed he had drafted the reference "*no mention of Cayman Island deposits*" on page 84 of the Report, which was intended to convey that Mr. O'Reilly-Hyland's name had appeared on some documentation relating to off-shore deposits that was made available to the inspection team, but no evidence of this had been included on his loan file account in Guinness & Mahon.

21-60 The primary focus of the 1988 inspection related to asset quality and the adequacy of provisioning, and soon after Mr. Donovan's meeting with Mr. Byrne, he was assigned substantial work in this regard by Mrs. Horan, which occupied most of his remaining time in the on-site inspection. Shortly before this ended, he had started to prepare a section in relation to back-to-back loans for the Inspection Report. He recalled that Mrs. Horan informed him that she saw no need for the Report to include a description of his back-to-back inquiries, indicating that the approach should follow the pattern of the 1985 Report. Mr. Donovan understood that the intention was to include material in the Report sufficient to provide confirmation to Central Bank management as to whether the back-to-back arrangements were still in operation, and whether the amounts involved had been reduced since the last inspection. Mr. Donovan stated to Mrs. Horan that he was not satisfied that the matter had been adequately reflected, whereupon she gave him some background information, including the fact that there had been previous Central Bank contact in relation to the back-to-back loans. It seemed to Mr. Donovan that there was a degree of sensitivity involved. Only on reading the material provided by the Central Bank to the Tribunal, in the course of preparing his evidence, had Mr. Donovan learned the extent of previous consideration of the issue by the Central Bank. However what Mrs. Horan had stated then made it clear to him that much if not all of the information encountered by him was not new to the Central Bank. She also then mentioned to him a portion of the previous Report where reference was made to matters not being pursued further because of the sensitivity of the matter. Mr. Donovan stated that he then suggested to her that, as a minimum, a similar reference should be included in the 1988 Report, but Mrs. Horan did not agree.

21-61 In the course of his work on the Report, Mr. Donovan stated that he had prepared some handwritten notes relating to the back-to-back loans. Whilst he had been unable to locate these, and was unable to recall the entire contents, he believed that they included such prudential matters as the possible legal frailties involved in Guinness & Mahon relying on the off-shore deposits as security, the extent of reliance on the aggregate Cayman

Island deposits as a single funding source, the Free Resources or Liquidity Ratio issue in relation to the back-to-back loans, and Mr. Traynor's apparent ongoing involvement with certain unspecified loan customers. No information however came to his attention, or as far as he knew to any other member of the inspection team, indicating any form of a bank-within a-bank arrangement within Guinness & Mahon or elsewhere in 1988 or at any other time; likewise, there was no information received which constituted definitive evidence of tax evasion. On completion of the on-site inspection, Mr. Donovan returned to the Central Bank offices. Having documented his findings in relation to the loan accounts he had received, he passed these to either Mrs. Horan or Ms. Byrne for inclusion in the Inspection Report. He later also furnished the working papers that he had assembled to Mrs. Horan, and indicated that he did not wish his name to appear on the Inspection Report, because he felt it was likely to be deficient in its treatment of the back-to-back loans. She disagreed, whereupon Mr. Donovan suggested that his name be included only by way of a footnote, and stated to her that he was not prepared to sign the completed Report, since he was not fully in agreement with its contents. He was not thereafter consulted or involved further in finalising the Report, but continued to be concerned that it would not fully reflect the issues raised.

21-62 Not knowing how to address the difficulties that had arisen between the Examiners, Mr. Donovan approached Mr. Michael Deasy, who along with Mr. Adrian Byrne was Deputy Manager of Banking Supervision, for advice. He gave Mr. Deasy a summary of what had occurred, and asked would it be best for him to seek a transfer to another Central Bank Department. After considering the matter over the next day or two, Mr. Deasy told him the matter should be taken up with Mr. Brian Halpin, Manager of the Banking Supervision Department. Mr. Halpin soon afterwards called Mr. Donovan to his office, stated that he would deal with the matter himself and informed Mr. Donovan that he should not have any further concerns regarding the 1988 inspection. Mr. Halpin also then stated that it had not been appropriate that Mr. Donovan had been placed in such a difficult situation, given the history of the matter, and he confirmed that Mr. Donovan had no responsibility in the matter; he mentioned that he had spoken to Mr. Byrne, who did not recall speaking to Mr. Donovan on the subject, and declined Mr. Donovan's offer of a written memorandum of his findings and concerns, stating that he was aware of the issues.

21-63 Thereafter Mr. Donovan returned to working under the direction of a different Senior Examiner, and understood that some further action may have been taken in 1988 by the Central Bank in regard to the Guinness & Mahon back-to-back loans. A few weeks after the 1988 inspection, Mr. Donovan was shown by Mrs. Horan an internal note which he believed made reference to the back-to-back loans. He could not recall the contents of the note, which had not been located in the course of recent searches of the Central Bank files, and was unsure whether or not the note had been prepared originally by Mrs. Horan. He also recalled that Mrs. Horan again

approached him at a later stage in 1988, and remarked that the 1988 Report was finally complete. Whilst he could not recall the brief conversation clearly, he had some recollection that she stated that she had approached Mr. Halpin with the Report, and that it had been agreed that, given the passage of time and the fact that her own aforesaid internal note had been circulated, it was not necessary at that stage to circulate the Report itself, and it would be sent directly to the file, probably a box file.

21-64 In the course of Mr. Donovan's detailed evidence, he elaborated somewhat upon the occasion when Mrs. Horan showed him the internal note referring to the back to the back loans. It was some weeks after the inspection, and Mrs. Horan had come round to the area where both Ms. Byrne and Mr. Donovan were then located. She had in her hand a note, and seemed to be annoyed about something to do with that note. She said to Mr. Donovan "*this is all your fault*", and put the note into his hands very briefly. He understood that she had been concerned in the drafting of the note, and thought her concern was that someone had made amendments to it in her absence and then circulated it as amended. He understood the note had something to do with the back-to-back loans, but did not know exactly what. Some one to three years later, he came across the note on part of the Guinness & Mahon file, and saw it gave some description of the back- to-back loan arrangements. It was typed, consisted of more than one page, and there were attachments to it. On then reading it, he thought that if the note had been put into the Report in the first place, there would have been no need for him to have kicked up a fuss. In saying to him "*this is all your fault*", she did not say it with any venom.

21-65 Apart from a detailed examination by Tribunal Counsel, Mr. Donovan was also cross-examined by Counsel for Mrs. Horan, and Counsel for the Central Bank. Amongst the several matters emerging were that Mr. Donovan acknowledged that he had not read the 1988 Report until a period of perhaps one to two years after it had been prepared, although he would have been entitled to access to it. He also acknowledged that this was his first involvement in any inspection as a trainee, that he was unlikely to be of any huge use in preparing the Report, and that the main elements in the examination were prudential matters such as the loan portfolio and bad debts, which occupied considerably more time than was involved in the back-to-back loans. In his twelve years of experience, having been appointed to the position of Deputy Head of Banking Supervision, he had not encountered any other similar case of a trainee dealing alone with a senior Bank Manager during an inspection. It was correct that Mr. Byrne had approved of his proceeding with and completing his work on the back-to-back loans. It was put to him that he had had a number of previous opportunities to raise his concerns, including when he was offered a draft copy of Mr. Byrne's initial statement to the Tribunal, and suggested that he owed it to his colleagues to have ventilated the matter in a more prompt and open fashion. Mr. Donovan responded that he was not familiar with the nature of the dealings between the Central Bank and the Tribunal, and that

at that earlier stage he took the view that on balance he had nothing of significance to contribute. He agreed that he had been provided with legal representation, and time off to prepare his statement. He acknowledged that it might to some extent have been the case that the recent deluge of information reaching him may have affected his recall, and said that he could not totally rule out that the new information may have affected his evidence. Put that his evidence in relation to his encounter with Mrs. Horan, when she produced the document subsequent to the examination, differed significantly from what had been contained in his statement, he stated that he did not agree with that, said that it was partly correct that he had had a good relationship with Mrs. Horan, and declared that he had very high regard for her, and still did. In response to his own Counsel, he reiterated that he had expressly placed limitations on his evidence at its outset, and said that it had been a difficult time for him in putting forward a version of events that differed from his colleagues' recollections, especially given the generally very good relationships within the Department. When asked, Mr. Donovan stated that he was not inviting an inference to be drawn on the basis that there was some kind of orchestrated conspiracy within the Central Bank to silence him as having come too close to embarrassing events.

Other evidence of Central Bank witnesses

21-66 The testimony of the other Central Bank witnesses who testified was considerably shorter and less detailed than that of Mr. Donovan. Mr. Michael Deasy, the Deputy Manager of the Banking Supervision Department in 1988, stated that he had read Mr. Donovan's evidence in relation to seeking guidance from him as to a possible transfer to another Department and indicating the nature of his concerns regarding Guinness & Mahon, on foot of which the matter had been referred to Mr. Brian Halpin, the Manager of the Department. Whilst not asserting that none of these events occurred, Mr. Deasy stated that having considered Mr. Donovan's account he had no recollection of any of them.

21-67 Mrs. Ann Horan, who had left the Central Bank and become Managing Director of Bank of Ireland Commercial Finance, also testified. She also stated that she did not remember any of the events described in Mr. Donovan's statement, and had very limited recall in relation to the 1988 inspection, although she did remember some aspects of the earlier inspection in 1986. She stated that if events were as described by Mr. Donovan in relation to the 1988 inspection, she was confident that she would remember them. She found some aspects of his testimony extraordinary and inconsistent with the conduct of inspections as she remembered them. She was disturbed by the tone of his statement, which seemed to range from suggesting that she unwittingly ignored his stated concerns to the more serious possible inference that she deliberately tried to keep reference to hypothecated deposits out of the Report due to sensitivities concerning Guinness & Mahon. She felt that she had always

been a conscientious official in the Central Bank, would not have ignored reasonable suggestions that something was wrong, and refuted any version that she might have deliberately kept information out of the Report. She was unaware of sensitivities regarding Guinness & Mahon, or of any institutional reason to protect that bank. The 1988 Report was detailed and more comprehensive than its predecessor.

21-68 As to Mr. Donovan's account of the inspection, she found it unusual that he would have visited Mr. Lanigan O'Keeffe to return files, or that he would have met Mr. Pender on his own, since the Central Bank practice was that officials did not attend meetings on their own, in order to ensure that they would not be compromised in any way in the course of their dealings with bank personnel. It also seemed unusual to her, since the matter of hypothecated deposits had been discussed between the Central Bank and Guinness & Mahon on a number of past occasions, that the Bank would react to a junior examiner who asked for an explanation of the term. If the conversation with Mr. Adrian Byrne described by Mr. Donovan had taken place, she believed that Mr. Byrne would have discussed it with her, which was not the case. She also believed that the conversation with her described by Mr. Donovan, in which she supposedly referred to prior problems with back-to-back loans in the course of prior inspections, could not have taken place, since she was not then aware of those matters, having only earlier in the year 2000 read Mr. Byrne's initial statement to the Tribunal, and then become aware of those dealings in the 1970's. If Mr. Donovan had clearly conveyed to her that he felt strongly about the Report, it would have prompted her to take action or at least discuss his concerns fully with him. None of the senior officials in the Central Bank to whom Mr. Donovan stated that he spoke had come to her in the context of a potential problem for the Report having been raised by him, still less in relation to a possible transfer having been sought by him. As to the note or document which he alleged she had produced to him, she did not know what was in that note, or why it did not appear in the Central Bank files. Nor did she recall using the words "*this is all your fault*" or any similar words to him.

21-69 She did not suggest that Mr. Donovan was activated by malice towards her; they had worked well together as part of a small team, his work was of a high quality, and she would have described the two of them as friends. Prior to leading the 1988 inspection, she would have prepared herself and identified areas of concentration, in regard to which prudential issues were always the main thrust. She could not say definitely whether or not she had read the preceding Report, but the normal practice was to read that Report and the most recent registered files. She had not then been aware of concerns over the Cayman Island back-to-back loans, although she now appreciated that there had been serious concerns at the time. At the time of the 1988 inspection, Guinness & Mahon had serious financial problems, which were the primary concern of the inspection, although she felt that the fear of actual collapse of the Bank had been overstated in the course of earlier evidence. In conclusion, she stated that

she was very upset by any suggestion on the part of Mr. Donovan she had shelved the back-to-back issues because they were sensitive or embarrassing. In fixing as priorities, for what was the first examination in which she had been the leader, the aspects of the loan portfolio, particularly bad debt provision, and the investment business of Guinness & Mahon, she would have had regard to her own preparation, and also consultation with senior colleagues, before commencing the examination.

21-70 Mr. Adrian Byrne again testified on the matters that had arisen. For an inspection by the Central Bank, the general protocol was that the examiner in charge would be responsible for its pre-planning, which would involve ensuring that any advance information needed was sought from the bank concerned. Before commencing work on-site, the overall position of that bank from a supervisory viewpoint, and the general approach to the inspection would be discussed with the Deputy Manager or Manager of the Banking Supervision Department. Other members of the inspection team would be briefed on the main focus by the examiner in charge. While on-site, the examiner in charge would determine the detailed nature of the work to be done, and would arrange interviews and discussions on relevant subjects with senior management of the particular bank. The format of reports was somewhat standardised, and the headings covered would reflect the principal licensing and supervisory requirements of the Central Bank at the time. The primary focus was prudential, that is to say, to verify the solvency position of the bank concerned, and to assess any risks that might have impinged adversely on solvency in the future. Issues other than directly prudential ones would normally be dealt with outside the inspection process, usually by bank personnel at a higher level than those at examiner level.

21-71 As to what had been stated by Mr. Donovan, Mr. Byrne said that he had no recollection of the events and the meeting with himself to which Mr. Donovan had referred. As to Mr. Donovan's recollection that Mr. Byrne had confirmed that he should continue with the work on the back-to-back loans on which he was engaged, it did not appear, and Mr. Donovan did not suggest, that any information acquired by him was new to the Central Bank. Mr. Byrne stated that he was fully satisfied that the 1988 inspection was carried out in a proper, responsible and thorough fashion. Nothing that could be recollected by his two senior colleagues on the inspection was of a nature that ought to have caused them to look more closely at the back-to-back loan deposits. Mr. Byrne noted that Mr. Donovan had in his evidence acknowledged that the information then new to him was not new to the Central Bank, and accordingly the material might not have had the same significance for other officers as for him at the time; he had also acknowledged that he had no reason to believe that any officer of the Central Bank had any knowledge or suspicion of the Bureau System as conducted within Guinness & Mahon. Accordingly, whilst Mr. Byrne could not say that individual events did not happen, he had no recollection of them, and there was certainly no evidence within the Central Bank on any

of the files that they had very thoroughly searched that was supportive of anything that Mr. Donovan had said. He accepted that the type of concern that Mr. Donovan had testified to having expressed did relate to the prudential side and was within the ambit of the Report, since it essentially related to the matter of whether or not the Bank would recover the money lent. He acknowledged that, from what had more recently become known, Guinness & Mahon had in fact continued trying to conceal things from the Central Bank right up to 1988. As of the time in question, the Central Bank was concerned in relation to the back-to-back loans held by Irish residents, and the taxation issue had arisen, but their understanding with Guinness & Mahon was that those loans would be run down, and it was believed that that had been done. Insofar as similar arrangements in relation to non-residents continued in place, that was something the Central Bank could live with from a prudential point of view, because it was believed that the loans were adequately secured; this transpired to be the case, as all of the loans were recovered and none transpired to be bad debts. Whatever Mr. Donovan may have said or not said, concern was not triggered within the Central Bank.

21-72 Mr. Byrne agreed that it seemed to be the case that the Central Bank personnel concerned in the 1988 inspection did not have as detailed a picture on this aspect as the Tribunal had more recently acquired. As to whether, if all that information had then been to hand, whatever was said by Mr. Donovan might have been taken more seriously, this was speculation but he acknowledged that that could have happened. In hindsight, it would have been better if those involved in the inspection had been aware of the complete history. Whilst Mr. Donovan was a trainee, he was nonetheless a full member of the team, and should have taken some degree of responsibility for the contents of the Report. Mr. Byrne viewed some of the recollections advanced by Mr. Donovan as quite amazing.

21-73 In response to Mr. Donovan's Counsel, Mr. Byrne reiterated that he could not say that none of the events described by Mr. Donovan happened but he could not remember one way or the other. He agreed that if a young examiner encountered the matter of back-to-back loans on his first inspection without knowing any relevant history, this could be expected to prompt him to further inquiries, and that his natural route would be to Mrs. Horan and ultimately to Mr. Byrne. Mr. Donovan's promotion to the position formerly held by Mr. Byrne had been earned because of the very good quality of his work.

21-74 In response to Counsel for the Central Bank, Mr. Byrne stated that if anyone within the Central Bank had given him information that might have been relevant to the Tribunal prior to making his statement in February, 2000, he would have considered it, and included it in his statement if he deemed it necessary, but Mr. Donovan brought no such information to him. Had he raised the relevant matter, Mr. Byrne believed he would have remembered it, having been very familiar with the accounts in question for

a long number of years. It was Mr. Byrne himself who had uncovered these matters in 1976, which made him particularly interested in their progress, and if something had emerged in 1988, he would certainly have followed it through. Both in the course of the next Guinness & Mahon inspection in 1992, and the takeover by Irish Life & Permanent Plc in 1994, Mr. Donovan had further opportunities to air his concerns, and did not avail of them.

21-75 Of shorter concluding Central Bank witnesses, Mr. Brian Halpin, Manager of the Banking Supervision Department in 1988, also testified. He stated that he had no recollection of the meetings with Mr. Donovan referred to by him in connection with the 1988 Guinness & Mahon inspection. If he had been approached on Mr. Donovan's behalf by Mr. Deasy in the manner indicated, he was sure that he would have discussed his concerns with Mr. Donovan at the earliest opportunity. No specific concerns had been mentioned as having been raised with him by Mr. Donovan, and he had to presume that he was satisfied that any concern that might have been raised in regard to the inspection was adequately addressed by the officers in charge of it, and that there was no reason why Mr. Donovan should seek a transfer out of the Banking Supervision Department. In asking him to assist in relation to the inspection so soon after he came to the Department, Mr. Halpin's primary objective was to enable him to gain experience of inspection procedures and techniques as soon as possible. Mr. Halpin was satisfied that the 1988 Inspection Report contained all material findings of that inspection. Back-to-back loans which had been the subject matter of previous correspondence with the Central Bank had been included in the 1988 Inspection Report. On Mr. Donovan's account, it seemed his concerns related to the quality of security backing these loans, that he had not been aware of previous correspondence on the subject, and that Mr. Pender seemed to suggest that Mr. Donovan should check the record of correspondence. The inspection team had pressing prudential concerns regarding other Guinness & Mahon loans which involved much greater risk of default than the back-to-back loans. Indeed the Central Bank had very material supervisory concerns regarding the ownership and continued viability of Guinness & Mahon. Mr. Halpin confirmed that at all stages he was very satisfied with the performance of his duties by Mr. Donovan. It was confirmed by Mr. Halpin that the bulk of the back-to-back loans as then disclosed to the Central Bank were foreign currency loans to non-residents. When they found out that in fact the practice had continued in relation to residents despite the undertakings, the feeling in the Central Bank was one of outrage, since breaches of basic banking legislation were involved, in addition to the taxation question. Insofar as Mrs. Horan had not been aware of the relevant dealings with Guinness & Mahon in the 1970s, Mr. Halpin accepted from Tribunal Counsel that not every aspect of possible concern had been addressed in the 1988 Report.

21-76 The final witness was Ms.. Elaine Byrne, who had participated as an examiner in the 1988 Report with Mrs. Horan and Mr. Donovan. During the on-site work, which took place under the supervision of Mrs. Horan

between 8th February and 18th February, 1988, Ms. Byrne recalled reviewing a sample of loan files, and taking notes of meetings with officials of Guinness & Mahon, as requested by Mrs. Horan. She also carried out a spot check on the work of the foreign exchange department of the Bank at the request of Mr. Halpin. To the best of her knowledge, Mr. Donovan was requested by Mrs. Horan to carry out an analytical review of the balance sheet of Guinness & Mahon, and to review certain large loans which appeared not be performing satisfactorily. In working with Mrs. Horan in the preparation of the Report, it was quite likely that Mr. Donovan passed on to her some of the material relating to his work for inclusion in the Report. It was the position that Mr. Lanigan O’Keeffe had been assigned as the official of Guinness & Mahon to assist the Central Bank in the course of its inspection. Ms. Byrne had no specific recall of Mr. Donovan referring to concerns arising from a meeting with Mr. Lanigan O’Keeffe, but she did recall him then referring to a meeting with Mr. Pender; in this regard, she recalled thinking that as a fellow junior examiner she was glad not to have to meet a senior manager in that manner. As to the occasion referred to by Mr. Donovan of a document being produced to him by Mrs. Horan, Ms. Byrne had a recollection of being in Mrs. Horan’s office along with Mr. Donovan, and some reference being made by Mrs. Horan about a note which may have been related to back-to-back deposits, an aspect she understood to relate to Mr. Donovan. Her recollection included seeing a note that was in typed form of maybe a page or slightly over a page, but she did not recall any such encounter as having taken place in the open plan portion of the Central Bank referred to by Mr. Donovan.

CONCLUSIONS

21-77 As has become apparent from other evidence, both to the McCracken Tribunal and this Tribunal, Guinness & Mahon failed abjectly to afford due or proper disclosure and cooperation to Central Bank Inspectors in respect of loans to Irish residents backed by off-shore deposits, and supplied materially false and deficient information in connection therewith. In particular, the existence and mode of operation of the Bureau System in Dublin was withheld from Inspectors, incomplete and inadequate disclosure relating to such loans was made, spurious explanations of their basis were advanced, and undertakings that their continuance would diminish and cease were dishonoured.

21-78 Other than the existence and mechanics of the Bureau System in Dublin, the Central Bank Inspectors were made aware of the essential features of the back-to-back loan arrangements in question, whereby Irish residents were enabled to earn interest on off-shore deposits free of tax, whilst at the same time claiming tax relief on the loans thereby backed. Inspectors were also requested not to note the names of Guinness & Mahon clients who had availed of such loans, and were later informed (falsely) that no relevant documentation was kept within Ireland, in each instance

because of Revenue sensitivities; there was also a reluctance on the part of bank office staff to answer relevant questions and an indication that these should be referred specifically to Mr. Traynor, coupled with a further reluctance to provide all material documentation, to set forth in writing a satisfactory explanation for the related loan arrangements, and an improbable verbal justification in that behalf provided by Mr. Traynor. Regard has been had to the possibility of importing in hindsight an untowardly high duty of care on the part of the Central Bank Inspectors, and to the various reasons advanced in evidence for not having taken more decisive action on the matter. These include the perceived overriding function in inspections of protecting depositors and ensuring banks did not fail, the disposition to exercise trust in favour of a long-established bank and its Senior Officers, the absence of knowledge of the Bureau System, constraints of the oath of confidentiality, and caution resulting from the adverse outcome in litigation relating to the Irish Trust Bank. A careful and lucid written submission on behalf of the Central Bank in relation to these and other matters has also been considered with care. Yet it appears to the Tribunal that, in the course of the succeeding inspections and meetings had with Guinness & Mahon personnel, sufficient of a concerted and clandestine course of dealings designed to circumvent substantial tax payments was clearly apparent to the Central Bank to have rendered a more positive and proactive response on its part imperative. Both Mr. Murray and Mr. O'Grady-Walsh acknowledged in evidence that, had the actions on the part of Guinness & Mahon constituted tax evasion, it would have been incumbent on them to have taken action in relation to Mr. Traynor's ongoing position. In the light of what was known, including the negative response that was given to Mr. Traynor's request as to Solvency or Free Resources Ratio in relation to the backed loans, it is difficult indeed to see how what was involved was other than tax evasion, and what appears to have been the minority view advanced by Mr. Adrian Byrne in particular appears clearly preferable and worthy of commendation. Even if what was apparent fell short in strict terms of coming within the category of tax evasion, its nature, persistence and potential repercussions necessitated firmer and more concerted action than was apparent. The Central Bank was of course at that time precluded from disclosure of the information acquired by it to the Revenue Commissioners or other Irish agencies, but as the statutory licensing authority in relation to banks, its entitlement and duty to address what had become apparent, whether by conditions attached to the licence or otherwise, was beyond doubt. Had this course been taken, it would in all probability have accelerated the rate and level of response on the part of regulatory authorities generally to abuses within Irish banking that were not unique to Guinness & Mahon. In this context, it was significant and justified that Counsel on behalf of the Revenue Commissioners saw fit to cross-examine Central Bank witnesses on the basis that has been noted.

21-79 In the light of all available evidence, it appears to the Tribunal probable that Irish borrowers from Guinness & Mahon were aware of and

agreed to the scheme whereby a default in repayment would occasion forfeiture of the backing deposit placed off-shore with its Cayman subsidiary, from whom it would in turn be remitted to the parent bank in Dublin. Accordingly, the Irish customer had a commitment to a party outside the Scheduled Territories, and exchange control requirements were applicable. The absence of compliance with such requirements in many instances ought to have been a further factor in occasioning more vigilant action on the part of the Central Bank in relation to these loans.

21-80 Of the limited evidence available from former Guinness & Mahon personnel, some aspects verged on the unbelievable. Whilst some allowance must be made for ill-health and indisposition on the part of Mr. Maurice O'Kelly, who had suffered a serious stroke, it is extremely difficult to attach serious probative weight to his evidence that, as a long time friend and colleague of Mr. Traynor, Accountant and Managing Director of Guinness & Mahon (initially Joint), he had until 1978 been unaware of the back-to-back loan system, and had thought the designation "*suitably secured*" merely meant that the Bank was satisfied with the standing and integrity of the borrower, particularly given instances of Credit Committee loan approval minutes signed by him which coupled that designation with a reference to Guinness Mahon Cayman Trust.

21-81 From the evidence of Mr. Richard Robinson and Ms. Sandra Kells, and the content of the letter of 17th October, 1985 from Mr. Bruce Ursell to Mr. Traynor, the Tribunal is satisfied that the operation of the Bureau System had been known to the Directors of both Guinness & Mahon and Guinness Mahon & Company in London, as of October, 1985, and probably for some appreciable time previously, rather than as having dated from the Internal Audit Report prepared in 1989.

21-82 Turning to the differences that emerged in evidence in relation to the 1988 Central Bank Inspection of Guinness & Mahon and surrounding circumstances, it is noted that the extent of those differences and the gravity of resultant inferences that might be drawn have been moderated in the course of both the statements prepared and the evidence heard. Mr. Donovan stated that it was important that the content of his evidence should not be taken out of context, and that more significance should not be attached to it than was warranted; he also accepted that the deluge of information which had reached him around the time of making his statement might have affected his recall, which could have impacted upon his evidence, and was disposed to exclude as an inference properly to be drawn from his evidence that there had been an orchestrated conspiracy within the Central Bank to silence him as having come too close to embarrassing events. Similarly, of those officials at the time whose recollections differed, none advanced a view that Mr. Donovan was giving knowingly false testimony, and all praised the quality of his work, which since the events of 1988 had won him significant promotion within the

Central Bank. Nonetheless, serious differences remained in the evidence that was heard, and whilst not all of these may directly fall within the Tribunal's Terms of Reference, it would be remiss not to express certain conclusions which follow upon careful consideration.

21-83 In the first instance, having regard to the evidence of Ms. Elaine Byrne that she recalled Mr. Donovan referring to having had a meeting with Mr. Pender in the course of the inspection, and also that some subsequent communication between Mrs. Horan and Mr. Donovan took place in her presence with reference to a note that may have related to the back-to-back deposits, albeit in a venue and circumstances not in accord with Mr. Donovan's recall, it is accepted that this provides some measure of corroboration as to the unusual aspect of a Trainee Examiner meeting a Senior Bank Official alone, and logically suggests that that meeting followed upon some communications between Mr. Donovan and Mr. Lanigan-O'Keeffe. Similarly, that evidence confirms some degree of post-inspection contact between Mrs. Horan and Mr. Donovan.

21-84 Where Mr. Donovan's recollections are less persuasive are in regard to the extent and detail of his communications with Senior Central Bank colleagues at the time of and shortly subsequent to the inspection. Mr. Brian Halpin, Manager of the Banking Supervision Department in 1988, and Mr. Michael Deasy, then the Deputy Manager, each testified as to having no recollection whatsoever of the relevant meetings or dealings with Mr. Donovan referred to by him. However, the more crucial differences relate to what may or may not have transpired between Mr. Donovan and each of Mr. Adrian Byrne and Mrs. Ann Horan. Regarding Mr. Byrne, it has already been noted that Mr. Donovan disavowed any suggestion of an orchestrated conspiracy to deflect him from examining the back-to-back loans, but it is in any event significant that on Mr. Donovan's own evidence, he accepts that Mr. Byrne assented to Mr. Donovan proceeding with and concluding these inquiries, and in no sense sought to deter further inquiry. Likewise, from the overall impression made by Mr. Byrne's earlier evidence, and his diligence in investigating the backed loans, which disposed him towards a more robust approach than was ultimately adopted, it would seem uncharacteristic for Mr. Byrne to have sought to minimise the younger colleague's interest in the matter at a later stage. More pertinently to the limited degree of remaining differences, it would seem that if Mr. Donovan had conveyed his concerns to Mr. Byrne as fully as he recalled, Mr. Byrne would have noted it and referred to it in his initial statement of February, 2000.

21-85 The evidence of Mrs. Ann Horan appeared balanced, dispassionate and persuasive, and it is felt improbable that, if Mr. Donovan had expressed his discontent to her in terms as unequivocal as recalled by him, she would have taken no action, registered no response or retained no recollection. Similarly, if her own state of knowledge at the time of the

1988 Inspection regarding the earlier history of back-to-back loans in Guinness & Mahon had enabled her to respond to Mr. Donovan as recalled by him, it is felt improbable that she would not have recalled this in the course of her evidence, or still less that she would have wilfully omitted this. Her professed unawareness of that history occasioned Mr. Donovan to be implicitly critical of her preparation for the 1988 Inspection. This is felt unwarranted, and the Tribunal accepts that what was conveyed to her in advance of the inspection laid stress upon the prudential matters affecting the bank in the context of its immediate financial problems, and did not set forth the prior history in relation to back-to-back loans. It should not have been the case that this was omitted, and the fact that prior concerns and verification of undertakings were allowed to dwindle into oblivion reflects a degree of systemic failure on the part of the Central Bank, but ought not properly to be viewed as reflecting fault or inattention on the part of Mrs. Horan.

21-86 Some matters that arose in the course of Mr. Donovan's comparatively lengthy evidence occasioned some concern as to the precision of his recollection of events some twelve years previously, as opposed to the further details he may have assimilated in the year 2000. Among these was his recollection of the encounter with Mrs. Horan after the 1988 on-site inspection had concluded. His evidence markedly extended in both details and context the account given in his lengthy and detailed statement in this regard, and his succeeding recollections that Mrs. Horan appeared annoyed over something connected with the document that she produced, yet still was devoid of any venom towards Mr. Donovan, when she stated that what had arisen was all his fault, did not rest easily together. It was also the case that Mr. Donovan did not act with any urgency in seeking or investigating all that had transpired, and that he had not seen fit to avail of a number of opportunities to record his concerns prior to actually doing so, which accords less than fully with a picture of a whistleblower whose expressed concerns were ignored or trivialised. Accordingly, the Tribunal is on balance of the view that Mr. Donovan did indeed happen upon the unfinished business of the back-to-back loans, and dealt with Mr. Lanigan-O'Keeffe and Mr. Pender in that regard, but that the degree of concerns and misgivings expressed by him to senior colleagues at the time fell significantly short of what was recalled by him in evidence. This may, as he conceded, have to some extent reflected the surfeit of information that came to his attention only in the year 2000, or may unconsciously have reflected a feeling that he ought to have responded to the matter in 1988 more vociferously than he did, but in any event does not reflect wilful falsity or distortion on his part.

21-87 As has already been referred to, what transpired to be a difficult and awkward situation for Central Bank personnel involved with Guinness & Mahon at different stages arose to a significant degree from the manner in which the serious unfinished business of the back-to-back loans and Mr.

Traynor's undertakings was permitted to be ignored or forgotten. In general terms recommendations are matters that will primarily be addressed in the second part of this Report, and it may be that the Central Bank has already addressed what arose, but in any event the Tribunal is of the view that some protocol or set of procedures should be established to ensure that future bank inspections do not ignore or neglect significant matters of unfinished business from past inspections, both with regard to all material documentation, and to persons having charge of past inspections.

BRIEF CONCLUDING OBSERVATIONS

22-01 The main thrust of this Part of the Report relates to the finances of Mr. Charles Haughey, and the manner in which these may have related to or impacted upon his conduct in the positions of public office held by him during the years 1979 to 1996 inclusive. From the totality of the evidence heard, inescapable conclusions must be drawn that he received a wide range of substantial payments falling squarely within the Tribunal's Terms of Reference, and that certain of the acts or decisions on his part while Taoiseach, were referable to some of those payments.

22-02 Throughout the said 1979-1996 period, Mr. Haughey lived a lifestyle and incurred expenditures vastly beyond the scale of the public service entitlements which were his sole apparent income for virtually the entire of that period, and which were in any event cashed by him on a monthly basis. This was primarily enabled by the bill-paying service set in place for Mr. Haughey by Mr. Desmond Traynor.

22-03 The funds provided to that bill-paying service were primarily enabled by borrowings during the first year of that period, and for some years prior to it. After Mr. Haughey first became Taoiseach at the end of 1979, the borrowings receded, and the funds were derived primarily from clandestine donations, and recourse to the Leader's Allowance Account, including not merely amounts of public monies, but money intended for the medical expenses of the late Mr. Brian Lenihan.

22-04 No information whatsoever in relation to payments found to be within the Terms of Reference was at any stage volunteered by or on behalf of Mr. Haughey. Whilst some related aspects were subsequently and belatedly admitted on his behalf, several portions of his related testimony are viewed as unacceptable and are rejected.

22-05 In particular, the Tribunal cannot accept the testimony given by Mr. Haughey to the effect that he knew virtually nothing of his financial arrangements, and left these matters to Mr. Traynor. Apart from Mr. Haughey's own considerable involvement in these arrangements personally, the Tribunal is satisfied from the evidence, in particular that of Mr. Tony Traynor, Ms. Joan Williams, Mr. Pádraig Collery and Ms. Catherine Butler, that the nature of substantive arrangements was imparted to Mr. Haughey by Mr. Traynor in the course of their frequent dealings. As a relatively limited example in itself, the evidence of Mr. Haughey given on commission on 6th March, 2001, to the effect that he had never heard of the Cayman Islands before the Tribunal started, and had never at the time of his meetings with Mr. Traynor known that Mr. Traynor was a regular traveller to the Cayman Islands on foot of his business interests, is unbelievable.

22-06 The Tribunal similarly rejects and notes with some regret evidence given by Mr. Haughey in which he sought to saddle such individuals as Ms. Eileen Foy, Mr. Paul Kavanagh and Mr. Jack Stakelum with responsibility for particular aspects of financial affairs. Regarding funds from the Leader's Allowance account, which were applied for the benefit of Mr. Haughey, the version advanced in evidence by Mr. Haughey to the effect that Ms. Foy operated a form of accounting procedure to ensure restitution in relation to any personal benefit obtained by Mr. Haughey is specifically rejected.

22-07 Such evidence as was given by Mr. Haughey as sought to justify any acceptance of personal donations, either on a basis of disinterested citizens seeking to assist a politician whose views they supported, or of according with practices gleaned from "*biographies of English political leaders down the years*", is rejected. Apart from the almost invariably secretive nature of payments from senior members of the business community, their very incidence and scale, particularly during difficult economic times nationally, and when Governments led by Mr. Haughey were championing austerity, can only be said to have devalued the quality of a modern democracy.

22-08 The aggregate funds which the Tribunal has identified as having been available to Mr. Haughey in the years from 1979 to 1996, is £9,106,369.17. This figure excludes Mr. Haughey's income or pensions from his public offices, and further excludes any additional funds that may have been available to Mr. Haughey from the activities of the Stud business conducted from Abbeville, and from the limited farming enterprise which Mr. Haughey himself undertook following his retirement from public life.

22-09 The computation of the total figure is itemised in the Table comprised in Appendix J to the Report. In arriving at this figure, the Tribunal has endeavoured, as far as is reasonably possible, to exclude elements of double-counting, and has adopted a conservative approach to the inclusion of items of receipt and items of expenditure. With the exception of a portion of the payment made by Mr. Ben Dunne in November, 1997, and a personal payment of £20,000.00 which he made in May, 1993, all payments made by Mr. Dunne to Mr. Haughey have been excluded on the assumption that, having been lodged to Ansbacher accounts, they were applied to Mr. Haughey's bill-paying service, or are reflected in the balances which stood to the credit of the S8 and S9 accounts as of 31st December, 1996. The Tribunal also has refrained from attributing the entire of the differential between what appears to have been raised for the benefit of the late Mr. Lenihan, and what appears to have in actuality been applied to that end, as having been available to Mr. Haughey, even though there is considerable evidence to support that view.

22-10 The figure of £9,106,369.17 is the equivalent of €11,565,088.84, which of itself is a very considerable sum of money. If the aggregate figure is taken as a multiple of Mr. Haughey's then gross salary for the year 1988,

which was the mid-point in terms of the accrual of the funds available to him, it represented a multiple of 171 times Mr. Haughey's gross salary of £53,161.00. Whilst it is not intended to relate money values of today with those of the 1980s, if that multiple of 171 is applied to the current gross salary payable to a Taoiseach, the figure which was available to Mr. Haughey, in comparable terms would amount to €45 million. If the aggregate figure is factored up by reference to Mr. Haughey's gross salary just prior to his retirement in February, 1992, of £76,900.00, giving a multiple of 118 rather than 171, the comparable amount would be €31 million.

22-11 Whilst the number of acts or decisions on the part of Mr. Haughey that have been found to fall within the Terms of Reference is limited, although scarcely insignificant, and whilst as stated a limited number of matters privately investigated did not warrant proceeding to public sittings, this cannot and does not give rise to a finding that all other acts or decisions in public office on the part of Mr. Haughey during the relevant years were devoid of infirmity. In terms of both time and resources, a detailed investigation of all such acts or decisions, or even a substantial proportion of them, would be wholly impracticable.

22-12 As stated, the vast majority of payments to Mr. Haughey found to have been within the Terms of Reference were made in forms that were secretive, opaque and frequently involved off-shore vehicles. Had such payments been in all respects proper and accountable, it is difficult to see the need for such structures, or the extreme reluctance in many cases to acknowledge their making. Even where benefits were conferred on Mr. Haughey on foot of agreements that were likely to be subjected to audit, or some other external scrutiny, as in the case of the settlement agreement with Allied Irish Banks and its subsequent Press Release, or in the case of the purported agreement made with the Gallagher Group, it was noteworthy that the forms employed sought to convey a higher level of commerciality than was warranted by the actual agreements.

22-13 Given the totality of the evidence heard in relation to the Tripleplan payment, and subsequent payments by Mr. Ben Dunne to Mr. Haughey, communications had by Mr. Haughey with the Revenue Commissioners, and the course of dealings had between Mr. Dunne, Mr. Noel Fox and the Revenue Commissioners, it is the conclusion of the Tribunal that Mr. Haughey in return for such payments acted with a view to intervening improperly in a pending tax case of great magnitude. Whilst recognising that ultimately the Dunnes tax appeal was successful, Mr. Haughey's role in this matter is particularly noteworthy in the context of the state of the public finances in 1987. One of the salient features of his involvement in the Revenue handling of the matter was his persistence in intervening with successive Chairmen, matched only by Mr. Dunne's persistence in requesting his intervention. This is not explicable, at least on Mr. Dunne's part, on the basis of a desire to meet the Chief Officer of the agency he was dealing with when, without Mr. Haughey's involvement, the Dunnes

Trustees had already gained access to and made contact with Mr. Pairceir. At a time when the finances of the State were under extreme pressure, Mr. Haughey, as the head of the Government, had a particular duty to maintain the paramountcy of Revenue in collecting taxes, and this ought to have been reflected in a studious avoidance of unnecessary contact as opposed to his persistence in advertising to Revenue his interest in Dunnes affairs so as to signal his support for a radical reduction in the amount of tax being demanded by Revenue.

22-14 Having regard to the contents of the Chapters dealing with Passports, and with the Leader's Allowance Account, the Tribunal notes with concern a disposition from time to time on the part of Mr. Haughey, as Taoiseach, to involve himself in the affairs of individual Government departments, without any, or any proper reference to the responsible Ministers, and in so doing to deal inappropriately with individual Civil Servants.

22-15 In preparing this Report, the Tribunal has been required to do so in accordance with its Terms of Reference, and is in no sense engaged in preparing a political biography of Mr. Haughey, or in a subjective taking of accounts of positive and negative elements in his career. Insofar as any personal aspects did emerge from evidence heard, they undoubtedly included an acknowledgement of much diligence and capability in the manner in which Mr. Haughey discharged his day-to-day responsibilities as Taoiseach, but also included elements of fear and domination engendered by him in individuals in both private and public sectors.

22-16 It has been an unattractive task for the Tribunal to have to investigate, and take evidence from Mr. Haughey at a time of declining health, and also to have to express necessarily harsh conclusions in the year of his death, and at the time of year that this Report is presented. In dealings with him, it was sought as far as possible to make accommodation for his state of health, and to accord him due courtesy. In reporting it has been sought, as was stated at the outset of the Tribunal, to avoid the extremes of either fudge or witch-hunt. It is likely that this part of the Report could have been presented at an appreciably earlier stage, had it not been for correspondence between Mr. Haughey's solicitors and the Tribunal between the months of November, 1997 and May, 2001 running to approximately five hundred and ninety items, many of considerable protraction, the preponderance of which provided no constructive assistance to the Tribunal.

22-17 It has already been noted that the role of Mr. Ben Dunne was both substantial and crucial. Whilst it is accepted that Mr. Dunne was a courteous witness, and one who regularly attended public sittings when requested to do so, the Tribunal cannot accept what has been conveyed to it, in submissions and medical reports furnished on his behalf, to the effect that the several instances of further payments on his part discovered

by the Tribunal had eluded his memory. From careful observation of Mr. Dunne in evidence on several occasions, not least in his recollections of the earlier portion of dealings had in relation to the Dunnes Trust, it appeared that he could be an astute and observant witness in respect of many matters and, given the high quality of assistance and advice at all times available to him, the Tribunal cannot accept that all these successive transactions, and in particular one so pivotal as the Tripleplan payment, were matters in respect of which he had no actual recollection.

22-18 Whilst relevant Recommendations are not being made at this juncture, the Tribunal has noted with approval a number of significant amendments and improvements since the time of the events examined in this part of the Report, both legislative and practical, to provide for higher levels of probity in public office, and to prevent any likelihood that the abuses noted in the Chapter on the Leader's Allowance Account could recur. It is also encouraging to see that, both through legislation and revised practice, the disposition of banks and finance houses towards ensuring tax compliance on the part of customers has markedly improved during the lifespan of the Tribunal, an aspect noted in the testimony of the Chairman of the Revenue Commissioners, Mr. Frank Daly, earlier in 2006.

22-19 Concerning the years 1979 to 1992, the Tribunal was undoubtedly examining what for much of the time was a dismal period in the interface between politics and business in recent Irish history. Having regard to its Terms of Reference, resources, and the time already occupied in investigations, the Tribunal does not purport to have uncovered all significant improprieties in this sphere (not necessarily related to Mr. Haughey). However, while what transpired was unacceptable, wrong and must not be replicated, it would be quite unwarranted to conclude that "*everyone was at it*". It would require a certain wariness to assert that what took place could never happen again, but a much changed legislative environment, particularly as regards powers and sanctions in the sphere of Revenue, allied to what would seem a discernible change in public attitudes, makes a repetition less likely.

22-20 In the sphere of media matters, the Tribunal has sought to recognise the important role of both print and broadcast media in conveying to the public what transpired at Tribunal public sittings, and in contributing to informed discussion of issues arising. Notice has at all times been furnished to media representatives by the Tribunal Registrar of the dates of sittings and, whilst the Tribunal's duties as to confidentiality obviously inhibit responses to many queries, it has generally been sought to co-operate with media representatives as far as possible. At an early stage of the Tribunal, some correspondence took place with the then Director General of RTE, Mr. Bob Collins, in relation to his request for permission to make television transmissions of public sittings. This request was declined, essentially for the reasons that adequate media coverage was in any event available, that some drawbacks had arisen in similar

transmissions elsewhere and that, having invited the co-operation of significant numbers of potential witnesses in the first instance, it might seem late in the day to then tell them their participation in public sittings could be transmitted nationwide. It is not contended that these reasons are or were definitive, and it may be that a different view will be taken on future occasions. Whilst the Tribunal must at all times adhere to its commitment to base its Reports and conclusions solely upon evidence heard and submissions made, it has of course read and noted media coverage of its affairs, particularly researched articles in the sphere of investigative journalism. Lastly, on the fringes of media matters are the twin phenomena of “leaks” and “spinning”. Neither is conducive to the efficient working of the Tribunal, and both retard and complicate the investigation of relevant matters, and to some extent jeopardise public confidence in the Tribunal process, effects that in most instances are no doubt intended. Yet they are both contemporary features that are not going to go away, and save in potentially extreme cases, the Tribunal has been left to live with them, and proceed as best it can.

CAVEAT

23-01 It has become a function in a number of recent Tribunals of Inquiry that the Report of the Tribunal will contain what is termed an Executive Summary of the principal conclusions, findings and recommendations contained in the main body of the Report. On this occasion, it has been conveyed to the Tribunal that this practice should if possible be adhered to. The Tribunal is anxious to comply, and what follows in this Chapter is a comparatively brief resumé of the principal matters comprised in each of the preceding Chapters of this Part of the Report.

23-02 However, it is to be stressed that it is far from easy to set out in condensed form an accurate or sufficient summary of Chapters that already represent a truncated and distilled account of matters that transpired over many days of evidence and voluminous documentation, together with associated conclusions, findings and recommendations. Accordingly, what follows can be regarded as no more than in itself an endeavour to enable a reader acquire a superficial overview of the main matters addressed; it cannot hope to replicate the full content of what is contained in the detailed Chapters, or to reflect in a fully satisfactory way the balance conveyed in these Chapters, or to enable a full and informed understanding of the substantive subject-matter of the Report.

ORGANISATION OF MR. HAUGHEY'S FINANCES

23-03 Mr. Haughey's sole source of income from 1979 to 1996 was his State entitlements, in the form of his salary (including his ministerial pensions during the years he was leader of the Opposition) from 1979 to 1992, and in the form of his State pension from 1992 to 1996. His gross annual salary ranged from £14,717.00 in 1979 to £75,248.00 in 1992, and following his retirement, his gross pension ranged from £20,442.00 in 1972 to £55,327.50 in 1996, with a lump sum payment in 1993 of £46,219.00. During the entire of those years, Mr. Haughey, while generating relatively modest earnings, lived a conspicuously lavish lifestyle. The Tribunal's task in pursuing its inquiries for the purposes of paragraphs (a) and (b) of its Terms of Reference, involved the Tribunal, in the first instance, in endeavouring to ascertain how, and from what source, Mr. Haughey funded his lifestyle.

23-04 From the early 1960s, shortly after Mr. Haughey devoted himself full-time to his duties as a public representative, until January, 1992, his household and personal expenses were paid through a bill-paying service which was administered jointly by Mr. Haughey's personal secretary who was based in Abbeville, Kinsealy, and by the business service division of Haughey Boland, Chartered Accountants, of which firm Mr. Haughey had been a founding member. The service was operated by Haughey Boland through a single bank account, the Haughey Boland No. 3 account held

with Allied Irish Banks, Dame Street, and this enabled an analysis to be undertaken of the drawings from the account to estimate the expenditures made on Mr. Haughey's behalf during the years from January, 1985 (being the date of the earliest account statement which could be retrieved by Allied Irish Banks) to January, 1991.

23-05 The immediate source of funds to the bill-paying service from 1979 to January, 1991 was accounts held in Guinness & Mahon, initially in Mr. Haughey's own name, and from mid-1983 in the names of Amiens Securities Limited, Amiens Investments Limited and Kentford Securities Limited, which were bank accounts controlled by Mr. Traynor, and which formed an integral part of the operation of the Ansbacher accounts.

23-06 From February, 1991, following the creation of the much larger accountancy practice of Deloitte & Touche, which incorporated Haughey Boland, an equivalent bill-paying service was provided by Mr. Jack Stakelum, through his company, BEL Secretarial Services. Mr. Stakelum opened a dedicated account which he used exclusively for the purposes of administering the service with Allied Irish Banks, 52 Upper Baggot Street, Dublin 4.

23-07 During the years that Mr. Stakelum operated the bill-paying service, it was funded from accounts held in Irish Intercontinental Bank Limited. This change in the immediate source of funds coincided with the movement of the Ansbacher accounts from Guinness & Mahon to Irish Intercontinental Bank.

MR. HAUGHEY'S ACCOUNTS AT DAME STREET

23-08 In December, 1979, when Mr. Haughey was elected Taoiseach, he was indebted to Allied Irish Banks, Dame Street Branch, in the sum of £1.143 million. The indebtedness had accumulated progressively during the 1970s, and related solely to personal and household expenditures made by Mr. Haughey during those years, and included the funding of the bill-paying service then provided by Haughey Boland. In the course of much of the 1970s, the Bank, while indicating its concerns through extensive correspondence, memoranda and meetings with Mr. Haughey, took no action whatsoever to curb Mr. Haughey's mounting indebtedness, or to recover the debt which he owed. On the contrary, the Bank exhibited a marked deference in its attitude to Mr. Haughey, and a disinclination to address or control his excesses as a banking customer which had accumulated over several years, and which became increasingly pronounced when he was appointed a Government Minister in 1977.

23-09 Following negotiations conducted by Mr. Traynor, on Mr. Haughey's behalf, the commencement of which coincided with Mr. Haughey's election as Taoiseach, with the then Deputy Chief Executive of Allied Irish Banks,

Mr. Patrick O’Keeffe, a settlement was concluded in January, 1980, the terms of which were confirmed by letter dated 24th January, 1980 from Mr. O’Keeffe to Mr. Traynor. Under the terms of the settlement, Mr. Haughey’s debit balance with the bank was agreed at £860,001.17: £750,000.00 was to be paid by Mr. Haughey by mid-February, 1980, and the balance of £110,000.00 was to stand interest-free on the books of the Bank, and was to be paid within a reasonable period of time. On the discharge of that £110,000.00, the Bank would release its security over Abbeville, and return the deeds to Mr. Haughey. £750,000.00 was paid to the Bank by means of three separate bank drafts drawn on Guinness & Mahon in the following amounts and on the following dates:—

- (i) £600,000.00 — 18th January, 1980.
- (ii) £100,000.00 — 31st January, 1980.
- (iii) £50,000.00 — 14th February, 1980.

23-10 The £110,000.00 was never paid. No steps were taken by Mr. Haughey, or by Mr. Traynor to discharge that sum: nor did the Bank ever either insist on, or even request payment. In 1990, the deeds of Abbeville were requested by Mr. Haughey’s solicitor, and were released by the Bank without demur notwithstanding that the £110,00.00 element of the settlement remained outstanding.

23-11 On 31st January, 1980, Allied Irish Banks issued a press statement in response to an article that had appeared in the Evening Press Newspaper on 28th January, 1983, in which it was suggested that Mr. Haughey had owed the bank £1 million in the previous year. The response issued by the bank was in the following terms:—

“...in the Evening Press on January, 28th, in an article by a Special Correspondent dealing with the financial affairs of a well known figure it was stated that sources close to Allied Irish Banks insist that he owed them around £1 million last year. This statement is so outlandishly inaccurate that Allied Irish Banks feel bound, as a special matter, to say so positively and authoritatively.”

23-12 The Tribunal is of the opinion that the degree of forbearance shown by Allied Irish Banks in the settlement concluded with Mr. Haughey in January, 1980, constituted an indirect payment, or benefit equivalent to a payment, in circumstances within paragraph (a) of the Tribunal’s Terms of Reference. The press release issued on 28th January, 1983 was an unhappy, misleading and inaccurate document. The fundamental premise of the article was to ventilate that it had been rumoured “for years” that Mr. Haughey had owed £1 million to a major bank, and that sources close to Allied Irish Banks stated that he owed them that sum during the previous year, that is, 1982. With the exception that the article was incorrect as to the relevant year, for the Bank to have described it as “*outlandishly inaccurate*” was disingenuous in the extreme. It may reasonably be said that the content of the press relief reflected an appreciable degree of

sensitivity on the part of the Bank in relation to the disposal of Mr. Haughey's indebtedness, and that the course taken in issuing the press release is confirmatory of the fact that Mr. Haughey's office as Taoiseach impacted on the settlement.

23-13 Of the £750,000.00 paid by Mr. Haughey to Allied Irish Banks in settlement of his indebtedness, £300,000.00 was provided by the late Mr. Patrick Gallagher who was then Managing Director of the Gallagher Group of Companies. This payment was made in response to an urgent personal entreaty for financial assistance by Mr. Haughey, following his election as Taoiseach, and was made primarily as a donation to assist Mr. Haughey in clearing his indebtedness to Allied Irish Banks. An agreement dated 27th January, 1980 purporting to provide for the sale of 35 acres of lands at Abbeville at £35,000.00 per acre was not, in the view of the Tribunal, a genuine agreement which either party ever intended should proceed to completion. The Tribunal is satisfied that the £300,000.00 provided, by Mr. Gallagher did not constitute a deposit paid in pursuance of that agreement, but must clearly be regarded as a payment which enabled the discharge of 40% of the monies paid to Allied Irish Banks on foot of its settlement with Mr. Haughey, and in all the circumstances was a payment falling within paragraph (a) of the Tribunal's Terms of Reference.

23-14 The balance of £450,000.00 paid by Mr. Haughey to Allied Irish Banks was funded from an account opened in Mr. Traynor's name in Guinness & Mahon on 11th December, 1979. There were in all five lodgements to that account, which amounted in aggregate to £785,682.55. The Tribunal conducted lengthy and painstaking inquiries in relation to the sources of the lodgements to the account, in the course of both public sittings and on-going private investigations, the latter having been pursued to the extent of hearing evidence in private. Whilst it is clear that Bank of Ireland was the source of two of the lodgements to the account, each for £150,000.00, and that the Rotunda Branch of that Bank was the source of the lodgement in that sum made on 11th December, 1979, due to the unavailability of bank records, the Tribunal was unable to trace the sources of those two lodgements further. Although identification of such source or sources to a standard warranting further public sittings was not forthcoming, it is nonetheless clear that the likelihood of this sum having been funded by virtue either of further borrowings or realisation of assets can be dismissed as reasonable possibilities, and that the clear probability is that this sum was funded by a further donation or donations procured at the time of the settlement by or on behalf of Mr. Haughey. Having regard to all of the evidence available, the Tribunal is not disposed to accept that a person of Mr. Haughey's intelligence, insight, political experience and qualifications, as both accountant, barrister and senior politician, was ignorant in relation to the identities of any other benefactor or benefactors who came to his financial aid in the context of the funds required to discharge his indebtedness to Allied Irish Banks.

MR. HAUGHEY'S FINANCES 1979-1986

23-15 Mr. Haughey held four bank accounts in his own name with Guinness & Mahon from 1989: the earliest record of an account in Guinness & Mahon in Mr. Haughey's name was in 1976. The four accounts were virtually dormant from mid-1983, and the last of the accounts was closed in May, 1987 when the debit balance of £282,880.73 was cleared with funds provided by Mr. Ben Dunne.

23-16 Resident Current Account No. 1 (28500/01/50) (subsequently 0335600) was Mr. Haughey's principal operating account, and was the last of his accounts to close. The total funds lodged to the account from 1st January, 1979, net of transfers from other accounts in Mr. Haughey's name, was £1,243,083.00 and the bulk of the lodgements were made between February, 1979 and May, 1983. In excess of £400,000.00 appears to have been drawn from the account to fund Mr. Haughey's bill-paying service, and again the preponderance of those drawings pre-dated June, 1983. The lodgements and withdrawals from the account have been extracted from the account statements and consolidated in tables comprised in Appendix C and D to the Report.

23-17 The Tribunal sought to identify the sources of the significant lodgements to the account but due to the unavailability of banking records, and Mr. Haughey's inability to provide any assistance, there were a number of instances where the Tribunal's inquiries could not be advanced. It is however apparent that, apart from the proceeds of borrowings from Northern Bank Finance Corporation, and from the Agricultural Credit Corporation, there were substantial lodgements to the account which, in all probability, represented payments made to Mr. Haughey from unidentifiable sources. These lodgements were as follows:—

- (i) £200,000.00 lodged to the account on 4th January, 1983, and which represented a transfer of funds from a sterling Ansbacher account held with Guinness & Mahon, and which in all probability, reflected a payment to Mr. Haughey from a person connected with the Ansbacher accounts.
- (ii) £100,000.00 lodged to the account on 10th January, 1983, which represented the proceeds of a cheque in that sum drawn on Allied Irish Banks, and which in all probability, reflected a payment made for Mr. Haughey's benefit by a customer of Allied Irish Banks.
- (iii) £30,000.00 lodged to the account on 19th May, 1983 which represented a transfer of funds from an Amiens account controlled by Mr. Traynor, and the ultimate source of which was a loan account in the name of the late Mr. PV Doyle.

- (iv) £20,000.00 lodged to the account on 9th April, 1985 which represented a transfer of funds from another of the Amiens accounts controlled by Mr. Traynor, and the source of which cannot be identified with certainty.

23-18 Resident Current Account No. 2, No. 3356019, was opened in May, 1983, and closed in January, 1984, although activity on the account was limited to the months from May to September, 1983. The total sum lodged to the account was £211,344.50 and funds in the account were also used to fuel the bill-paying service operated on Mr. Haughey's behalf, with some £80,000.00 being applied for that purpose in the three month period from May to July, 1983. Apart from the proceeds of Mr. Haughey's seasonal loan from the Agricultural Credit Corporation, and the proceeds of transfers from other accounts in the name of Mr. Haughey, £80,000.00 was introduced to the account from an Amiens account controlled by Mr. Traynor, and the ultimate source of which was a loan account in the name of Mr. PV Doyle.

23-19 Joint Account No. 023180 was opened in November, 1981 and closed in September, 1984. In all, there were no more than nine transactions across the account and throughout its operation, the account was overdrawn. It is probable that all five withdrawals from the account, amounting to £150,000.00, reflected funds provided to Mr. Haughey's bill-paying service. Apart from the final transfer from Mr. Haughey's no. 1 account to clear the outstanding balance, £113,897.00 was introduced to the account in the form of three lodgements which were as follows:—

- (i) £53,897.76 which was lodged to the account on 18th January, 1982 and appears to have represented the proceeds of a cheque or instrument drawn on another bank, and which may have represented a payment made for the benefit of Mr. Haughey.
- (ii) £10,000.00 on 5th May, 1983 which represented a transfer of funds from an Amiens account controlled by Mr. Traynor, and the ultimate source of which cannot be identified with certainty but, in all probability, was connected with the Ansbacher deposits.
- (iii) £50,000.00 which was lodged to the account on 20th January, 1984 and which represented a transfer from a personal account in the name of Mr. Traynor.

The account was in the joint names of Mr. Harry Boland and Mr. Haughey. Mr. Boland is a qualified accountant and was, with Mr. Haughey, a founding member of the firm of Haughey Boland. Mr. Boland knew nothing of the account until informed by it in the course of the Tribunal's inquiries. The Tribunal accepts that Mr. Boland never opened the account, that he never authorised any other person to open the account, and that he never gave a general form of authorisation to open the account in his name. At the time the account was opened, Mr. Haughey

was heavily indebted to Guinness & Mahon, and it is possible that Mr. Traynor attached Mr. Boland's name to this account, unbeknown to Mr. Boland, to deflect attention within Guinness & Mahon from the growing level of Mr. Haughey's indebtedness.

23-20 Resident Loan Account No. 86256/01/11 operated for just one month from 2nd September, 1981, to 1st October, 1981, and appears to have been used primarily for the purpose of the repayment and crediting of Mr. Haughey's annual Agricultural Credit Corporation seasonal loan. Apart from the repayment of the previous year's loan, a draft for £15,600.05 was issued with funds drawn from the account, and in all probability was applied to Mr. Haughey's bill-paying service.

23-21 The accounts in Guinness & Mahon in Mr. Haughey's name were dormant from mid- 1983, and from that time, with one or two exceptions, ceased to be the source of funds to the bill-paying service. From mid-1983 to January, 1985, from which time statements of the Haughey Boland No. 3 account were available, there was no material which the Tribunal could use as a starting point in endeavouring to identify either the funds available to Mr. Haughey or their immediate or ultimate source. However, it appears probable that the Amiens accounts in Guinness & Mahon, controlled by Mr. Traynor and used as an adjunct to the Ansbacher accounts, were the primary funding entities.

23-22 For 1985 and 1986, the Tribunal is satisfied, from the exercise undertaken by Haughey Boland of estimating the drawings from the No. 3 account referable to Mr. Haughey's bills, that payments in the region of £189,000.00 and £177,000.00 were respectively made. Of the funds applied to the bill-paying service, the Tribunal has tracked eight payments back to Amiens accounts totalling £145,000.00, and it is probable that the demands of the bill-paying service were largely met from these accounts. It does however appear that the Leader's Allowance Account (to which reference will be made in some detail at a later point in this Chapter) was the source of two such payments, in June, 1986 and in October, 1986 of £10,000.00 and £25,000.00.

BORROWINGS IN MR. HAUGHEY'S NAME

23-23 In the years from 1979 to 1987, Mr. Haughey had borrowings in his own name from Guinness & Mahon (through his overdrawn accounts), from Northern Bank Finance Corporation, and from the Agricultural Credit Corporation. In December, 1980, Mr. Haughey borrowed £150,000.00 from Northern Bank Finance Corporation, initially for a term of one year, which was extended for a further term to January, 1983. The proceeds of the loan were lodged to Mr. Haughey's No.1 Resident Current Account with Guinness & Mahon, and interest payments were made from the same account. The loan was cleared by a payment of £154,433.88 on 4th

January, 1983 also from that account. It will be recalled that there was a lodgement of £200,000.00 to the account on the same date, the source of which was a transfer of funds from an Ansbacher account, and it appears clear that the funds were introduced to the account to cover the loan repayment.

23-24 Mr. Haughey also had an annual stocking loan from the Agricultural Credit Corporation. The McCracken Tribunal found that the loan was ultimately paid off in December, 1987 with the proceeds of funds provided by Mr. Ben Dunne. For each of the years up to 1985, the current loan was repaid in September, and a new loan was drawn down, usually within a matter of days. Apart from two of the years when repayments were made from Mr. Haughey's No. 1 Account, repayments were funded from accounts in Mr. Traynor's name in Guinness & Mahon, which were then recouped from Mr. Haughey's account following the lodgement of the new loans. The loans were rolled-over in 1985 and 1986 with interest payments being met.

23-25 There were certain features of Mr. Haughey's relationship with the Agricultural Credit Corporation which were unusual. Firstly, additional measures were taken, at Mr. Haughey's request, to ensure the confidentiality of his affairs. Secondly, the Corporation, also on Mr. Haughey's request, refrained from registering particulars of a chattel mortgage that had been executed by Mr. Haughey as security for his borrowings thereby rendering his borrowings unsecured.

23-26 The Tribunal does not consider that the advantages that accrued to Mr. Haughey by reason of the actions taken by the Corporation, at his request, were sufficiently tangible to constitute benefits conferred on Mr. Haughey within the meaning of paragraph (a) of the Tribunal's Terms of Reference. Nonetheless, these measures were undoubtedly special privileges extended to Mr. Haughey by reason of the public offices which he held. The Tribunal believes that it was inappropriate for Mr. Haughey to seek these special privileges by reference to his office, and that it was equally inappropriate for the Corporation, as a State owned institution, to facilitate Mr. Haughey in that regard.

23-27 It appears from documents made available to the Tribunal by the Central Bank on foot of an Order made by the Tribunal, that Mr. Haughey borrowed the equivalent of stg£400,000.00 from Ansbacher Cayman in December, 1982. These documents related to applications for, and grants of Exchange Control approval to permit borrowings in sterling. The proceeds of the loan do not appear to have been lodged to Mr. Haughey's accounts in Guinness & Mahon, and it is possible that the loans may have been drawn down on a piecemeal basis in 1983 and in subsequent years, and provided to Mr. Haughey's bill-paying service, through the vehicle of the Amiens accounts.

FUNDS PROVIDED FOR MR. HAUGHEY'S BENEFIT BY MR. PV DOYLE AND MR. MAHMOUD FUSTOK

23-28 There were two loan accounts in Guinness & Mahon in the early 1980s in the name of the late Mr. PV Doyle. Both the Estate of Mr. Doyle, and Mr. Haughey accepted that the proceeds of the loans were applied exclusively for the benefit of Mr. Haughey. The funds made available through these loans were not transmitted directly from Mr. Doyle's loan accounts in Guinness & Mahon to Mr. Haughey's accounts in Guinness & Mahon, but were transmitted in a circuitous and secretive manner through the Amiens accounts. Likewise, interest payments made in respect of the loans, which the Tribunal is satisfied were made by Mr. Doyle, were channelled through the Amiens accounts. The loans were cleared in full on 26th February, 1988 with funds transferred from an Amiens account, and which were largely recouped by Mr. Doyle's Estate.

23-29 While the Tribunal heard evidence that these loans were taken in Mr. Doyle's name to facilitate Mr. Haughey, who was then financially embarrassed, and that it was understood that Mr. Haughey would service the interest on the loans, and repay Guinness & Mahon from his own funds, the Tribunal is satisfied that it is far more probable that Mr. Doyle intended to make these funds available outright to Mr. Haughey. The fact that these funds were borrowed by Mr. Doyle from Guinness & Mahon does not, in the view of the Tribunal, detract from the substance or effect of the transaction, namely, the provision of funds by Mr. Doyle for the benefit of Mr. Haughey. The payments, amounting in total to £301,957.27, were undoubtedly substantial payments, even by today's values, and the Tribunal is satisfied that they constituted payments for the purposes of paragraph (a) of its Terms of Reference.

23-30 On 19th February, 1985 a sum of £50,000.00 was lodged to an Amiens account in Guinness & Mahon, the source of which was a cheque provided by Dr. John O'Connell. That cheque represented the proceeds of a payment made by a Saudi Arabian Diplomat and businessman, the late Mr. Mahmoud Fustok, to Mr. Haughey. Mr. Fustok had asked Dr. O'Connell to transmit his payment to Mr. Haughey, which Dr. O'Connell duly did, by lodging it to his own account with Bank of Ireland, and by drawing his personal cheque which was unearthed by the Tribunal.

23-31 It was suggested by Dr. O'Connell, and by Mr. Haughey that the cheque had been provided by Mr. Fustok as payment for a horse, probably a yearling, purchased by him from Abbeville Stud. Mr. Fustok declined to attend to give evidence to the Tribunal but furnished the Tribunal with the same explanation in correspondence, albeit without any further details of the transaction. The Tribunal is satisfied that, while Mr. Fustok may well have purchased a horse from Abbeville Stud, the payment of £50,000.00 in February, 1985, which was made in a secretive and clandestine manner, by being channelled through Dr. O'Connell's bank account, did not relate

to that or to any other commercial transaction, but constituted a payment by Mr. Fustok to Mr. Haughey within the meaning of paragraph (a) of the Tribunal's Terms of Reference, and was specifically connected with the naturalisation of certain of Mr. Fustok's relatives.

THE PARTY LEADER'S ALLOWANCE ACCOUNT

23-32 The Leader's Allowance Account, which was maintained in the joint names of Mr. Haughey, Mr. Bertie Ahern and Mr. Ray MacSharry at Allied Irish Banks, Lower Baggot Street, Dublin 2, was intended as a designated account for the receipt and application of the Party Leader's Allowance, paid by the Exchequer to Mr. Haughey as Party Leader, to meet expenses incurred in connection with the parliamentary activities of the Fianna Fáil Party. During Mr. Haughey's time as Party Leader, there were no adequate controls, statutory or otherwise, governing the operation of the account, or the application of the Allowance. The account was used by Mr. Haughey for other purposes, including the reception of funds from a number of different sources, and the making of payments unconnected with the parliamentary activities of the Fianna Fáil Party, including payments for Mr. Haughey's personal benefit. For all practical purposes, the account was treated by Mr. Haughey as being at his disposal, and Mr. Haughey accepted that it was used for payments not intended to be made from the Leader's Allowance, including payments to meet his personal expenditures.

23-33 There can be no doubt that the Leader's Allowance Account was operated in an irregular and unorthodox fashion by Mr. Haughey. Mr. Haughey accepted that funds were applied from the account for his personal use. In the absence of either the records maintained by Ms. Eileen Foy (who administered the account on Mr. Haughey's instructions), or reliable bank records pre-dating December, 1990, the Tribunal cannot quantify the full extent of personal drawings made from the account by Mr. Haughey. What is however beyond doubt, is that funds from the account amounting to £35,000.00 were applied to Mr. Haughey's bill-paying service in 1986, and that £25,000.00 was drawn by cheque from the account on 20th June, 1989, and was transmitted for Mr. Haughey's benefit to Guinness & Mahon. There were also what were self-evidently considerable personal drawings from the account from December, 1990 to February, 1992 including payments to Charvet of Paris, Le Coq Hardi Restaurant, and cash drawings. In that year, those drawings amounted to £64,367.23, although it must be said that some of these drawings may have been made to meet legitimate expenses of the Fianna Fáil Party. It is the view of the Tribunal that similar drawings were made from the account in the previous years.

23-34 Mr. Haughey, while accepting that these personal drawings were made by him, nonetheless testified that an informal account was kept by Ms. Foy, and that these personal drawings were offset against expenditures incurred by Mr. Haughey primarily in connection with the use of his home

at Abbeville for party activities, and that from time to time Ms. Foy struck a balance in favour of Mr. Haughey, or in favour of the account. From all of the evidence available, the Tribunal cannot accept that any running account was operated as suggested by Mr. Haughey, and the Tribunal is forced to the conclusion that Mr. Haughey did not reimburse the account for personal expenditures made on his behalf.

23-35 As already indicated, there were funds lodged to the account in addition to instalments of the Leader's Allowance. These included payments by Dr. Edmund Farrell of £100,000.00 in 1986, and £40,000.00 in 1991, which the Tribunal is satisfied were not intended by Dr. Farrell as donations to the Fianna Fáil Party but were payments to Mr. Haughey within the meaning of paragraph (a) of the Tribunal's Terms of Reference. There was also £220,000.00 lodged to the account in 1989, in addition to instalments of the Leader's Allowance, much of which, in the Tribunal's view, represented the proceeds of funds collected to defray the medical expenses of the late Mr. Brian Lenihan. As all of these third party funds were intermingled with instalments of the Leader's Allowance, it is possible that they may have met some of the personal expenditures made from the account by Mr. Haughey. However, without the records kept by Ms. Foy, and which were the ultimate responsibility of Mr. Haughey, the Tribunal cannot ascertain the extent to which these third party funds, as distinct from instalments of the Leader's Allowance, were utilised for that purpose. What is clearly evident is that the use of the Leader's Allowance Account by Mr. Haughey was irregular, as regards both the intermingling of funds in the Account, and the manner in which funds from the account were applied.

23-36 There were no statutory or other controls governing the operation of the account at the time, and whilst the Tribunal is satisfied that Mr. Bertie Ahern (who co-signed the cheques drawn on the account), had no reason to believe that the account was operated otherwise than for a proper purpose, the practise of pre-signing cheques by Mr. Ahern undoubtedly facilitated the misuse of the account by Mr. Haughey. This was a practise which has to be viewed as both inappropriate and imprudent, having regard to the nature of the account (being one used to administer funds provided from the public purse), the skills and experience then possessed by Mr. Ahern, and the absence of any internal or external audit of the account. This was a matter which was largely accepted by Mr. Ahern in his evidence to the Tribunal, and it is noteworthy that, at the instance of Mr. Ahern, certain amendments to the law governing the allowance have since been made, which have introduced significant statutory controls in terms of both the application of the allowance, and in terms of accountability to the Public Office Commission.

23-37 In the course of hearing evidence regarding the operation of the Leader's Allowance Account, the scope of the Tribunal's inquiries extended to a scrutiny of funds collected in 1989 for the benefit of the late Mr. Brian Lenihan, and to funds collected for the Fianna Fáil Party in the context of

the General Election which was held in June, 1989. Mr. Haughey determined that funds would be provided to ensure that the cost of Mr. Lenihan's treatment in the United States would be met. It gives the Tribunal no satisfaction to find that Mr. Haughey deliberately sought to raise funds in addition to what he knew, or must have known, was required to meet the cost of Mr. Lenihan's treatment, and that he ultimately applied part of those funds for his own use. No other conclusion can be reached by the Tribunal in the light of the evidence heard. Mr. Haughey initiated a campaign to raise funds for that purpose in late May, 1989, when he knew that the Voluntary Health Insurance Board would make an ex gratia payment of £50,000.00 towards the cost of Mr. Lenihan's treatment, when he had an estimate of the likely cost of such treatment, when he knew that the additional expenses to be met were in the region of £100,000.00, and when he nonetheless fixed £150,000.00 to £200,000.00 as the target figure to be raised. It is evident that Mr. Haughey personally misappropriated the donation of £20,000.00 made by Dr. Edmund Farrell for Mr. Lenihan's benefit, and that he took a series of steps to conceal his actions, including the channelling of the proceeds of the cheque through the bank account of Celtic Helicopters Limited. Mr. Haughey also personally misappropriated £25,000.00 contributed to the Lenihan Fund by Mr. Mark Kavanagh, on behalf of Custom House Docks Development Company Limited, when he remitted that cheque to the Fianna Fáil Party as a donation to Party funds, whilst retaining a further £75,000.00 provided for that purpose by Mr. Kavanagh.

23-38 The Tribunal is satisfied that Mr. Haughey alone knew what was collected for the benefit of Mr. Lenihan, and by whom it was contributed. The Tribunal has established that as much as £265,000.00 may have been collected for that purpose, and that of those funds, no more than £70,283.06 was applied in meeting the costs and expenses attendant on Mr. Lenihan's medical treatment in the United States. The Tribunal is satisfied that a sizeable proportion of the excess funds collected was misappropriated by Mr. Haughey for his personal use.

23-39 Fundraising for the General Election in 1989 proceeded in conjunction with the campaign to raise funds for Mr. Lenihan, and was also utilised by Mr. Haughey to bolster his personal finances. The focus of the Tribunal's inquiries in that regard was on a payment of £75,000.00 made by Mr. Mark Kavanagh of Custom House Docks Development Company Limited, and a payment of £60,000.00 made by Dr. Michael Smurfit of the Jefferson Smurfit Group. Mr. Haughey deliberately and skilfully arranged the manner in which these payments were made to enable him to retain £85,000.00 of the £160,000.00 provided, while ensuring that donations for lesser amounts were recorded as having been received by Fianna Fáil headquarters. By arranging that the cheque intended by Mr. Kavanagh for the Lenihan Fund was paid to Fianna Fáil, that the donation made by Mr. Kavanagh to the Fianna Fáil Party of £75,000.00 was made by three bank drafts for £25,000.00 each payable to cash, and that the payment of

£60,000.00 by Dr. Smurfit was made by a transfer from an off-shore account to the account of Ansbacher Cayman with Henry Ansbacher, Mr. Haughey secured for himself an unfettered capacity to apply the funds at his own discretion.

23-40 By remitting the cheque for £25,000.00 intended as a contribution to the Lenihan Fund to Fianna Fáil headquarters as a donation from Mr. Kavanagh to the Fianna Fáil Party, and by using two of the £25,000.00 drafts provided by Mr. Kavanagh to purchase a draft for £50,000.00 from Guinness & Mahon, and remitting that draft to Fianna Fáil as a contribution by Dr. Smurfit, Mr. Haughey protected both himself, Mr. Kavanagh and Dr. Smurfit in the event that any query might be raised about the application of those donations. Mr. Haughey took the further step of directing Mr. Fleming to record both of the donations as anonymous donations and, to forward receipts to Mr. Haughey, and he thereby obviated the risk of Mr. Fleming forwarding receipts to Mr. Kavanagh or Dr. Smurfit for lesser amounts than the payments actually made. In this way, Mr. Haughey manipulated the recording system that had been implemented by the Fianna Fáil Party to his own ends.

23-41 In his actions over the period leading up to and after the General Election of June, 1989, Mr. Haughey demonstrated a clear and deliberate intention to use the opportunities provided by the raising of funds for the late Mr. Lenihan, and for the Election campaign to advance his personal finances. The evidence heard by the Tribunal established beyond doubt Mr. Haughey's involvement in the misappropriation of the £20,000.00 provided by Dr. Farrell for the Lenihan campaign, the £25,000.00 provided by Mr. Mark Kavanagh for the Lenihan campaign, and £85,000.00 of the donations provided by Mr. Kavanagh and Dr. Smurfit for the Fianna Fáil Party, although it is the Tribunal's view that Dr. Smurfit was, at least, indifferent as to the application of the funds contributed.

23-42 Mr. Haughey's evidence to the Tribunal in relation to all of the material gathered by the Tribunal regarding the Leader's Allowance Account, the funds raised for the benefit of the late Mr. Lenihan, the contributions of Mr. Kavanagh and Dr. Smurfit and the use of all of these funds for his personal benefit was less than candid. The Tribunal is satisfied that Mr. Haughey, despite his protestations of ignorance and lack of recollection, was fully aware of his pivotal role in all of these matters, and the Tribunal considers that Mr. Haughey's efforts to attribute responsibility to Ms. Foy and to Mr. Paul Kavanagh (who had assisted in the collection of funds for Mr. Lenihan's medical treatment), amongst other was, regrettable and reprehensible.

MR. HAUGHEY'S FINANCES JANUARY, 1987 – JANUARY, 1991

23-43 The Tribunal's task in seeking to ascertain the funds available to Mr. Haughey, and to identify the ultimate sources of those funds for the

purposes of its inquiries pursuant to paragraphs (a) and (b) of its Terms of Reference, was all the more difficult for the years January, 1987 to January, 1991, as there were no records of such funds available, and there were no bank accounts in Mr. Haughey's name. The Tribunal set about this task in the first place, by seeking to identify the expenditures made on Mr. Haughey's behalf; by then endeavouring to identify the immediate source of funds from which those expenditures were met; and by seeking in turn to trace those funds from their immediate source to their ultimate source.

23-44 The analysis conducted by Deloitte & Touche of the Haughey Boland No. 3 account produced estimated figures for expenditures from that account in connection with the bill-paying service provided for Mr. Haughey in the years 1987 to 31st January, 1991. The estimated expenditures for those years were as follows:—

(i)	1 st January, 1987 — 31 st December, 1987	—	£204,000.00.
(ii)	1 st January, 1988 — 31 st December, 1988	—	£232,000.00.
(iii)	1 st January, 1989 — 31 st December, 1989	—	£325,000.00.
(iv)	1 st January, 1990 — 31 st December, 1990	—	£264,000.00.
(v)	1 st January, 1991 — 31 st January, 1991	—	£16,000.00.

The Tribunal considers that this exercise was reasonably accurate and is satisfied that, in all probability, expenditures in the region of £1,041,000.00 were made from the Haughey Boland No. 3 Account for the benefit of Mr. Haughey over the four year period from January, 1987 to January, 1991.

23-45 In order to identify the immediate source of funds to the bill-paying service, lodgements to the Haughey Boland No. 3 account were compared with debits to accounts in Guinness & Mahon controlled by Mr. Traynor, to ascertain whether debit and credit transactions across those accounts matched in terms of both the quantum and timing of transactions. From the evidence of Ms. Sandra Kells, of Guinness & Mahon, and Mr. Paul Carty, then Managing Partner of Deloitte & Touche, who commented on the documentary evidence available, the Tribunal is satisfied that the immediate source of funding to the bill-paying service for the years 1987, 1989, 1990 and for the first month of 1991 was accounts controlled by Mr. Traynor in Guinness & Mahon, being accounts in the name of Amiens Investment Limited, Amiens Securities Limited and Kentford Securities Limited. Tables for each of the years 1987, 1989, 1990 and 1991 showing each corresponding credit and debit are comprised in Appendix G of the Report.

23-46 The Tribunal was unable to identify any correspondence between credits to the Haughey Boland No. 3 account, and debits to accounts controlled by Mr. Traynor, for which statements were available to the Tribunal, for the year 1988. However, having regard to the evidence

available, the Tribunal considers it probable that the Amiens accounts, or other accounts controlled by Mr. Traynor in Guinness & Mahon, continued to fuel the bill-paying service in that year, and that the difficulties encountered by the Tribunal in identifying corresponding transactions arose from deficiencies in the retrieval of account statements from Guinness & Mahon microfiche records, whether due to shortcomings in the system employed by Guinness & Mahon or deliberate intervention by officials of Guinness & Mahon with the archiving process.

23-47 As the immediate source of funds to the bill-paying service were drawings from Amiens and Kentford accounts, the Tribunal in the course of its private investigative work endeavoured to trace all lodgements to, and withdrawals from the accounts. The Tribunal examined well in excess of one thousand such transactions. While the starting point of the Tribunal's inquiries was always documentation from within Guinness & Mahon, in many cases the money trail led the Tribunal to making inquiries of other banks. In many instances, due to the destruction policies of those banks, the Tribunal's inquiries could not be advanced further. In conducting this aspect of its inquiries, the Tribunal had to exercise particular caution in determining whether it was, or was not appropriate to lead evidence at public sittings regarding the sources of lodgements to the Guinness & Mahon accounts. This was because of the Tribunal's knowledge of the manner in which the accounts were operated by Mr. Traynor in conjunction with the Ansbacher accounts, and in particular as a means of facilitating the making of Irish Pound lodgements in Dublin by customers of Ansbacher Cayman to their off-shore accounts, and likewise to enable Irish Pound withdrawals to be made by customers of Ansbacher Cayman from their off-shore holdings. The use of this device meant that the Tribunal could not automatically conclude that it was likely that, where lodgements were made to Amiens accounts, and the proceeds were used to make a payment to Mr. Haughey's bill-paying service, the person who provided those funds was a source of money to Mr. Haughey.

23-48 In many instances, the Tribunal did not proceed to hear evidence about specific lodgements to the Amiens accounts where the Tribunal believed that the connection with Mr. Haughey was too tenuous, or where the Tribunal had received adequate explanations to enable the Tribunal to exclude those lodgements from further inquiry. There was however one Amiens account which, by reason of the large volume of transactions which appeared to relate to Mr. Haughey, did in the view of the Tribunal warrant separate inquiry in the course of public sittings, and that was Account No. 10407014.

23-49 That account was operated by Mr. Traynor from October, 1986 to October, 1988 and between January, 1987 and March, 1988 the Tribunal heard evidence of no less than nineteen transactions which appear to have related to Mr. Haughey's financial affairs. In the course of public inquiries, the Tribunal focused on four separate lodgements to that account:—

- (i) £106,800.00 was credited to the account between 13th February, 1987 and 26th March, 1987 by eleven separate cash lodgements. This was an exception to the usual pattern of lodgements, which were primarily made in the form of cheques or other instruments. Whilst no direct connection can be made between these cash lodgements, and Mr. Haughey's finances, it is perhaps of some significance, and warranting of comment that such an unprecedented volume of cash lodgements was made over the five week period which coincided with both the General Election held on 17th February, 1987, and Mr. Haughey's accession to the office of Taoiseach on 10th March, 1987.
- (ii) On 18th February, 1987, the day following the General Election, £50,000.00 was lodged to the account which represented the proceeds of a cheque drawn on an account of an unlimited company, Skelligs Investments, and signed by Mr. John Byrne. Mr. Byrne was a friend of Mr. Haughey, and is a successful businessman. In common with Mr. Haughey, Mr. Traynor was a close financial adviser to Mr. Byrne. The company, Skelligs Investments, was used by Mr. Byrne for non-trading activity, and the account was, in substance, an account operated by Mr. Byrne to meet personal expenditures. Mr. Byrne had no recollection of the cheque, and could not provide the Tribunal with a credible explanation as to why he would have drawn a cheque for £50,000.00 payable to Guinness & Mahon on the account of a non-trading company which he used for personal purposes. In the absence of such an explanation, the Tribunal cannot exclude the real possibility that the cheque represented a payment intended for the benefit of Mr. Haughey, but in the absence of evidence that these funds were in fact applied for Mr. Haughey's benefit, the Tribunal equally cannot make a positive finding.
- (iii) On 23rd July, 1987, £260,000.00 was lodged to the account. After extensive inquiries made of Guinness & Mahon and of Allied Irish Banks, the Tribunal ultimately identified Princes Investments Limited as the source of the lodgement. The company operates the Mount Brandon Hotel in Tralee, County Kerry and as of 1987, the company was jointly owned by Mr. John Byrne, Mr. William Clifford, and a sister of Mr. Clifford who had inherited her shareholding from her deceased brother. Both Mr. Byrne and Mr. Clifford testified that the purpose of the payment was to discharge an outstanding loan of Princes Investments to Guinness & Mahon. Whilst there is no doubt that Princes Investments did have a substantial loan from Guinness & Mahon, that loan was cleared in September, 1985, with funds transferred from an Ansbacher Cayman account. As of July, 1987, when this lodgement was made to the Amiens account, there was no loan outstanding by Princes Investments on the books of Guinness & Mahon, and there had been no such loan since September, 1985. Whilst the Tribunal is

left with considerable doubts as to the true purpose of the payment of £260,000.00, and while the circumstances raised very many questions which were not satisfactorily answered, in the absence of access to the Memorandum Accounts (being the confidential accounts kept of the balances of customers of Ansbacher Cayman in the pooled sterling accounts deposited with Guinness & Mahon), and in the absence of assistance from Ansbacher Cayman, the Tribunal's inquiries as to whether the lodgement was connected with the financial affairs of Mr. Haughey must remain inconclusive.

- (iv) Lodgements of £195,000.00 and £49,700.00, were made to the account on 22nd February, 1988, and 24th February, 1988, respectively. Both of the lodgements originated with Bank of Ireland, but as no records were available within Bank of Ireland that might have assisted the Tribunal in identifying the provenance of the funds, the Tribunal was unable to further its inquiries regarding the sources of the two lodgements or their connection, if any, with the financial affairs of Mr. Haughey.

MR. HAUGHEY'S FINANCES FEBRUARY, 1991 — DECEMBER, 1996

23-50 Following the merger of Haughey Boland with a number of other accountancy firms, Mr. Jack Stakelum of BEL Secretarial Services took over the running of Mr. Haughey's bill-paying service. Mr. Stakelum opened a dedicated account for the purposes of administering the service with Allied Irish Banks, 52 Upper Baggot Street, Dublin 4, and as copies of the account statements were available from February, 1991 to December, 1996, the Tribunal was able to establish from the lodgements to, and the drawings from that account, the precise sums which were available to Mr. Haughey to meet his living expenses in those years. The Table below sets out the total lodgements to that account.

DATE	AMOUNT (£)
February, 1991 — December, 1991	332,449.73
January, 1992 — December, 1992	340,000.00
January, 1993 — December, 1993	305,000.00
January, 1994 — December, 1994	320,000.00
January, 1995 — December, 1995	434,000.00
January, 1996 — December, 1996	266,630.50

The total of the monies that passed through the accounts for the six years from February, 1991 to December, 1996 was £1,998,080.23.

23-51 The Tribunal's task of identifying the immediate source of funds to the bill-paying service from February, 1991 was rendered significantly more accessible by virtue of the fact that by then, the Ansbacher accounts, which included funds under the control of Mr. Traynor, had largely been

transferred from Guinness & Mahon to Irish Intercontinental Bank. The operation of the accounts was placed on a more formal footing, and thereafter all instructions given by Mr. Traynor, including instructions for the provision of cheques or bank drafts payable to BEL Secretarial Services, were in writing. Through the banking records which were available from Irish Intercontinental Bank, and which were confirmed in evidence, the Tribunal, with the exception of three lodgements which are referred to below, was able to trace each and every lodgement to Mr. Stakelum's dedicated account with Allied Irish Banks back to an Ansbacher Cayman or Hamilton Ross account held with Irish Intercontinental Bank. The results of that exercise, for each of the ninety-three lodgements to the account from February, 1991 to December, 1996, amounting in total to £1,923,542.40, are set out in the Tables comprised in Appendix H to the Report. From that exercise, and from the analysis conducted by the Tribunal, and from the evidence available, the Tribunal is satisfied that the following were the arrangements made for funding Mr. Haughey's bills in the years from February, 1991:—

- (i) From February, 1991 to September, 1992 the payments were debited to the principal Ansbacher Cayman sterling call account held with Irish Intercontinental Bank, Account No. 02/01087/01.
- (ii) From October, 1992, when certain accounts had passed from Ansbacher Cayman to Hamilton Ross, the funds were debited to a Hamilton Ross Deutschmark Account No. 04/39231/81, reference S8.
- (iii) From December, 1992 to August, 1993, funds were debited to the principal Hamilton Ross Sterling Account No. 02/01354/81.
- (iv) From August, 1993 to November, 1995, funds were debited to another Hamilton Ross Deutschmark Account No. 04/39236/81, reference S9.
- (v) From December, 1995 to December, 1996 the debiting of the funds reverted to the Hamilton Ross Principal Sterling Account No. 02/01354/81.

23-52 There were three additional lodgements which were not funded from accounts in Irish Intercontinental Bank and they were as follows:—

DATE	AMOUNT (£)
17/10/199	125,000.00
07/07/199	220,000.00
12/11/1996	24,630.50

The lodgement of £25,000.00 on 17th October, 1991 represented the proceeds of a cheque drawn on an account of Kentford Securities Limited with Bank of Ireland, St. Stephen's Green, which was an account

maintained by Mr. Traynor, and used by him in conjunction with the Ansbacher Cayman and Hamilton Ross accounts in much the same way as the Amiens and Kentford accounts had functioned in Guinness & Mahon. The lodgement of £24,630.50 on 12th November, 1996 represented the proceeds of a payment made by Mr. Dermot Desmond. This left the lodgement of £20,000.00 in July, 1992 which is the single lodgement to the account operated by Mr. Stakelum, the source of which remains unknown.

23-53 Copies of what were known as the Memorandum Accounts were available to the Tribunal for the years from September, 1992 to December, 1996. These were the confidential accounts which recorded individual balances of customers of Ansbacher Cayman in sterling funds which were held in pooled accounts initially in Guinness & Mahon, and subsequently in Irish Intercontinental Bank. Following the establishment of Hamilton Ross & Company Limited by Mr. Furze and Mr. Traynor in September, 1992, and the filtering of deposits from Ansbacher Cayman to Hamilton Ross, an identical set of Memorandum Accounts was kept for customers of Hamilton Ross. As it was not the practice of Ansbacher Cayman to amalgamate customers' funds in currency accounts, (that is, accounts in currencies other than sterling), Memorandum Accounts were maintained solely for sterling deposits. Currency accounts held by Ansbacher Cayman at all times represented the funds of a single customer or beneficiary.

23-54 The Memorandum Accounts represented by the code "S" formed part of the holdings of the Poinciana Fund. It appears that the shares in Poinciana Fund Limited were held by the Trustees of a Cayman Trust, and that the company was the vehicle through which the Trust held bank accounts and administered funds held within the Trust. The Fund was primarily used by Mr. Traynor for his own monies, the monies of Mr. Haughey, and for other monies which Mr. Traynor directly controlled. There were eleven S accounts in all, designated S1, S2, S3, S4, S5, S6, S7, S8, S9 and S10. In the case of some of the individual S accounts there were also currency accounts, and in the case of the S9 account, there were two currency accounts being an S9 Dollar account and an S9 Deutschmark account.

23-55 In all, the Tribunal identified seven accounts coded S8 or S9 and which were as follows:—

- (i) S8 Sterling account.
- (ii) S8 Deutschmark account.
- (iii) S8 Dollar account.
- (iv) S8A Sterling account.
- (v) S9 Sterling account.
- (vi) S9 Deutschmark account.
- (vii) S9A Dollar account.

From an inspection of the records available to the Tribunal in relation to the bill-paying service operated by Mr. Stakelum, from a scrutiny of the instructions received by Irish Intercontinental Bank from Mr. Traynor and subsequently from Mr. Collery, and from a further analysis of the Memorandum account statements, the Tribunal was able to trace the payments to BEL Secretarial Services for the purposes of the bill-paying service, to the Cayman accounts in Irish Intercontinental Bank, and where drawn from sterling accounts, back to the sterling Memorandum Accounts. The results of that analysis are set out in tabular form, and are comprised in Appendix I to the Report. The Tribunal is satisfied that all seven of the S8 and S9 accounts identified by the Tribunal comprised funds held exclusively for Mr. Haughey's benefit.

23-56 There were four credits recorded on the S8 sterling Memorandum Account statements between 30th September, 1992 and 31st December, 1996. Three of the credits reflected lodgements to the Hamilton Ross Sterling account in Irish Intercontinental Bank, and one of them reflected a lodgement to the account of Kentford Securities Limited in Bank of Ireland. Details of these lodgements are as follows:—

- (i) **Stg£108,017.69** was credited on 30th September, 1992, and represented part of the proceeds of a payment of £180,000.00 made by Mr. Ben Dunne to Mr. Haughey.
- (ii) **Stg£84,800.00** was credited to the account on 10th December, 1992, and represented the balance of the payment of £180,000.00 made by Mr. Ben Dunne for Mr. Haughey's benefit.
- (iii) Stg£99,933.00 was credited to the account on 31st October, 1994, and represented the proceeds of funds transferred by Mr. Dermot Desmond to the Hamilton Ross sterling account in Irish Intercontinental Bank, and intended as a payment for the benefit of Mr. Haughey.
- (iv) Stg£168,036.81 was credited to the account on 29th September, 1995, and represented the proceeds of an investment held by a nominee holding company of Ansbacher Cayman with NCB Stockbrokers Limited, for the benefit of Mr. Haughey.

23-57 Mr. Haughey testified that he had no knowledge of the S8 or S9 coded accounts, whether in the form of Memorandum Accounts recording balances in the pooled sterling accounts held with Irish Intercontinental Bank, or whether relating to currency accounts held in the name of Ansbacher Cayman or Hamilton Ross with Irish Intercontinental Bank. Whilst Mr. Haughey may not have known of the coded references attaching to these accounts, he was furnished with information by Mr. Stakelum, based on quarterly account schedules provided by Mr. Collery, and the Tribunal is satisfied that Mr. Haughey must have had knowledge of the funds available for his benefit, of the currencies in which they were held, of the drawings and accruals, and of the overall balances held for his benefit.

In furnishing those quarterly account schedules, Mr. Collery was simply following a practice that had been established by Mr. Traynor, during his lifetime. From all of the evidence available to the Tribunal, including that of Ms. Joan Williams, Mr. Traynor's secretary and that of Mr. Traynor's son, Mr. Tony Traynor regarding the frequency of Mr. Traynor's visits to Mr. Haughey at Abbeville, the Tribunal considers it probable that Mr. Haughey must also have had knowledge of those matters from Mr. Traynor.

NCB INVESTMENT ACCOUNT

23-58 The lodgement to the S8 Memorandum Account on 29th September, 1995 represented the final balance on an investment account held for Overseas Nominees Limited, which was the nominee holding company of Ansbacher Cayman, with NCB Stockbrokers. That account, which was registered in the name of NCB Stockbrokers own nominee company, Aurum Nominees Limited, was designated Aurum Nominees No. 6. It was one of the first of a series of five accounts opened, on the instructions of Mr. Traynor for Overseas Nominees Limited. Instructions in relation to the five accounts were at all times conveyed directly by Mr. Traynor to Mr. Dermot Desmond, who was then Chief Executive of NCB Stockbrokers, although the accounts were administered by the Private Client Division.

23-59 The No. 6 account was opened on 7th July, 1988: stg£175,000.00 was credited to the account on 7th June, 1988, and a further stg£125,000.00 was credited on 18th August, 1988. Whilst these funds were received into a sterling account held by NCB Stockbrokers with Royal Bank of Scotland, Threadneedle Street, London, through a tracing exercise conducted by the Tribunal, it is clear that the entire of the stg£300,000.00 originated in the Ansbacher Cayman principal sterling account with Guinness & Mahon, in Dublin. The funds provided were invested in securities by NCB Stockbrokers, and as and when such securities were sold, or dividends were received, lodgements were made to an account in Ulster Bank, College Green, registered in the name of Aurum Nominees No. 6.

23-60 The funds in the investment account were drawn down over the years: £206,613.57 was remitted in May, 1990, £95,000.00 was remitted in March, 1991, and the final £165,471.99 was remitted on 18th September, 1995, when the account was closed. It was this last tranche of funds which, having been converted into sterling and lodged to the Hamilton Ross principal sterling account with Irish Intercontinental Bank, was credited to the S8 sterling Memorandum Account held for the benefit of Mr. Haughey.

23-61 The Tribunal is satisfied that the entire of the funds held to the credit of the Aurum Nominees No. 6 Investment account were held for the benefit of Mr. Haughey. From the evidence heard by the Tribunal, it is clear that Mr. Haughey knew that the lodgement of stg£168,036.81 to the S8 account represented the proceeds of an investment account, and accordingly, the

Tribunal cannot accept Mr. Haughey’s evidence that he had no knowledge of the account.

FURTHER PAYMENTS MADE BY MR. BEN DUNNE

23-62 The Report of the McCracken Tribunal identified five payments made by Mr. Ben Dunne for the benefit of Mr. Haughey. All of these payments were brought to the attention of the McCracken Tribunal by Mr. Dunne, and with the exception of one of the payments, had been encompassed within Replies to a Notice for Particulars delivered in proceedings between Mr. Dunne, the Trustees of the Dunnes Settlement, and his siblings, which were settled in November, 1994. The amounts and timing of those five payments were as follows:—

DATE	AMOUNT (STG.£)
November, 1987	182,630.00
August, 1988	471,000.00
April, 1989	150,000.00
February, 1990	200,000.00
November, 1991	210,000.00

23-63 The Tribunal has identified the following five further payments made by Mr. Dunne to Mr. Haughey.

DATE	SUBJECT MATTER	AMOUNT (£)
January, 1987	Bearer cheques	IR£32,200.00
May, 1987	Tripleplan payment	Stg.282,500.00
November, 1990	Wytrex payment,	Stg.200,200.00
November, 1992	Carlisle cheques	IR£180,000.00
May, 1993	Personal cheque	IR£20,000.00

Apart from the final payment of £20,000.00 which was lodged directly to an account in Mr. Haughey’s name, all of the payments, and in particular the Carlisle cheques, were routed in the most elaborate and complex manner. With the exception of the Bearer cheques and the Wytrex payment, Mr. Haughey accepted that he was the recipient of the payments, but that admission was made only after the Tribunal had led in evidence the entire of the technical banking records which established that the payments originated with Mr. Dunne, and terminated with Mr. Haughey.

23-64 None of these payments was brought to the attention of the McCracken Tribunal by Mr. Dunne, or by Mr. Haughey, notwithstanding that Mr. Dunne had disclosed to the McCracken Tribunal the payments referred to in the Report of that Tribunal. Nor were the payments disclosed by Mr. Dunne to this Tribunal, but were either discovered by the Tribunal in the

course of its scrutiny of relevant bank accounts, or were reported to the Tribunal by third parties. What distinguished these payments from those disclosed by Mr. Dunne to the McCracken Tribunal is that the payments were not referred to in the Replies to Particulars delivered by Mr. Dunne in November, 1994 in the litigation between Mr. Dunne, the Trustees of the Dunnes Settlement Trust (including Mr. Noel Fox) and his siblings.

23-65 It is the Tribunal's view that Mr. Dunne was at all times fully aware of all of the payments which he made to Mr. Haughey, and the Tribunal cannot accept that he had any absence of recollection. It appears to the Tribunal that Mr. Dunne was selective in the information that he provided to the McCracken Tribunal, and deliberately confined his disclosure to those payments which were discoverable by that Tribunal. Mr. Dunne's approach to this Tribunal was no different: he disclosed none of these payments to the Tribunal and on each occasion that the Tribunal unearthed further payments, he pleaded ignorance through lack of recollection.

23-66 The initial payments found by this Tribunal predated by many months the first payment identified by the McCracken Tribunal. The Tribunal is satisfied that the approach made to Mr. Dunne, through Mr. Fox, to contribute to Mr. Haughey's finances was not made in November, 1987, (as found by the McCracken Tribunal based on the evidence heard by that Tribunal), but was in fact made some time prior to May, 1987 and may have been made as early as February, 1987 when the Fianna Fáil Party was returned to Government, and Mr. Haughey was elected Taoiseach. It further appears from the evidence heard by the Tribunal that subsequent payments by Mr. Dunne to Mr. Haughey were payments with which Mr. Fox had no involvement, and that, as testified by Mr. Fox, Mr. Dunne's commitment to support Mr. Haughey financially was fulfilled at latest in February, 1990 and possibly at an even earlier date. All later payments made by Mr. Dunne arose in different circumstances, were made without any involvement on the part of Mr. Fox and were independent of the commitment made in 1987. In view of the fact that Mr. Dunne had no more than a nodding acquaintance with Mr. Traynor, it appears to the Tribunal very probable that the subsequent payments arose as a result of direct interaction between Mr. Haughey and Mr. Dunne, who were by then on close personal terms. There can certainly be no doubt that the final payment made in May, 1993, was made directly by Mr. Dunne to Mr. Haughey.

23-67 The McCracken Tribunal found, from the inquiries which it had made, and from the evidence which it had heard, that there was "*no wrongful use of his position by Mr. Haughey*" in connection with the payments made to him by Mr. Dunne. In the light of the further payments identified, and the additional evidence which it has heard, the Tribunal cannot share that view. That aspect of the Tribunal's findings is addressed in detail in Chapter 16 of the Report. The Tribunal is satisfied that the payments made by Mr. Dunne to Mr. Haughey were all substantial

payments and were all made in circumstances giving rise to a reasonable inference that the motive for making the payments was connected with the office of Taoiseach held by Mr. Haughey, and in the case of the payments made during the years that Mr. Haughey held office, had the potential to influence the discharge of such office by Mr. Haughey.

23-68 With the exception of the final payment made in May, 1993, from Mr. Dunne's personal account, the four payments found by the Tribunal were made from accounts of the Dunnes Group or, in the case of the Wytrex payment, from funds which were ultimately beneficially owned by the Dunnes Group. While the Tribunal has heard no evidence that any other director of the Dunnes Group was aware of the payments, it is clear that Mr. Fox, who was a trustee of the Dunnes Settlement Trust, and who attended meetings of the Board of the Dunnes Group, played a pivotal role in relation to a number of the payments. Mr. Dunne testified that in making these payments, he was not doing so in his own right but was at all times acting in his capacity as managing director of the Dunnes Group and doing so on behalf of the Group.

POST-RETIREMENT PAYMENTS TO MR. HAUGHEY BY MR. DERMOT DESMOND

23-69 Mr. Dermot Desmond made two payments to Mr. Haughey after Mr. Haughey had retired from public life: one for Stg£100,000.00 in 1994, and one for Stg£25,000.00 in 1996. Mr. Desmond issued a public statement in January, 1998 in which he had stated that:—

"If payments made by Mr. Desmond to Mr. CJ Haughey since 1994 are matters that fall within the Term of Reference of the Moriarty Tribunal, Mr. Desmond had already stated that he will fully co-operate with this Tribunal."

Shortly after the publication of that statement, the Tribunal requested information from Mr. Desmond about payments made by him to Mr. Haughey after Mr. Haughey had ceased to hold public office. In the event, Mr. Desmond declined to provide the Tribunal with any information until 22nd March, 1999, by which time the Tribunal had already identified the two payments in question, from statements of the S8 sterling Memorandum Account which were available to the Tribunal, and from information provided by Mr. Pdraig Collery, and by Mr. Jack Stakelum.

23-70 The Tribunal cannot accept Mr. Desmond's evidence that these payments were otherwise than outright dispositions made by him to Mr. Haughey, notwithstanding Mr. Desmond's characterisations of them as loans. It is clear to the Tribunal that neither Mr. Desmond, nor Mr. Haughey, had any intention or any belief that the funds would ever be repaid to Mr. Desmond.

23-71 Both of the payments were undoubtedly substantial payments as contemplated by paragraph (a) of the Tribunal's Terms of Reference. As

they were made after Mr. Haughey had ceased to hold office as Taoiseach, and had retired from political life, it follows that they did not have the potential to influence the discharge of any public office held by Mr. Haughey. The Tribunal is nonetheless satisfied that they were made “*in circumstances giving rise to a reasonable inference that the motive for making the payment(s) was connected with any public office held*” by Mr. Haughey. and were payments for the purposes of paragraph (a) of its Terms of Reference. In so concluding, the Tribunal has had regard to the following matters:—

- (i) The payments were not isolated payments.
- (ii) They were not made in a transparent manner, but on the contrary, they were shrouded in secrecy, and were made from one off-shore account, through a series of off-shore accounts to what was, at least nominally, an off-shore account, held for the benefit of Mr. Haughey.
- (iii) They followed in the path of an established pattern of support by Mr. Desmond of the business ventures of Mr. Haughey’s family, and they further followed the conferring of an indirect benefit of £75,456.00 on Mr. Haughey by Mr. Desmond, through the financing of the refit of the Haughey family yacht, Celtic Mist, all of which occurred during Mr. Haughey’s tenure as Taoiseach.
- (iv) Mr. Desmond was asked by Mr. Traynor to provide funding for Mr. Haughey while Mr. Haughey was Taoiseach, which Mr. Desmond declined, not as a consequence of any principled objection but due to his then financial frailty.
- (v) While Mr. Desmond testified that these payments were prompted by no more than friendship for Mr. Haughey, it is clear that such friendship arose in the context of Mr. Haughey’s office as Taoiseach.

23-72 Mr. Desmond testified to the Tribunal that apart from these payments amounting to Stg.£125,000.00, apart from the investments that he made in companies with which Mr. Haughey was associated and, apart from the funding of £75,456.00 in respect of the cost of refitting the Haughey family yacht, Celtic Mist, he made no other payments to Mr. Haughey, or to persons associated with him, within the meaning of the Tribunal’s Terms of Reference. In particular, Mr. Desmond testified that he made no direct payments to Mr. Haughey prior to 1994, after Mr. Haughey had left office. Whilst it must be said that the Tribunal has heard no evidence to the contrary, the Tribunal cannot make a finding to that effect as neither Mr. Haughey’s off-shore accounts, nor Mr. Desmond’s off-shore accounts were accessible to the Tribunal for the purposes of verifying this matter.

INDIRECT PAYMENTS AND BENEFITS

23-73 The first of two Chapters dealing with indirect payments and benefits in relation to Mr. Charles Haughey concerned inquiries into one of two companies closely associated with the Haughey Family, namely Feltrim Plc, a mining exploration company largely initiated by Mr. Conor Haughey, a son of Mr. Charles Haughey, in 1988. Despite a successful flotation, the company experienced consistently adverse results in its exploration activities, lurched from one crisis to another, and was in 1993 taken over by another investor, and renamed Minmet Plc, at which point Mr. Conor Haughey resigned as Managing Director. The primary focus of the Tribunal's inquiries was to ascertain, whether or not any of the monies advanced to the company at various stages should be found to be indirect payments to Mr. Charles Haughey, in accordance with the various instances of indirect payments set forth in Term of Reference (a).

23-74 Various individual contributions made to the company were examined. (a) The late Mr. Bernard Cahill, in addition to acting as Chairman at the request of Mr. Charles Haughey, had purchased shares both at the time of the flotation and two years later, and also made a loan of £6,421.00 to the Company in 1992, to advance what then seemed its last prospect of trading successfully. (b) Mr Jack Stakelum acted as Finance Director at the request of Messrs. Deloitte & Touche, invested an initial £5,000.00 in the company, and also advanced a £15,000.00 loan to it in 1991. On conversion of this loan to shares, a course adopted by the Company with almost all of its creditors, eventual disposal on the part of Mr. Stakelum resulted in an overall loss to him that was limited to £492.00, apart from which he also waived fees of approximately £2,500.00. (c) Mr. Emmet O'Connell, who had advised and assisted prior to, and at the time of the flotation, invested approximately £10,000.00, with his company Texas Continental Securities Plc investing approximately £15,000.00. (d) Mr. James Stafford had also advised and assisted at the early stages of the company. Although considerable vagueness and imprecision arose in relation to his evidence regarding financial contributions, it seemed from what was stated by him, and also Mr. Conor Haughey that he had contributed an initial £40,000.00 in respect of promotional expenses at flotation, which had subsequently been repaid, and that either he or associates had made an investment of £100,000.00 at the time of the flotation. (e) Mr. Dermot Desmond also invested in the company and made a loan to it. It was his statement in that regard which first brought the company to the attention of the Tribunal. Whilst not involved at the time of the flotation, he purchased 83,333 shares for £21,041.00 in July, 1990 at which time he had become friendly with members of the Haughey Family, including Mr. Conor Haughey, who had informed him that the Company's prospects were good. In August, 1991, when the finances of the Company had become critical, he advanced a loan of £55,000.00, which was instrumental in enabling its survival at that point. He also furnished a guarantee in respect of the Company's borrowings in 1991, probably at the

request of Mr. Conor Haughey. Subsequent investments, conversion of the loan to shares, and disposals of most of his shareholdings gave rise to a profit to Mr. Desmond of £936,705.00, an exceptional outcome amongst the generality of those who invested in Feltrim, and one which in his evidence he acknowledged reflected pure luck. (f) Mr. Mike Murphy, of Mike Murphy Services Limited, indicted that his company had acted as insurance brokers to Feltrim from 1988 until approximately 1992. In providing insurance services, a balance of £5,167.06 had fallen due from Feltrim, and in common with other creditors, Mr. Murphy was asked to take shares in lieu of payment, but alone of such persons insisted on payment of his account at the time of Feltrim's takeover. Mr. Murphy had also been involved on a more substantial basis with the other company associated with the Haughey Family, Celtic Helicopters, and he acknowledged in evidence that, although he had not wished in regard to Celtic Helicopters to have the finger pointed at him as responsible for the folding of a company associated with the Taoiseach's son, he had in the later instance of Feltrim seen the position differently, and had opted for the repayment opportunity that the takeover presented.

23-75 Although many of the persons who invested, advanced loans or otherwise contributed to the fortunes of Feltrim had associations of friendship or prior professional dealings with Mr. Charles Haughey and members of his family, the Tribunal is mindful that the Terms of Reference require that any payment found to fall within Term of Reference (a) must be in some way referable to Mr. Haughey's public office as Taoiseach. To interpret this as involving no more than some incidental or minor link would be oppressive and unfair. The mere fact that a person's parent might hold public office could not tenably preclude that person from launching business ventures, and it would be equally unsustainable to regard any support or assistance advanced by the office holder as being thereby tainted. On this basis, a number of distinguishing grounds from Celtic Helicopters appear, including (a) the relative openness with which investments were made, (b) the relative involvement of Mr. Charles Haughey directly, (c) the undoubted degree of investment sentiment in favour of small exploration companies in Ireland at the time that Feltrim was launched (d) the relative response of investors when a downturn was apparent in the case of each company, (e) the fact that those who invested in Feltrim acquired shares in a publicly quoted company, interests that were clearly recorded and discoverable, and (f) the undoubted handsome profit which even if fortuitously, was derived by Mr. Desmond. Whatever the frailties of Feltrim, it at least in its early days manifested considerably more commerciality than Celtic Helicopters. In all the circumstances, whilst some aspects of the evidence heard do occasion a degree of concern, findings within Term of Reference (a) are not on balance warranted.

23-76 Apart from acknowledging his involvement in Feltrim, Mr. Desmond had at that time also referred to a number of payments in 1990 and 1991, that were initiated by him, and were referable to the refurbishment and

refitting of the yacht “*Celtic Mist*”, which had been acquired in January, 1988, and transferred into the name of the Haughey Family company, Larchfield Securities Limited. The total of these payments amounted to £75,546.00 and, although they were made by two companies with which Mr. Desmond was associated, it was acknowledged by him that he was the person responsible, irrespective of the vehicles used. Despite evidence from Mr. Desmond and Mr. Conor Haughey to the effect that these payments were advanced as loans, the Tribunal has no hesitation in all the circumstances in finding that they were outright dispositions, and that the entire of the said sum of £75,546.00 constituted an indirect payment by Mr. Desmond to Mr. Charles Haughey, on a basis of enabling the discharge of monies or debts due by Larchfield Securities Limited, a company with which Mr. Charles Haughey was associated. It was noteworthy that this sum was then very far from being a trifling one, and exceeded the gross annual salary of Mr. Haughey as Taoiseach at the time.

23-77 There remains the even more substantial matter of the purchase price of *Celtic Mist*, which was Stg.£150,000.00, equivalent at the time of purchase in Irish currency to £145,793.30, and Valued Added Tax of £21,283.64, giving an aggregate of £167,073.94. Mr. Conor Haughey could throw no light on the source of these funds, other than that he believed the requisite amounts had been arranged by his father. Mr. Charles Haughey stated that Mr. Desmond Traynor would have arranged the funds to provide both the purchase price and the Value Added Tax payment, but he was unable to say out of which account or other source Mr. Traynor obtained the money. Having carefully examined all known accounts controlled by Mr. Traynor, no indication whatsoever is apparent of the money coming out of these accounts. Neither is there any realistic explanation to hand in the context of Mr. Haughey’s earnings at the time, borrowings taken out, or funds realised through the disposal of any previous vessel. In all the circumstances of this substantial unexplained funding, the Tribunal is driven to conclude that the discharge of both the purchase of “*Celtic Mist*”, and the resultant Value Added Tax payment were funded by a payment or payments made to Mr. Traynor from a source or sources that cannot be identified, and that the entire of the said amount is accordingly an indirect payment to Mr. Haughey, by virtue of having been used to discharge the indebtedness of Larchfield Securities Limited, as a company with which Mr. Haughey was associated.

MR. CHARLES HAUGHEY AND CELTIC HELICOPTERS LIMITED

23-78 Chapter 14 deals with Mr. Haughey’s involvement with Celtic Helicopters, an involvement which took two forms, firstly embracing payments to Celtic Helicopters found by the Tribunal to be indirect payments to Mr. Charles Haughey. In total these payments amount to approximately £623,000.00. Secondly, it deals with the extent to which Celtic Helicopters was used by Mr. Haughey as a vehicle for the transmission of other payments, direct payments, within Term of Reference

(a) of the Tribunal's Terms of Reference, or as a vehicle used to disguise the identity of the sources of direct payments to Mr. Haughey.

23-79 Between 1985 and 1993, Celtic Helicopters Limited was a small helicopter company ostensibly under the control of its main pilots, Mr. John Barnicle and Charles Haughey's son, Mr. Ciaran Haughey. At its inception loan and equity capital amounting to £160,000.00 was jointly raised by Mr. Charles Haughey and Mr. Des Traynor, who was then Chairman of Guinness & Mahon. The funds involved were assembled in Guinness & Mahon, and transmitted to Celtic Helicopters through accounts in Guinness & Mahon under the control of Mr. Des Traynor. Of the total of £80,000.00 raised by way of what might in the ordinary way be called equity, some £50,000.00 was transmitted through Ansbacher accounts. Of the £80,000.00 raised in this way, the Tribunal has succeeded in identifying at least £50,000.00 transmitted through Ansbacher accounts. A further £10,000.00 of that sum appeared, on its face, to constitute the proceeds of a domestic cheque transaction, as a matter of probability originated in an Ansbacher account or a similar account under the control of Mr. Des Traynor.

23-80 The Tribunal has identified the sources of a number of payments to Celtic Helicopters at this time, namely, Dr. John O'Connell, Mr. Seamus Purcell, Mr. Joseph Malone, Mr. Cruse Moss and Mr. PV Doyle, as having provided £49,987.00 of the total of £80,000.00 invested.

23-81 Of the identified funds so provided, the Tribunal found that some £5,000.00 was provided by Dr. John O'Connell. Dr. O'Connell informed the Tribunal that he was approached by Mr. Haughey to make what he called a "*contribution*" to Celtic Helicopters. Dr. O'Connell did not understand this to be an invitation to invest, that is, to purchase shares in the company, but saw it as a contribution to Celtic Helicopters related to his having become a member of the Fianna Fáil Party. The late Mr. Seamus Purcell provided £10,000.00 through a company with which he was associated, Purcell Exports Limited. The approach for the monies was made by Mr. Charles Haughey, and the transfer of the funds was arranged by Mr. Traynor through accounts in Guinness & Mahon.

23-82 Mr. Joseph Malone by 1985 had a successful career in business; both in private enterprise and with the Irish Tourist Board and his family had a friendship with the Haughey family. He was approached by Mr. Haughey to become Chairman of the new helicopter company being set up by Mr. Haughey's son, and whilst he declined the offer of the Chairmanship on account of what he perceived to be a potential conflict of interest, subsequently on foot of another invitation by Mr. Haughey to invest in the company, he accepted, and agreed to invest £15,000.00 stipulating that the investment should be held in the name of his son. Mr. Malone accepted the invitation to invest thinking that Mr. Haughey had been either offended or disappointed by his earlier refusal to become involved as

Chairman and in giving his reasons for investing stated that “*Mr. Haughey was not a person to whom many people would say no*”.

23-83 Mr. Malone was instrumental in introducing a Mr. Cruse Moss to the Celtic Helicopters investment. Mr. Cruse Moss was the owner of General Automotive Corporation which had taken over bus building on behalf of CIE at Shannon in 1983. Mr. Malone facilitated Mr. Cruse Moss' involvement by arranging for his funds of £4,987.00 to be transferred through Mr. Traynor to Celtic Helicopters. Mr. Cruse Moss' association with the Company was terminated in 1990 when, through Mr. Malone, he was informed that the Haughey family wished to buy back his shares. Mr. Malone acted as intermediary to arrange the buy-back at £7,000.00, the price having been stipulated by Mr. Ciaran Haughey. The Tribunal has been unable to make contact with Mr. Cruse Moss.

23-84 The Tribunal has found that the late Mr. PV Doyle was, as a matter of probability, one of the original investors in the company in 1985. In Guinness & Mahon documentation examined by the Tribunal it appears that in a presentation to the credit committee or loans committee of Guinness & Mahon in 1985 on Celtic Helicopter's application for loan capital, the late Mr. PV Doyle was mentioned as being an investor in the Company. Mr. Malone, who was recommended to invest in the Company, notwithstanding his own initial reservations, by Mr. Doyle, testified that while he had no certain knowledge, he understood from his conversations with Mr. Doyle that it was the latter's intention to invest in the Company. Having regard to the role played by Mr. PV Doyle in encouraging Mr. Malone to make an investment, and Mr. Malone's actually having paid £15,000.00, the Tribunal has concluded that Mr. Doyle's payment to Celtic Helicopters was likely to approximate to £15,000.00.

23-85 A further sum of £10,000.00 transmitted to the Company's account by Traynor appeared on the face of it to represent the proceeds of a cheque made payable to Dr. Michael Dargan, but the Tribunal is satisfied that Dr. Dargan was not in fact an investor in Celtic Helicopters, and moreover that he was not responsible for any payment to or for the benefit of the company. The Tribunal has however concluded that unknown to Dr. Dargan, Mr. Traynor used the proceeds of a cheque payable to Dr. Dargan, and in a switching mechanism similar to other such mechanisms described elsewhere in the Report, replaced Dr. Dargan's funds which were due to be transmitted abroad with other off-shore funds. The true investor in Celtic Helicopters was therefore an unidentified individual within the circle of individuals to whom Mr. Traynor provided banking services connected with the Ansbacher Cayman accounts, or at least similar services involving off-shore or foreign exchange activities. The Tribunal has been unable to identify any of the other sources of funding to Celtic Helicopters in 1985.

23-86 Apart from his involvement in raising funds for Celtic Helicopters, Mr. Haughey in 1992 made an approach to Dr. John O'Connell referring to

Dr. O’Connell’s £5,000.00 for the first time as a shareholding in the company, and stating “*we would like to buy them from you*”. Mr. Haughey eventually agreed to pay £15,000.00 for the shares, and in October, 1992 at a Fianna Fáil Convention in Donnycarney, Mr. Haughey gave Dr. O’Connell a cheque for that amount. Although the cheque was drawn on an Irish Intercontinental Bank account with the Bank of Ireland, the funds for the cheque had in fact been debited to the Hamilton Ross S8 Deutschmark Ansbacher account, an account operated by Mr. Traynor for the benefit of Mr. Charles Haughey.

23-87 None of the payments mentioned above were prompted by commercial considerations. It is of significance that neither Mr. Ciaran Haughey nor Mr. John Barnicle, the prime movers in the Company, appear to have played any role in the raising of the funds. While Mr. Haughey regarded the payments as investments, there is no evidence that any of the identified individuals by whom funds were provided engaged in any examination of the project as a commercial proposition; nor is there any evidence that they were provided with any information to enable them so to do. Neither Mr. Ciaran Haughey nor Mr. John Barnicle were even aware of Dr. O’Connell’s involvement in the company until 1992. Even at that stage they played no part in the negotiation of, or the buying in of, his shares, matters which were handled entirely by Mr. Charles Haughey. There was no follow-up by the Company (except to a very limited extent in the case of Mr. Joseph Malone in 1992) by way of the issue of shares, the provision of information regarding the Company’s financial affairs and so forth. The buy-back of shares, whether from Mr. Cruse Moss or Dr. O’Connell was no more commercial than the original investment. In the case of Mr. Cruse Moss, the shares were bought in by the Haughey family for £7,000.00 in 1990, at a time when the Company was in need of finance. Two years later in 1992, over twice that sum of money was paid to Dr. John O’Connell although in the interim, the Company’s financial state had worsened dramatically. The circumstances in which these payments were made are more accurately characterised by Dr. O’Connell’s description of them as “*a contribution*” to Celtic Helicopters, as distinct from an investment in the Company, payments made to an individual, Mr. Charles Haughey, to whom it was difficult to say “*no*”. The payments mentioned above amounting to approximately £49,987.00 were payments within Term of Reference (a) as payments having been made in circumstances giving rise to a reasonable inference that the motive for making the payments was connected with the office of Taoiseach which had been held by Mr. Haughey prior to 1985, and which at that time he had a very real potential of assuming once again.

23-88 The Tribunal was unable to identify the sources of the balance of the payments which went to make up the £80,000.00 transferred from an Amiens account to Celtic Helicopters’ account in connection with the initial capitalisation of the company. However, having regard to the fact that these funds were transmitted through the same Amiens account, at the same time, and further the fact there seems to be no reference to them or to

any identifiable source, in any of the documents made available by Celtic Helicopters or Guinness & Mahon, the Tribunal has no reason to doubt but that they were provided by unidentified individuals in circumstances similar to those pertaining to the payments made by identified individuals referred to above.

23-89 In the early 1990s, Celtic Helicopters experienced financial difficulties due to a number of factors, including debts incurred as a result of the construction of a new hangar at Dublin Airport, and the related development of a helicopter maintenance business. At the same time the company had also experienced difficulties paying its aviation insurance premiums. At the time Mike Murphy Insurance Brokers Limited, of whom Mr. Mike Murphy was the principal, was Celtic Helicopters' Insurance Brokers. Mr. Murphy arranged for Celtic Helicopters to borrow the money to pay its insurance premiums from a finance company entitled Gatehouse Finance Limited. The repayments however were made at the direction of Mr. Mike Murphy by one of the companies through which Mr. Murphy conducted his various businesses. The amount borrowed was £92,500.00, and this was agreed to be repaid in ten instalments of £9,917.00, bringing the total amount to be repaid to £99,170.00, the commencement date for the ten instalments repayable under the loan was November of 1992. It would appear that these instalments, having been paid by a company associated with Mr. Mike Murphy, were never repaid to Mr. Murphy by Celtic Helicopters. In evidence, it was suggested that a sum of £50,000.00 was paid to one of Mr. Murphy's companies in repayment of the £99,170.00. There was no evidence that this payment was specifically appropriated to that indebtedness and in the accounts there is no record that it was applied to reduce the borrowing of £99,170.00. It was also suggested in evidence that Mr. Murphy was compensated by the provision of helicopter services to MMIB, one of its companies, by Celtic Helicopters. Mr. Murphy produced a reconstituted handwritten record of MMIB's flying hours with Celtic Helicopters during the period commencing the 15th December, 1992 and ending the 4th of November, 1993. This record, created in March of 1989, purported to detail the amount due by MMIB to Celtic Helicopters for flight services rendered, an amount which was to be deducted from the amount advanced by MMIB in respect of the Gatehouse loan. Other than this retrospective account, there were no invoices or other documentation produced by either company to demonstrate either the existence of, or the reduction of Celtic Helicopters' debt to Irish Intercontinental Bank.

23-90 Whilst Mr. Murphy did not agree that the payment of the insurance premiums on behalf of Celtic Helicopters was just another form of gift to assist that Company with its financial difficulties, Mr. Murphy did concede that he was anxious not to be the person who "*pulled the plug*" on the Company. He indicated that he was fearful of losing customers, especially in the beef industry, and indicated that he was justified in his apprehensions having regard to what he felt was the enormous power of Mr. Haughey. This arrangement, no more than the 1985 payments, lacked any

commercial reality. Had there been any commerciality in the payment, it is likely that it would have been reflected in the books of both Celtic Helicopters, and one or other of the companies associated with Mr. Mike Murphy. The payment was in fact motivated by Mr. Murphy's desire not to fall foul of what was perceived to be Mr. Haughey's enormous power and/or by desire to retain the good opinion of Mr. Haughey, the latter in particular having regard to what was conceded to have been the effect that any failure to retain his good opinion might, according to Mr. Murphy, have had on his business.

23-91 The payment was on the face of it the straightforward discharge of a debt owed by a company, Celtic Helicopters, associated with Mr. Haughey. It was an indirect payment to Mr. Haughey within Term of Reference (a) of the Terms of Reference made in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with the public office formerly held by Mr. Haughey, namely the office of Taoiseach.

23-92 The Tribunal goes on in the Chapter to consider payments in 1992 which are related to matters already mentioned in the Report of the McCracken Tribunal. The payments in total amounted to £153,868.54 and the background to the payments is referred to in the McCracken Report, where reference is made to a loan of £150,000.00 negotiated for Celtic Helicopters by Mr. Desmond Traynor from Irish Intercontinental Bank in May of 1991. This loan was it would appear backed by a guarantee in the sum of £175,000.00 from Ansbacher Cayman, and in support of the guarantee that sum was transferred from Ansbacher Cayman's general account with Irish Intercontinental Bank to a special deposit account to be held as security for the loan. From the McCracken Report, and the evidence given to this Tribunal it appears that Mr. Barnicle and Mr. Ciaran Haughey gave personal guarantees to secure this borrowing. It was not their personal guarantees however but the security arranged by Mr. Traynor, unknown either Mr. Barnicle or Mr. Ciaran Haughey, which constituted the true security for the loan. By February of 1992 the loan together with interest stood at approximately £153,868.54. On foot of arrangements made by Mr. Traynor, the loan was discharged by a draft purchased by Celtic Helicopters from Bank of Ireland, Dublin Airport Branch. The funds applied by Celtic Helicopters in order to purchase the draft were represented by Mr. Traynor to Mr. Barnicle, and effectively to Mr. Ciaran Haughey, as the aggregate proceeds of three separate payments to the Company; the first, as the consideration for the sale of a cause of action by Celtic Helicopters to Mr. Traynor himself, and the other two, for £50,000.00 and £3,868.54 respectively, as prepayment, or payment, for flying hours by a Mr. Gary Heffernan, a coded name for Mr. Charles Haughey.

23-93 The arrangements to discharge the loan were directed by Mr. Traynor. The steps taken were somewhat involved, even for what, on the

face of it, ought to have been a fairly simple proposition. In summary what happened was as follows:—

- (i) By letter of 29th January, 1992, Ms. Joan Williams, Mr. Traynor's secretary wrote to Irish Intercontinental Bank indicating that she wished to make arrangements to clear Celtic Helicopters' facility with the Bank inclusive of interest as of Monday, 10th February following, and she asked to be informed of the figure required to clear the facility as of that date. This deadline could not be met, and arrangements were instead made to clear the facility by reference to the amount due as of 14th February, 1992. The figure involved was £153,868.54.
- (ii) Mr. Traynor contacted Irish Intercontinental Bank with instructions to make available three drafts payable to the Bank of Ireland, one for £100,000.00, one for £50,000.00 and one for £3,868.54. This instruction was given by Mr. Traynor, on behalf of Ansbacher Cayman on Ansbacher Cayman's notepaper from 42 Fitzwilliam Square, Dublin 2. He directed that the total cost of the three drafts should be debited to the main Ansbacher Cayman sterling account at the Bank. The Bank, not being a retail bank, could not issue drafts and instead drew three cheques on its account with Allied Irish Banks, each dated 14th February, 1992 for the amounts in question.
- (iii) The three Allied Irish Banks cheques having been lodged to Dublin Airport branch of Bank of Ireland, a draft was then issued by that branch on 14th February, 1992 in the sum of £153,868.54. On the same day by letter written on Ansbacher notepaper Mr. Traynor forwarded the draft to Irish Intercontinental Bank for credit to Celtic Helicopters account.

23-94 The labelling of the largest of the three amounts used by Celtic Helicopters to purchase a draft, namely the £100,000.00 cheque, as a payment for the purchase by Mr. Traynor of a cause of action was without any foundation in reality. The cause of action was effectively worthless in that the Defendant against whom Celtic appeared to have a right of action had neither insurance nor assets; even assuming that Celtic had pursued the cause of action, and successfully obtained an award in the Courts, there was no prospect of the recovery of anything from the Defendant. Notwithstanding whatever was said to Mr. Barnicle concerning the so-called purchase, it is clear that Mr. Traynor never regarded himself as having acquired an asset of any value.

23-95 The two cheques for £50,000.00 and £3,868.54 described as payments for flying hours by Gary Heffernan, whether prepayments or payments for services actually rendered, were likewise found by the Tribunal to have been misrepresented by Mr. Traynor to Mr. Barnicle and Mr. Ciaran Haughey. It is impossible to accept that these two cheques

would have been drawn on the one day, on the same account, for the same purpose, when a single cheque in the sum of £53,868.54 would more conveniently have achieved that objective.

23-96 The funds for the three cheques were sourced from the one Ansbacher account. At the time of the McCracken Tribunal, it was believed that the S8 Memorandum account, identified as an account for the benefit of Mr. Haughey, was the source of these three cheques. From the greater volume of documentation available to this Tribunal, it is now clear that there is no record of any debit to the S8 Memorandum account related to this sum. The sterling account from which the total of Stg.£143,867.08 was debited to pay for the three cheques amounting in all to £153,868.54 was the main Ansbacher Cayman sterling account with Irish Intercontinental Bank. The labelling of the three amounts in the manner mentioned above was a fictitious representation intended to obscure the underlying reality that the entire amounts stemmed from an Ansbacher account, and in all likelihood originated from sources who were persuaded to contribute toward the funding of Celtic Helicopters, but who did not wish to be identified or who were in a position to conceal their identities. The manner in which these payments were disguised and the lengths to which Mr. Traynor went to misrepresent the true character or origin of the payments are circumstances from which it is reasonable to conclude that the motive for the making of the payments was connected with the office of Taoiseach held by Mr. Haughey at the time.

23-97 In 1992/1993 a further £290,329.00 was raised from a number of identified individuals in support of the company's then failing finances. This funding was organised in the main by Mr. Traynor. Mr. Haughey and Mr. Michael Murphy also became involved.

23-98 This sum comprised the following amounts contributed by the individual's names below:—

- (i) Mr. Xavier McAuliffe — the sum of £50,000.00.
- (ii) Mr. Patrick Butler/Butler Engineering Limited — the sum of £25,000.00.
- (iii) Mr. Guy Snowden — the sum of £67,796.00 (US\$100,000.00).
- (iv) Mr. John Byrne — the sum of £47,533.00 (Stg£52,500.00).
- (v) Mr. Michael Murphy/Mr. David Gresty — the sum of £100,000.00.

23-99 None of these investments involved any examination of the Company's financial difficulties. None of the "investors" in fact displayed any real interest in its status, or (with the possible exception of Mr. David Gresty) future prospects. In the case of Messrs. McAuliffe, Butler, Snowden and Byrne, their attitude, both at the time of the investment and at all times since, is best encapsulated with one of more or less complete indifference

to the company or its finances. All of the payments were prompted by the connection to Mr. Haughey. As he had done in relation to the £99,000.00 used to repay a loan for Celtic Helicopters aviation insurance premium, Mr. Murphy emphasised that he did not want to have made an enemy of the son of the most powerful man in the State; that the risk to which his own business might be exposed in the event of Mr. Haughey's son's business failing was a key factor in his promoting the investment to Mr. Gresty. Whilst he believed that the Company could trade out of its difficulties due to its contacts with the Haughey family, repeatedly he asserted that he had made what he called a commercial decision, albeit one indubitably connected with Mr. Haughey's position, that under no circumstances did he wish to be known as the person responsible for the collapse of Celtic Helicopters. The £100,000.00, although provided by Mr. Gresty was prompted by Mr. Murphy and was moreover supported, or guaranteed by Mr. Murphy, although to what extent precisely is unclear, whether on the basis of a 100% guarantee or on the basis that any losses would be shared equally between the two men or their associated companies.

23-100 The payment of the £100,000.00 Murphy/Gresty investment involved an overlap with what has already been described as the Carlisle payment. Of the £180,000.00 intended by Mr. Ben Dunne to be transmitted to Mr. Charles Haughey in October/November of 1992, £100,000.00 was appropriated by Mr. Traynor; was processed through the accounts of Carlisle Trust, a company associated with Mr. John Byrne, converted into a cheque drawn on an account of that company, and diverted to Celtic Helicopters account at Bank of Ireland, Dublin Airport Branch. Mr. Murphy's £100,000.00 cheque, representing the Murphy/Gresty investment, was then used to replace the £100,000.00 Dunnes Stores funds already diverted to Celtic Helicopters, and was transmitted in its place to Mr. Charles Haughey. This involved a complex financial intrigue whereby in mysterious circumstances for which the Tribunal was unable to obtain any satisfactory explanation, a blank cheque drawn by Mr. Murphy on one of his company accounts was in an irregular fashion stamped "*approved*" for credit to an external account. Subsequently, the amounts and the name of the payee of an external account, namely an Ansbacher account at Credit Suisse Zurich, were applied to the cheque which, on the instructions of Mr. Traynor, relayed through Deloitte & Touche, was sent to Credit Suisse in London for onward transmission to Zurich. By an arrangement with Mr. John Furze, an associate of Mr. Traynor an equivalent amount to the proceeds of Mr. Murphy's £100,000.00 cheque, credited to an Ansbacher account in Zurich, was credited to an Ansbacher Cayman account in Irish Intercontinental Bank in Dublin. Subsequently, a corresponding credit was recorded in the sterling memorandum account S8 maintained by Mr. Traynor, for the benefit of Mr. Haughey.

23-101 Although from the evidence it would appear that Mr. Murphy had meetings with Mr. Paul Carty, then, an accountant to Celtic Helicopters, in which information concerning aspects of the Company's financial affairs

was relayed to him, there would appear to be no doubt on the basis of the evidence of both Mr. Murphy himself and Mr. Gresty that the decision to invest was taken well in advance of any such meetings, and that they could have had no impact on the making of that decision.

23-102 In the case of none of these payments could it be suggested that they ought to be viewed as truly commercial. The lack of commerciality in the payments was also evident from the manner in which Mr. Haughey and the Haughey family company, Larchfield Securities viewed the investment. The sum of £290,329.00 was at one point described in the accounts of Celtic Helicopters as a loan. Subsequently, without any reference to the individuals by whom the investments supposedly had been made, this amount was recharacterised as representing cumulative preference shares. At the time of this reclassification or recharacterisation, one of the supposed investors, the late Mr. Patrick Butler, had already died. Not only was there no consultation with any of the supposed investors in connection with the classification of these shares, nor was there any consent requested or obtained in relation to the terms on which those shares were to be issued. The shares were effectively treated by both Celtic Helicopters and by the Haughey family company, Larchfield Securities as if the latter company had total dominion over them subject, to some undefined residual obligation to the providers of the funds.

23-103 The Tribunal has concluded that the Murphy/Gresty payment was connected with Mr. Haughey's prominent political position, and in particular the office he had formerly held as Taoiseach, and was made in circumstances giving rise to a reasonable inference that it was connected with that office.

23-104 The payments to Mr. Haughey were all within a general class of indirect payments within the Tribunal's Terms of Reference. However, having regard to the extent of Mr. Haughey's control over Celtic Helicopters, there were also payments to a connected person to Mr. Haughey, namely Celtic Helicopters, within the meaning of the Ethics in Public Office Act, 1995.

23-105 Quite apart from the payments to Celtic Helicopters classified as indirect payments to Mr. Haughey as set out above, Mr. Haughey also used Celtic Helicopters as a vehicle for the transmission of other funds, in themselves unrelated to Celtic Helicopters, so as to enable them to be applied to his own use, while removing traces of the identity of the providers of the funds. This occurred in 1989 and 1991 in the case of three cheques amounting in all to £40,000.00 from Dr. Edmund Farrell of Irish Permanent Building Society. The cheques were processed through Celtic Helicopters' account at Bank of Ireland, Dublin Airport Branch, so as to remove the traces of the identity of Irish Permanent Building Society as the drawer of the cheque or as the provider of the funds. Of the £40,000.00, £30,000.00 was applied for the benefit of Mr. Haughey directly and the balance, the

proceeds of a cheque for £10,000.00, was lodged to an account in the name of Mrs. Maureen Haughey.

OTHER HOLDERS OF PUBLIC OFFICE WITHIN TERMS OF REFERENCE

23-106 Chapter 15 deals with inquiries into three entirely separate individuals each of whom at different times held public office and all of whose financial affairs were, at one time or another, connected with Guinness & Mahon. Most of that Chapter concerns Mr. Denis Foley whose dealings with Guinness & Mahon shed interesting light on the operation of the Ansbacher accounts, and the lengths to which individuals connected with the operation of the accounts, in particular, Mr. Pádraig Collery, were prepared to go, in order to obscure the activities of the account holders.

23-107 Whilst the circumstances relating to each of the three individuals were entirely separate, two matters were common to each of the three. Firstly, in none of the three cases was there any question of money being paid by way of gift, loan, or otherwise to any of them, whilst holding public office, or at any other time. In regard to Mr. Foley and Mr. Coveney, what was inquired into were the circumstances in which monies which each had earned were held and transacted within particular bank accounts, and in regard to Mr. Sutherland, the essence of the inquiry was into circumstances whereby a banking loan facility extended to him for a house purchase was secured. No question at all arises in relation to any of these office holders of potentially corrupt payments being made out of the Ansbacher accounts, or any other clandestine sources. Secondly, no material connection whatsoever existed between any of the three and Mr. Charles Haughey, whose role and involvement is central to so many of the other Chapters in this Part of the Report. Both Mr. Coveney and Mr. Sutherland came to the attention of the Tribunal on foot of responses to Tribunal queries addressed to Irish Life & Permanent. Those initial inquiries did not elicit any potential involvement of Mr. Foley whose emergence served to focus a significant part of the Tribunal's inquiries on the role of Mr. Pádraig Collery, as a close associate of Mr. Desmond Traynor, in the operation of the Ansbacher accounts.

Mr. Denis Foley

23-108 Mr. Denis Foley was elected to Dáil Éireann in 1981 and, apart from one break between 1989 and 1992, when he was appointed to the Senate, he served as a TD representing Kerry North until his retirement from politics in 2002. At various times he also held office as Chairman and Vice-Chairman of the Public Accounts Committee. The Tribunal's public inquiries concerning Mr. Foley were conducted under Term of Reference (c) concerning payments made from the Ansbacher accounts to any person who held public office including persons such as Mr. Foley who held office both as a TD and as a Chairman and Vice Chairman of the Public Accounts

Committee. Mr. Foley was involved with the Ansbacher accounts as recipient of payments from those accounts. He was also involved with the accounts as a director of Central Tourist Holdings Limited, a company which had borrowings from Guinness & Mahon which were secured by a backing deposit over an Ansbacher account.

23-109 Mr. Foley did not come to the attention of the Tribunal until an advanced stage of its inquiries into the operation of the Ansbacher accounts. This was as a result of documents produced to the Tribunal by Ms. Margaret Keogh, on foot of an Order for Production made by the Tribunal on the 22nd October, 1999. On foot of the Order Ms. Keogh, who had formerly been secretary to Mr. Pdraig Collery, produced to the Tribunal a number of bundles of documents which had been deposited with her in October, 1999 by Mr. Collery for safe-keeping, until he could remove them elsewhere.

23-110 The documents produced by Ms. Keogh included copy Ansbacher accounts in coded form which had been made up to July, 1998, and a list identifying the persons to whom the codes applied. Mr. Foley was identified as the person to whom the account coded A/A40 related. The documents recorded that Mr. Foley had a credit balance of Stg.£133,535.51. They also recorded that certain sums had been debited from each of the various coded account balances, not just those relating to Mr. Foley, to meet legal costs incurred by Hamilton Ross and Mr. John Furze in resisting proceedings issued in the Cayman Islands in 1997 by the McCracken Tribunal in which access to documents of Hamilton Ross and Ansbacher Cayman was sought. The application failed. The amount of the costs apportioned in the case of coded account A/A40 was Stg.£5,000.00.

23-111 Mr. Foley had an association with the Mount Brandon Hotel in Tralee, a premises owned by Princes Investments Limited. He was involved in the business of booking bands to play at the hotel ballroom and arranging publicity for those events, and over a number of years became acquainted with Mr. Traynor who, as an accountant with Haughey Boland, auditors to Princes Investments, visited the Hotel once or twice a year. In 1975 or 1976, by which time he had become an executive of Guinness & Mahon, Mr. Traynor indicated to Mr. Foley that should he wish to make an investment, he would be able to offer him a good rate of return through Guinness & Mahon. Eventually Mr. Foley took Mr. Traynor up on his invitation and in October, 1979, he travelled to Dublin to meet Mr. Traynor at the latter's office in Guinness & Mahon and gave him two drafts for £50,000.00, money which he had accumulated both from his business and as the balance of political contributions received by him from his supporters in connection with an unsuccessful election campaign in 1977. Mr. Traynor informed him that his monies would be invested in a fund entitled "*Klic Investments*" and that he would be furnished with statements on a periodic basis. This investment involved the minimum of documentary records. There was no record of any lodgements to any account in Guinness &

Mahon relating to this sum of £50,000.00 and whatever Mr. Foley may have been informed by Mr. Traynor, the Tribunal is satisfied that the £50,000.00 was deposited in an offshore Ansbacher account and credited to a memorandum account ultimately coded A/A40.

23-112 In 1990, further funds were introduced into the account following the closure, in circumstances shrouded in secrecy, of a deposit account held by Mr. Foley with Guinness & Mahon. The account in question had been opened in 1986, and by 1990 stood at in excess of £24,000.00. On Mr. Traynor's advice the account was then closed and the balance, in the form of a draft lodged to an account of Management Investment Services, at Bank of Ireland, Talbot Street. Management Investment Services was an entity associated with Mr. Traynor. A cheque was drawn on the Bank of Ireland account, payable to Kentford Securities and that cheque was in turn lodged back to Guinness & Mahon to another Kentford Securities account. Accounts in the name of Kentford Securities were used to facilitate the activities of the owners of Ansbacher accounts and that it was the connection with Ansbacher that accounted for the resort to the Kentford Securities account in this case is borne out by the fact that an equivalent sterling credit to the Management Investments Services cheque was recorded in the memorandum account A/A49, another memorandum account associated with Mr. Denis Foley.

23-113 Mr. Foley had a limited number of dealings in connection with his Ansbacher account with Mr. Traynor up to 1994. Following Mr. Traynor's death, Mr. Foley had difficulty in obtaining information concerning his account and it was not until September of 1995, having made contact with Mr. Collery, that he succeeded in obtaining further information concerning his account. Specifically he wished to make a withdrawal of £50,000.00, and this was arranged by Mr. Collery who transmitted that sum in cash to Mr. Foley at a meeting in Jury's Hotel in Dublin. Mr. Foley applied the cash funds toward the purchase of two bank drafts from the Bank of Ireland, Tralee. His evidence was that, conscious of his tax liabilities, he retained the two bank drafts in his possession with a view to paying the Revenue Commissioners, and that the proceeds were in due course used by him towards paying his outstanding tax. This however did not occur until December of 1999 almost four years after the £50,000.00 cash transfer from Mr. Collery.

23-114 The Tribunal considers that Mr. Foley's evidence in relation to the purpose for which he sought the withdrawal of £50,000.00 is incredible and that while he did ultimately apply these funds towards the discharge of tax liabilities, this course was taken only after the Tribunal had made contact with him on foot of documents produced by Ms. Keogh.

23-115 Mr. Foley had a number of further contacts and dealings with Mr. Collery in the course of which various matters were discussed from which it was clear that at least by 1999 he was aware that his funds were held in,

and that his withdrawals were from, the Ansbacher accounts operated both by Mr. Collery and Mr. Traynor, and that the records pertaining to those funds were kept in coded form and specifically that the codes applicable to his funds were respectively A/A40 and A/A49. It was also clear that having regard to the denomination in which these funds were held, Mr. Foley was aware that these funds were held in offshore deposits. In the course of his evidence to the Tribunal, Mr. Foley accepted that he had invested his funds with Mr. Traynor; that he knew that his funds were held in a sterling offshore investment; that Mr. Traynor was the common element in the handling of these funds over a period of years both while he was at Guinness & Mahon and subsequently in the period when he operated from Cement Roadstone Holding's offices at Fitzwilliam Square. He was also aware, at least following Mr. Traynor's death, of Mr. Collery's connection with the account, and that a Mr. John Furze was involved in handling the funds; that all in all his funds were held in what by 1997 was well-known to him to be the Ansbacher accounts; that he was aware of all these matters before the Tribunal made contact with him.

23-116 Mr. Pdraig Collery was intimately connected with the operation of the Ansbacher accounts. From his dealings with Mr. Foley, a picture emerges of the extent to which he was aware of the involvement of a number of individuals with those accounts including in particular Mr. Foley's involvement, and of the manner in which funds held in these accounts were applied, and particularly of the manner in which they were applied during the period since the commencement of the investigation of the McCracken Tribunal and throughout the period of the inquiries both private and public conducted by this Tribunal. In the course of handling the affairs of Ansbacher account holders following the death firstly of Mr. Traynor, and later of Mr. Furze, Mr. Collery became aware, if he had not already been aware, of the identity of the various account holders and the correspondence between those identities and the memorandum account codes. Specifically he was aware that Mr. Foley's funds were recorded in the memorandum accounts under the code A/A40. In 1998 he took part in an exercise in the Cayman Islands which included, amongst other activities, the making of debits to each of the accounts held by memorandum account holders in respect of legal fees incurred by Hamilton Ross in resisting attempts by the McCracken Tribunal to obtain access to information concerning the accounts. Following that exercise he took back to Ireland with him copies of various account details and it was these documents which he deposited with Ms. Margaret Keogh, and which were ultimately produced to the Tribunal by Ms. Keogh on foot of an Order from the Tribunal.

23-117 Although at the time Mr. Collery was under a continuing obligation of disclosure to the Tribunal he did not inform the Tribunal of his visit to the Cayman Islands in August of 1998, or of the persons or entities of whose identities he became aware in the course of his dealings with documents relating to the Ansbacher accounts. Nor did he disclose to the Tribunal on

his return from the Cayman Islands the documents he had retrieved. Rather than furnish them to the Tribunal he instead deposited them with Ms. Keogh.

23-118 In the course of evidence on the 5th of November, 1998 Mr. Collery attributed or cross-referenced account code A/A40 to Mr. John Furze and in doing so wilfully gave evidence to the Tribunal which was material to the Tribunal's inquiries and which he knew to be false or did not believe to be true. Moreover, by omitting to inform the Tribunal of the information concerning the identity of persons or entities connected with the Ansbacher accounts, which he had obtained on his visit to the Cayman Islands in August of 1998, Mr. Collery obstructed or hindered the Tribunal in the performance of its duties. Further, the Tribunal is satisfied that by the act of placing documentation he brought back from the Cayman Islands in August of 1998, beyond the reach of the Tribunal, and into the custody of Ms. Keogh, Mr. Collery obstructed or hindered the Tribunal in the performance of its functions.

23-119 Mr. Foley's involvement with Mr. Traynor extended beyond the keeping of an Ansbacher account to his role as a director and shareholder of Central Tourist Holdings Limited. The other directors and shareholders were Mr. John Byrne, Mr. William Clifford and the late Mr. Thomas Clifford. The company acquired and developed the Central Hotel and Ballroom in Ballybunion in 1972. The business did not prosper, and ultimately the premises were sold in 1986. There were insufficient funds to discharge the company's debts, and it was Mr. Foley's understanding that the company solicitor and the accountants, Haughey Boland & Company, reached a settlement of the company's liabilities with the Revenue Commissioners, and with Guinness & Mahon, who were the company's bankers. The settlement was partially funded by the directors, including Mr. Foley, who contributed £5,000.00 each toward the payment of the company's trade creditors, and £2,787.38 toward the company's liabilities to the Revenue Commissioners.

23-120 In June of 1972, the company borrowed £70,000.00 from Guinness & Mahon. The loan was advanced in sterling but was converted into Irish pounds in February, 1979, following this country's entry into the European Monetary Union and break with sterling. Interest was serviced on the loan in the early years, but from 1982, interest payments ceased to be made, interest was rolled-over, and the facility was increased each year to cover accrued interest. The loan was discharged on the 4th of September, 1985, with funds debited to an off-shore account designated Guinness Mahon Cayman Trust/College. Fictitious loan account statements were manually generated by personnel in Guinness & Mahon after the Central Tourist Holdings loan was repaid, and a certificate of account balances were issued by Guinness & Mahon to Haughey Boland & Company over the signature of Mr. Pdraig Collery. Account statements were generated in October, 1985, November, 1985 and October, 1986: the latter account

statement purported to record that Central Tourist Holdings was indebted to Guinness & Mahon in the sum of £149,605.18.

23-121 The Tribunal considers it probable that the fictitious statements were generated on Mr. Traynor's instructions from within the bank in 1985 and on his instructions, in all probability transmitted to Mr. Coltery, from outside the bank in 1986. It is the view of the Tribunal that the records of Guinness & Mahon were falsified in October/November, 1995 and October/November, 1996 to give the impression that a loan made by Guinness & Mahon to Central Tourist Holdings Limited continued to be outstanding, notwithstanding that it had been discharged in full on the 4th of September, 1995. Mr. Pádraig Coltery had a role in creating this impression.

23-122 The Tribunal is of the view that it is likely that the ultimate source of the funds which were drawn from an Ansbacher account in Guinness & Mahon and used to discharge the borrowings of Central Tourist Holdings Limited on 4th September, 1985, was connected with the Cayman Trust set up by Mr. John Byrne. The repayment of the loan represented a benefit conferred on Mr. Foley, namely, the discharge of borrowings for which he had a secondary liability on foot of his personal guarantee and accordingly, constituted a payment to Mr. Foley by Mr. Byrne within the meaning of paragraph (c) of the Tribunal's Terms of Reference. Whether Mr. Foley was aware of this or not, there is no evidence that he did any act in the course of his public office to confer any benefit on Mr. Byrne, or was directed by Mr. Byrne to do any such act.

Mr. Hugh Coveney

23-123 In the case of Mr. Coveney, the relevant Term of Reference was (b), which required the Tribunal to inquire into the source of any money held in the Ansbacher accounts for the benefit of any person who holds or had held ministerial office.

23-124 Mr. Coveney's involvement in politics, and in particular his holding of ministerial office, came comparatively late in his professional career as a highly successful quantity surveyor. Following successful participation in Cork Local Elections, in 1979, he became Lord Mayor of Cork in 1982, and was elected to Dáil Éireann in June, 1981. He was appointed Minister for Defence in 1994, some years subsequent to the latter of his two periods of involvement with the Ansbacher accounts.

23-125 Mr. Coveney's involvement may be divided into two parts, firstly his involvement with Guinness Mahon off-shore operations in the Channel Islands and Cayman Islands in the 1970s, and secondly, after an interval of some years, his dealings with the Ansbacher Cayman operation in the 1980s in connection with a commercial venture based in the United States.

23-126 Regarding the former, the evidence establishes that Mr. Coveney was personally the holder of Ansbacher accounts, and that the source of

the funds held on deposit was portions of his professional earnings, the proceeds of trading in securities, and the proceeds of the disposal of a racing yacht. Mr. Coveney ceased to hold any such accounts prior to his involvement in national politics in Ireland, and many years before he had attained ministerial office. The Tribunal acknowledges that both in his lifetime, and thereafter through his solicitors and family, he afforded cooperation and assistance with the Tribunal's inquiries, which was helpful to the Tribunal in addressing the relevant banking operations in more general terms. With regard to the latter, Mr. Coveney was involved in a property venture in the United States and had obtained a loan from Ansbacher Cayman for that purpose.

Mr. Peter Sutherland

23-127 Mr. Peter Sutherland's involvement with the Tribunal arose in the context of the comparatively narrow focus established by Term of Reference (c), which for purposes of any possible connection on his part required the Tribunal to inquire whether any payment was made from the Ansbacher accounts to any person who has held public office. Mr. Sutherland held the position of Attorney General in successive coalition Governments headed by Dr. Garret Fitzgerald in different periods between 1982 and 1984 inclusive. The position of Attorney General under the Irish Constitution, as legal adviser to the Government, constitutes its incumbents as holders of public office. Term of Reference (c) does not countenance or address situations in which public office holders are sources or holders of Ansbacher accounts, but is concerned only with whether or not any such individuals actually derived payments either in the simple or in the extended interpretation of that word from such accounts.

23-128 Mr. Sutherland's dealings with Guinness & Mahon arose from an application for bridging finance in 1976 in the course of moving house from Foxrock to Blackrock. The bridging finance was secured by a solicitor's undertaking to hold the deeds of the Blackrock premises being purchased by Mr. Sutherland to the bank's order on completion of the sale and to lodge the proceeds of sale of his Foxrock premises in due course.

23-129 Bank documentation made available to the Tribunal as a result of a wide-ranging request for information to Irish Life & Permanent Plc included documentation from Mr. Sutherland's loan file which, apart from the solicitor's undertakings and related material, also contained other documentation suggesting that over and above the solicitor's undertakings, the bank appeared to have derived additional comfort or security from funds separately held on deposit with it. One of the documents, a memorandum detailing Mr. Sutherland's initial approach, referring to the facility sought, providing details of the houses involved, the likely undertakings required, also went on to indicate the likelihood of a favourable response to Mr. Sutherland's request for a facility, "*particularly in the knowledge of his other assets with us which he referred to briefly*".

Over the course of the life of the facility, which extended to 1980, other documentation came into existence including a memorandum referring to an extension of the facility and describing the security position in terms “*suitable secured*”, an expression as will appear from other parts of this Report that was frequently used to refer to a security consisting either of an Ansbacher deposit, or an Ansbacher-related or other offshore deposit.

23-130 From information provided to the Tribunal by Irish Life & Permanent Plc, from the evidence of officials in Guinness & Mahon and information provided by Mr. Sutherland who cooperated fully with the Tribunal’s inquiries, it appeared that Mr. Sutherland was not in fact the source or the holder of an Ansbacher account, and that the references in the account documentation which might be thought to refer to such an account appeared in fact to refer to an offshore deposit held on behalf of Mr. Sutherland’s father-in-law, a Spanish national, living in Spain, Mr. Cabria. Whilst there was no evidence of any formal charging of the Cabria deposit monies, it seems to the Tribunal that the Bank in referring to additional comfort or additional security must have been referring to something in the nature of an informal charging of the Cabria deposit monies as additional security when the bridging loan was sought and granted.

23-131 The informal comfort derived by the Bank from the offshore funds of the Cabria Family as collateral for Mr. Sutherland’s bridging loan amounts to a payment within the extended interpretation of “*payment*” and brings the transaction within Term of Reference (c). However, the bridging loan transaction proceeded by some years the holding of public office on the part of Mr. Sutherland and in any event the affording of a degree of domestically-related loan security is readily distinguishable from the making of a clandestine payment of money to a current holder of public office from an Ansbacher account, which would clearly appear the mischief contemplated by Term of Reference (c) when it was drafted.

DUNNES SETTLEMENT

23-132 By the mid 1980s the Dunnes Stores business established and developed by the late Mr. Bernard Dunne Senior and his wife, Mrs. Nora Dunne had expanded and prospered to such an extent that it was one of the outstanding successes among Irish indigenous businesses. The ownership and structure of Dunnes Stores had been devised in the mid 1960s so as to keep the value of the assets of the business in a Trust. Whilst within the Trust the assets were immune from taxation. By the mid 1980s the Trust device had been overtaken by legislation. As long as the assets remained within the Trust, they were still immune from the more severe capital taxes. Upon the termination of the Trust however, the assets would become exposed to enormous liabilities under the Capital Taxation Regime introduced in the mid 1970s.

23-133 This summary is not intended to detail all of the evidence, nor all of the various aspects of the Dunnes Trust's dealings with the Revenue. However, perhaps the most significant features to emerge from the evidence arose by comparison with the evidence given to the McCracken Tribunal. The question of the handling by Revenue of the Dunnes Trustees Tax appeal was dealt with in the course of the evidence, and in the Report of the McCracken Tribunal. Evidence was heard at the public proceedings of that Tribunal that: —

- (i) On an occasion that it concluded occurred in late 1987 and probably in early or mid-November of that year, an approach was made to Mr. Noel Fox by the late Mr. Desmond Traynor to the effect that Mr. Haughey's severe financial problems necessitated the raising of about £150,000.00 from each of some six persons, which request was conveyed by Mr. Fox to Mr. Dunne, who on consideration indicated that he would pay the entire amount himself;
- (ii) Further thereto, substantial payments were made by Mr. Dunne to Mr. Haughey, but commencing in November, 1987, by which time certain of the tax matters in dispute between the Revenue Commissioners and Dunnes Stores had been resolved;
- (iii) Whilst the then Chairman of the Revenue Commissioners, Mr. Philip Curran, met with Mr. Dunne in March of 1988 at the request of Mr. Haughey, this meeting was, on the basis of the evidence made available to the McCracken Tribunal, considered to be merely a routine meeting in which nothing specific was requested by Mr. Dunne, that no representations were made to Revenue by Mr. Haughey on behalf of any Dunnes interest and neither was there any wrongful use by Mr. Haughey of his position as Taoiseach.

23-134 Therefore, at the time of the evidence heard by that Tribunal and at the time of its Report, it would appear that payments made by Mr. Dunne to Mr. Haughey were believed to have commenced in November of 1987 and dealings with the Revenue Commissioners were deemed to be limited to a single meeting with Mr. Philip Curran, a meeting described by Mr. Dunne as having been sought by him on a basis tantamount to seeking a social encounter with someone equivalent to one of Dunnes largest customers.

23-135 At evidence heard by this Tribunal it emerged that substantial additional payments were made by Mr. Dunne to Mr. Haughey over and above those payments mentioned in the course of the evidence of the McCracken Tribunal or in the Report of that Tribunal. Not only did the aggregate of all such payments greatly exceed what initially had been supposed but in addition, the time scale of the making of those payments appreciably pre-dated the sequence of payments identified by the McCracken Tribunal. As already mentioned in this summary, the Tribunal

uncovered five further substantial payments made by Mr. Dunne to Mr. Haughey.

DATE	SUBJECT MATTER	AMOUNT (£)
January, 1987	Bearer cheques	IR£32,200.00
May, 1987	Tripleplan payment	Stg.282,500.00
November, 1990	Wytrex payment,	Stg.200,200.00
November, 1992	Carlisle cheques	IR£180,000.00
May, 1993	Personal cheque	IR£20,000.00

These additional payments brought the total Dunnes payments to Mr. Haughey to over £2 million pounds. Neither Mr. Dunne nor Mr Haughey had disclosed these payments to the McCracken Tribunal.

23-136 Apart from the additional payments, a considerable amount of documentation came to the attention of the Tribunal which appears not to have been made available to the McCracken Tribunal. Inquiries resulting from this additional material led to the Tribunal's discovery that despite Mr. Dunne's evidence to the McCracken Tribunal that his meeting with Mr. Philip Curran arranged by Mr. Haughey was the first occasion on which he had met the Chairman of the Revenue Commissioners he had in fact met Mr. Curran's predecessor, Mr. Seamus Pairceir on a number of occasions commencing in April of 1987 and continuing right up to the date of Mr. Pairceir's retirement in September, 1987. With one exception, his meetings with Mr. Pairceir like that with Mr. Curran had been arranged at the request of Mr. Haughey. The Tribunal established that in May of 1987 Mr. Pairceir had agreed to waive £62,450.00 due by Dunnes Stores to Revenue on foot of a compromise agreement made some short time earlier. It also emerged that the McCracken Tribunal had not been made aware that after his retirement, Mr. Pairceir had been retained in a consultancy capacity by Mr. Dunne, initially with regard to advising in relation to the appeal against the Capital Gains Tax assessment and that although the work he had performed was of a relatively perfunctory nature he had accepted a substantial payment from Mr. Dunne in advance of the carrying out of any such work.

23-137 The Dunnes Trust deed provided that in default of the Trustees making an appointment of the capital of the Trust by the 15th March 1985, the capital was to vest equally in the beneficiaries, thus triggering liabilities to capital taxes. In anticipation of these potential liabilities, the Trustees took expert advice according to which the options available to them were either to appoint their shares, again effectively triggering capital taxation liabilities, or to seek to extend the terms of the Trust beyond 1985 by the device of re-settling the trust assets on the same Trustees under a new Trust.

23-138 With a view to establishing whether a basis could be agreed whereby tax could be paid at a level which could be afforded by the Trustees, effectively by the business, an approach was made to Revenue. This was made by Mr. Frank Bowen through an association with Mr. Hugh Coveney, who put Mr. Bowen in touch with the then Minister for Finance, Mr. Alan Dukes. A meeting, at which Mr. Ben Dunne was in attendance, was arranged with Mr. Dukes who took the view that notwithstanding the high tax liability, the Company should have been in a position to pay although this might result in some temporary set back to its development. Mr. Dukes subsequently rang Mr. Bowen indicating that Mr. Seamus Pairceir, Chairman of the Revenue would contact him to arrange a meeting, which took place on the 7th of March, 1985 and was attended by a number of Revenue officials and representatives of the Trustees. The sole contention between the two sides was the value to be placed on the Company. Dunnes representatives argued for a value of £34 million while Revenue responded that the lowest valuation it could accede to was £80 million. It transpired that the tax liability might be in the vicinity of £43 million (albeit for a slightly different configuration of taxes to that which a short time later would apply). Dunnes interest had indicated that the most they could have paid was £16 million and that the gap between the two figures was too great. Mr. Pairceir indicated that he had an obligation to raise revenue for the State and that his approach could not be based on economic arguments then being advanced by Dunnes as to the impact any liability to tax might have on the Dunnes business. Negotiations, however, proved unsuccessful before the deadline of the 15th March 1985 and by that stage, the Trustees had determined to adopt the tax strategy of re-settling the assets on the same Trustees. From Revenue's point of view however, this did not dispose of the tax problems faced by the Trust in that Revenue believed that the re-settlement itself gave rise to a significant capital tax liability.

23-139 Apart from capital taxes of the kind alluded to above, the Trust, became liable, as did all Trusts, to Discretionary Trust Tax from 1984 onwards. This was charged at an annual rate of 1% on the value of the Trust assets. In February of 1985, the Trustees made a return for Discretionary Trust Tax based on a valuation, under the specific rules applicable to Discretionary Trust Tax, which diverged from those applicable to Capital Gains Tax or Capital Acquisitions Tax, at £33.4 million for the entirety of the Trust assets. Revenue disputed the valuation and raised an assessment based on a valuation of £100 million. The Trustees appealed and before the Appeal came on for hearing on the 16th March 1987, a compromise was reached on the basis of an agreed valuation of £82 million.

23-140 A compromise agreement agreed between two teams of lawyers was drawn up in writing. The agreement, provided for payment to be made within twenty-one days from the 16th March 1987 in default of which interest was to accrue. It specifically provided that the basis of the Agreement was

without prejudice to any liability for Capital Gains Tax. This was obviously of significance having regard to the different rules of valuation which applied to Capital Gains Tax and Discretionary Trust Tax. Some short time after the settlement, Revenue wrote to the Trustees setting out full particulars of the various amounts due. The Trustees replied seeking a reduction on the amount agreed under the written settlement on the basis that the agreed terms for interest were unfair. The Revenue Official dealing with the matter wrote to the Trustees indicating that by statute, interest was payable from the valuation date unless paid within three months of that date, which it had not been, and that the Revenue Commissioners did not consider it appropriate to depart from that position which had been incorporated in the written Settlement Agreement. Despite promises, payment was not forthcoming within twenty-one days of the Agreement. On the 25th May 1987, Revenue wrote to Mr. Noel Fox, one of the Trustees, seeking payment of the amount then due together with interest, and on the same day, Mr. Seamus Pairceir, Chairman of the Revenue Commissioners, phoned the official dealing with the matter, ascertained that the amount of interest due from the date of the Settlement was £62,450.00 and indicated that he proposed not to charge interest for that period and that the amount due should be reduced accordingly. The Revenue Official most intimately involved in progressing the assessment and agreeing the compromise terms, Dr. Don Thornhill, indicated in evidence that he did not agree with Mr. Pairceir's decision to waive interest.

23-141 On the Capital Gains Tax issue, there was little further contact between the parties in 1985 other than two telephone conversations in which Mr. Pairceir indicated that while discussions between the parties to achieve a settlement should not be ruled out it would be necessary for him to set the assessment procedures in train. In two telephone conversations with the Trustees in the following year, Mr. Pairceir informed Mr. Bowen that the lowest valuation figure that would be accepted by the Revenue was £100 million; that whilst Revenue had been asked to negotiate by the Minister and to take full account of the public interest in the matter, he felt that it was his responsibility to proceed and that no questions of equity arose in calculating the tax due; that he had spent an enormous amount of time and resources looking into the position and that he had obviously waited too long. Revenue then progressed the assessment arriving at a valuation for the relevant valuation date, namely the 14th March 1985, at £120 million generating a liability, according to the rules for indexation, allowances and so forth, of £38.8 million.

23-142 In the early part of 1987 dealings between the Dunnes interests and Revenue intensified. Apart from the settlement of the Discretionary Trust Tax assessment and the subsequent waiver of interest of £62,450.00 due under the settlement agreement, there was further contact with Mr. Ben Dunne in relation to Capital Gains Tax. On the 13th of April, 1987 shortly after he came to power following the General Election, Mr. Haughey requested Mr. Pairceir to meet Mr. Dunne. A meeting took place on the 22nd

April, 1987. Prior to the meeting Mr. Pairceir directed an official to calculate what liability to Capital Gains Tax would be thrown up by a valuation of £82 million, that is, the agreed valuation on the Discretionary Trust Tax settlement. The tax due on this basis would be £23.6 million rather than the £38.8 million already assessed. The figure of £23.6 million calculated in preparation for this meeting represented a drop of £15.2 million from the tax then assessed. This was the first of three or more meetings between Mr. Dunne and Mr. Pairceir while he was Chairman of the Revenue Commissioners.

23-143 No settlement was reached and a further meeting took place on the 4th June 1987. In the meantime Mr. Pairceir had explored with Revenue officials how the Capital Gains Tax assessed could be reduced further, and a number of calculations were performed both in relation to the valuation of the assets as at the valuation date of March 1985 and as at the base valuation date (applicable to all Capital Gains Tax calculations) of April 1974. The closer these two figures could be brought, the smaller would be the gain with the result that the amount of tax would reduce quite dramatically. After various calculations were performed by a number of officials under the direction of Mr. Pairceir, the view was taken that a figure of £16 million could be put to Dunnes as a reduced figure. According to Mr. Pairceir, at a meeting with Mr. Dunne, he had agreed on a settlement of £16 million with three years to pay subject to Mr. Dunne having an opportunity to consider the position. Mr. Pairceir's evidence was that the settlement foundered, and in a further meeting with Mr. Dunne in July of 1987 he was informed by Mr. Dunne that at that stage he wished to ignore the Trust Deed, and to approach the tax liability on the basis that the Trust had terminated on the 15th March 1985 and that the shares had been vested in the beneficiaries. This figure of £16 million was similar to the figure mentioned in the course of the very first meeting between Dunnes and the Revenue Commissioners in 1985 and would have represented a saving of £22.8 million. It was offered to Dunnes without any counter-offer or counter-proposal whatsoever emanating from that quarter, and was not therefore the result of the usual offer and counter-offer characteristic of negotiations in the ordinary way.

23-144 Mr. Pairceir retired from the Revenue Commissioners in September of 1987. On the 29th February 1988 the Appeal Commissioners notified the parties that the Dunnes Trustees' Capital Gains Tax Appeal against the Revenue Commissioner's assessment would be heard on the 9th and 10th June 1988. On the day following the notification, the 1st March 1988, Mr. Haughey requested the new Chairman, Mr. Curran, to meet him in connection with Mr. Dunne. According to Mr. Curran, Mr. Haughey had referred to Dunnes facing a large tax bill due to the increased value of its business, and that he just seemed interested in introducing Mr. Dunne to Mr. Curran.

23-145 Whilst the Revenue Commissioners were confident of success in the Capital Gains Tax Appeal, which proceeded on the 22nd and 23rd September 1988 in fact the decision went in favour of the taxpayer. Notwithstanding their earlier confidence, the Commissioners decided, having taken the advice of Senior Counsel, not to appeal the determination to the High Court, a view shared by most Revenue witnesses with the exception of Mr. Christopher Clayton a Senior Revenue Official who stated that the decision not to appeal was inordinately hasty.

23-146 1987 therefore was a year in which the Dunnes Business interests were facing exposure to capital taxes that had the potential of a marked effect on the entire value of the Dunnes Stores group of companies. It was also the year in which Mr. Noel Fox had notified Mr. Ben Dunne of the critical financial predicament faced by Mr. Charles Haughey. Mr. Dunne's agreement to discharge the entire amount of the funds required to resolve Mr. Haughey's financial predicament was something which was originally thought to have taken place in late 1987. When the additional information that had not been made available to the McCracken Tribunal is engrafted on the picture of events, the actions and the motivations of those persons centrally involved undeniably emerge in a clearer focus and more logical sequence.

23-147 The aggregate of payments made to Mr. Haughey by Mr. Dunne from the assets of the Dunnes business greatly exceeded what had been conveyed to the McCracken Tribunal with a preponderance of additional payments, and in particular the Tripleplan payment of Stg.£282,500.00, being made in a manner that was covert and extremely difficult to detect. These additional payments markedly pre-dated what had hitherto been conveyed as a time scale of payments commencing in late 1987. It is now apparent that both the request for money from Mr. Haughey, and Mr. Dunne's response to it, was set in train at a time when Mr. Haughey had good prospects of returning to political power, and when battle lines had been drawn in the large capital taxation issues between Revenue and the Dunnes interest. Rather than an isolated and innocuous 1988 request, as had been thought, from Mr. Haughey that Mr. Dunne be facilitated in meeting the Chairman of the Revenue Commissioners, Mr. Haughey had in fact the previous year, within a month of becoming Taoiseach arranged for Mr. Dunne to meet the previous Chairman of Revenue, Mr. Seamus Pairceir, with whom Mr. Dunne had a number of further meetings and negotiations on the critical Capital Gains Tax issue.

23-148 In assessing dealings between the Dunnes Trustees and the Revenue Commissioners throughout the period of the negotiations concerning the taxation matters referred to in this Report, it is possible to note a clear distinction between the years 1985 and 1986 on the one hand, and the period comprising 1987 and subsequent years on the other. In the initial period, there was considerable formality and circumspection about the manner in which a number of delegates from both sides were

introduced and met. Discussions between the parties seemed to leave their respective positions distinctly polarised. In contrast, in the second period, once Mr. Haughey as new Taoiseach in 1987 set discussions in motion again by requesting Mr. Pairceir to meet Mr. Dunne, the form and substance of those renewed discussions immediately differed both in intensity and in form from what preceded them. The meetings became informal to the extent that most of the dealings on the Dunnes side were conducted by Mr. Dunne himself rather than the Trustees, who apart from Mr. Fox seemed to recede from the picture. The substance of the meetings involved a change of Revenue emphasis and approach with the former persistent polarisation of views being replaced by a degree of active, if not indeed indulgent engagement on the part of Revenue, with an increased appetite on its part for a settlement reflected in ever reducing demands for tax. This change crystallised in the form of an offer from Revenue to Dunnes to settle for £16 million pounds, a sum which echoes the original figure proposed by Dunnes Trustees, as the maximum the business could afford.

23-149 The second of these periods was effectively ushered in with a concession by Mr. Pairceir to Dunnes Stores in the amount of £62,450.00. Whilst this may have reflected a relatively modest discount upon the agreed settlement figure the fact is that the settlement in itself had incorporated the adoption of a compromise valuation, and the resultant tax and interest due had been reduced to writing by lawyers on both sides in the form of an agreed written settlement. The concession cannot realistically be regarded as a necessary allowance to procure payment of the balance, and it is not difficult to imagine the Trustee's response had Revenue sought to increase their entitlements on foot of the concluded agreement.

23-150 Whilst, as was stressed in evidence by counsel for both the Trustees and the Revenue, allowance must be made in all of this for the risk element inherent in a contested appeal that was ultimately resolved in favour of the taxpayer, yet the appeal was not one that was at the time viewed with undue pessimism within Revenue. Careful examination of all that transpired between the sides only underlines how materially Revenue conduct in the period from 1987, when discussions were resumed after Mr. Haughey took power, diverged from its conduct in the preceding two years; and how assiduously Revenue sought to arrive at a settlement during the months that Mr. Pairceir dealt with Mr. Fox and Mr. Dunne.

23-151 On the evidence in its totality, and bearing in mind that not every detail of it has been rehearsed in this summary, the Tribunal is constrained to find that, in approaching Revenue on behalf of Mr. Dunne in relation to his tax problems, Mr. Haughey sought to and did confer a benefit on Mr. Dunne by way of actual and offered amelioration of those problems in subsequent dealings with Mr. Pairceir. The substantial payments made by Mr. Dunne to Mr. Haughey must be regarded as payments primarily motivated by Mr. Haughey's resumption of the office of Taoiseach in 1987. What may have been actually stated by Mr. Haughey must in all probability

remain a matter of conjecture, but in the light of the close temporal link with Mr. Pairceir’s reappraisal of the merits of the assessment which, in the view of the Tribunal, amounted to nothing short of a complete about turn in the consistent thinking of Revenue over the previous two year period, the connection cannot be tenably regarded as purely coincidental.

23-152 The Terms of Settlement offered by Mr. Pairceir to Mr. Dunne constituted a real and tangible benefit to Mr. Dunne in that they conferred on him an option, that he did not previously have, namely either to allow the appeal to proceed or to settle the assessment by a payment of £16 million pounds which then would have represented a saving of at least 22.8 million pounds, leaving aside any advantage to be accrued from obtaining time to pay. Irrespective of how matters ultimately unfolded, the Tribunal is satisfied that such an option was, at the time, a valuable and substantial benefit conferred on Mr. Dunne, directly consequent on Mr. Haughey’s actions.

IRISH PASSPORTS AND “MR. FUSTOK’S FRIENDS”

23-153 Under Irish law, there was provision for two procedural routes to obtain Irish citizenship through a grant of naturalisation made by the Minister for Justice. The relevant statute was the Irish Nationality and Citizenship Act, 1956, which was amended by an Act of 1986. Section 15 and Section 16 of the 1956 Act, as amended, were the operative sections. In brief, Section 15 required an applicant to satisfy the Minister of certain temporal conditions regarding an applicant’s notice of application and duration of residency within the State, as well as an intention in good faith to reside within the State after naturalisation. Section 16 conferred on the Minister a discretion to exempt an applicant from some, or all of the foregoing requirements in certain situations, the majority of which were obvious and understandable, but which also included the amorphous instance where the applicant was of Irish descent or Irish associations. It was the concept of Irish association in particular that proved to be a problematical area, and in time this concept was applied to a significant number of non-nationals undertaking financial investment in Ireland. The scheme whereby passports were provided to such persons has since been abolished.

23-154 In the course of its private investigative work, the Tribunal reviewed the contents of a substantial number of Department of Justice files relating to both residence-based naturalisations (that is, made pursuant to Section 15), an investment-based naturalisation (that is, made pursuant to Section 16). Having regard to evidence that had already been heard by the Tribunal, and having taken into account the parameters contained in paragraph (d) of the Tribunal’s Terms of Reference, the Tribunal decided to confine its inquiries, in the course of public sittings, to some fifteen inter-related and residence-based applications brought by Lebanese nationals over the course of a considerable number of years in the 1980s. Although

a number of succeeding Ministers for Justice were involved in these applications, each of them was granted at a time when Mr. Haughey was Taoiseach. It was also apparent that each of the applications was proposed or promoted by Dr. John O'Connell, who during those years was a TD, a close associate of Mr. Haughey, and for a portion of that period Ceann Comhaile of the Dáil. All fifteen applicants were relatives of, or connected to Mr. Mahmoud Fustok, and one of the applicants, Mr. Kamal Fustok, who was naturalised on 3rd June, 1981, was Mr. Mahmoud Fustok's younger brother. Mr. Mahmoud Fustok is one and the same person who made a payment of £50,000.00 to Mr. Haughey in February, 1985, through the conduit of Dr. John O'Connell's bank account, and the circumstances surrounding that payment are addressed in paragraphs 23-30 to 23-31.

23-155 The fifteen grants of naturalisation of which the Tribunal heard evidence were made by four sets of applications which are detailed below:—

- (i) The first set of applications was formally made in December, 1980, the applicants having registered their intention to apply at an earlier date. Certificates of naturalisation were granted in June, 1981 by the then Minister for Justice, Mr. Gerard Collins, to Mr. Ibrahim Moubarak, Mr. Razouk Daher, Mr. Philip Noujaim and Mr. Kamal Fustok. Whilst the Tribunal is satisfied that Mr. Collins believed, for good reason, that it was appropriate to extend citizenship to the four applicants, Mr. Haughey's interest and involvement in these applications was nonetheless evident.
- (ii) The second set of applications was lodged on 10th December, 1981 by Mr. Mohamad Moubarak, a minor, Mr. Mehsan Youseff Moubarak, also a minor, Mr. Bechara Anis Shoukhair, Mr. Michael Albinia, Mr. Slieman Moubarak and Mr. Wael Khairi. There had been a change of Government on the previous 30th June, 1981 and Dr. Garret Fitzgerald had been elected Taoiseach, and the late Mr. Jim Mitchell had been appointed Minister for Justice. Dr. O'Connell was also elected as Ceann Comhairle of the Dáil. On receipt of these applications, and following representations made by Dr. O'Connell, Mr. Mitchell, having been so advised by civil servants, notified Dr. O'Connell that he intended to postpone consideration of the applications until the requisite twelve month notice period had elapsed in December, 1982. In the event, Mr. Mitchell had no further dealings with the applications as, following a further election, the Fianna Fáil Party was returned to Government, Mr. Haughey was once again elected Taoiseach and the late Mr. Sean Doherty succeeded Mr. Mitchell as Minister for Justice. Dr. O'Connell continued as Ceann Comhairle of the Dáil.

Following correspondence from Dr. O'Connell to Mr. Doherty, dated 8th September, 1982, in which regarding the applications,

Dr. O’Connell referred to an unspecified but “*particular interest*” of which Mr. Doherty was aware, Mr. Doherty on 29th September, 1982, dispensed with the requirement of twelve months notice, and directed the naturalisations of the applicants, which proceeded on 29th September, 1982. Within a matter of days, the Aliens Registration Office (the Division of the Garda Síochána responsible for naturalisation matters), conveyed certain doubts to the Department as to whether the applicants had in fact resided in the State. Despite the recommendation of Mr. John Olden, the Assistant Secretary responsible for the Aliens Division, Mr. Doherty declined to direct that further investigations be pursued by the ARO.

- (iii) The third set of applications was made in November, 1982 by Mr. Kamal Moukarzel, Mr. Adnan Moubarak, Ms. Leila Moubarak and Mr. Antoine Ghorayeb. On 30th November, 1982, Mr. Doherty directed that grants of naturalisation should issue to the applicants. On the same day, Mr. Olden furnished Mr. Doherty with his detailed advices, and concluded that Mr. Doherty would be leaving himself open to serious criticism if he went ahead with the naturalisations. Still on the same day, Mr. Doherty, through his private secretary, conveyed his intention to proceed. On 3rd December, 1982, Mr. Olden, took what he described in evidence as the strongest stance open to a civil servant who considered that a Minister was acting beyond the limits of his discretion or otherwise illegally, and having restated his views, advised the Minister that he should consult the Attorney General before naturalising the applicants. Notwithstanding that recommendation, Mr. Doherty proceeded with the naturalisations of all four applicants on 8th December, 1982, without reference to the Attorney General.
- (iv) The final set of applications included that of Ms. Faten Moubarak, the daughter of Mr. Slieman Moubarak who was naturalised in September, 1982, and to whom a certificate of naturalisation was ultimately issued on 4th May, 1990. Whilst no formal application was made on behalf of Ms. Moubarak, who was a minor, until 1st May, 1990, her naturalisation was pending from early, 1983, and the misgivings of both senior civil servants and successive Ministers for Justice regarding her entitlement, which centred on their doubts concerning the validity of her father’s naturalisation, were evident. Mr. Michael Noonan, who had succeeded Mr. Doherty as Minister, met Dr. O’Connell on 21st September, 1983, Dr. O’Connell having earlier made written representations to him, and conveyed to Dr. O’Connell his considerable reservations concerning the matter. Likewise, Mr. Gerard Collins who was reappointed Minister for Justice on 10th March, 1987, resisted Mr. Haughey’s direct and persistent representations that he should proceed with the naturalisation of Ms. Moubarak. Ultimately Ms.

Moubarak was naturalised on 4th May, 1990: this was not in consequence of a decision made by the then Minister for Justice, Mr. Ray Burke, but in consequence of a direction given by Mr. Haughey to Mr. Cathal Crowley, the then Assistant Secretary with overall responsibility for the Division. The certificate of naturalisation issued by the Department was delivered to Mr. Haughey's office.

23-156 Whilst material events in relation to the fifteen grants of naturalisation ranged over a considerable number of years, the evidence heard undoubtedly demonstrates a clear pattern of consistent and exceptional support for the applicants on the part of Mr. Haughey as Taoiseach, an unvarying association with both Dr. O'Connell and Mr. Fustok in respect of all the applications, and a payment of £50,000.00 made in approximately the middle of that period of years by Mr. Fustok to Mr. Haughey, in a manner that could on no appraisal be viewed as transparent. Many of the applications were granted in unsatisfactory circumstances, and in the teeth of robust departmental advises to the contrary; Dr. O'Connell specifically invoked the assistance of Mr. Haughey as Taoiseach in advancing the applications, and Mr. Haughey conveyed to Mr. Collins the anxiety of Dr. O'Connell that the applications should be processed speedily; in conveying by letter of 8th September, 1982 to the late Mr. Doherty that there was a "*particular interest*" in the applications then being promoted, Dr. O'Connell invoked the influence and authority of the Taoiseach and supported the applications.

23-157 With regard to the final naturalisation, that of Ms. Faten Moubarak, a particularly unequivocal position emerged. Clear evidence has been adduced to the effect that, (a) an exceptionally explicit level of written and oral departmental advice over a lengthy period had made clear the unanimous view of senior officials that, given the substantive and procedural frailties of the naturalisations of Ms. Moubarak's parents, her application ought not to be granted; these advices were of a cumulative nature, and included, as regards the group of applicants which extended to Ms. Moubarak's mother, the exceptional advice by Mr. Olden to the late Mr. Doherty that he should take the advice of the Attorney General before finalising naturalisation decisions. (b) Apart from the specific written and oral advices tendered, the anecdotal evidence given by witnesses, in particular by Mr. Crowley and Mr. Magnier as Senior officials and by Mr. Collins and Mr. Burke as Ministers, conveyed forcibly the extreme sensitivity of Ms. Moubarak's application and the particular unease felt by both Civil Servants and Politicians as to the manner in which it was being advanced. (c) As regards Mr. Haughey himself, there was apparent a wholly exceptional and disproportionate involvement on the part of a Taoiseach in Ms. Moubarak's application. Apart from Mr. Haughey's involvement with the earlier and related cases advanced by Dr. O'Connell, this included his specific written request by letter to Mr. Collins as Minister, his verbal request in that behalf to Mr. Magnier, a department official, his ongoing

requests to Mr. Collins made subsequent to Cabinet meetings, his specific direction to Mr. Crowley, unprecedented in that witness's experience, that the application should be granted, the manner in which, pursuant to that direction, the Certificate was finally completed and furnished in May 1990, and the sustained and continual series of requests made through the Office of the Taoiseach for completion of the matter until and even after that had been done. (d) The payment of £50,000.00 by Mr. Fustok to Mr. Haughey, made through the agency of a cheque made out to cash by Dr. O'Connell, and paid into an account from which payments to Mr. Haughey's bill-paying service were made, was clandestine and undisclosed, and preceded (bearing in mind that Mr. Haughey was in Opposition for a portion of the ensuing period) Mr. Haughey's specific involvement in Ms. Moubarak's application.

23-158 The explanation advanced for the payment, namely that it was in consideration for the purchase of a horse, is highly unconvincing and improbable; such limited inquiries as the Tribunal has undertaken indicate that a purchase price of £50,000.00 for a yearling at that time would have been considered a significant and substantial purchase, the amount was one which appreciably exceeded the salary of the Taoiseach at the time, and in a purported transaction between a professionally run Stud and an internationally known horse owner and breeder, it seems wholly extraordinary that there exists no passport in relation to the yearling, no documentation whatsoever in relation to any sale, and no information even of an anecdotal nature as to how any such yearling fared after purchase. The Tribunal in the circumstances is driven to conclude that no such sale in fact took place, or if a yearling was transferred to Mr. Fustok, its true worth or value did not remotely approach the amount of the payment made.

23-159 In all these circumstances, the Tribunal finds that the payment of £50,000.00 made by Mr. Fustok to Mr. Haughey was a substantial payment made to him through the agency of Dr. O'Connell in circumstances falling within the meaning of Term of Reference (a), by reason of being connected with the granting of Naturalisation to certain non-nationals associated with Mr. Fustok, and in particular Ms. Faten Moubarak. Further, in involving himself and assisting in connection with the said Naturalisations, and in particular by directing the Naturalisation of Ms. Faten Moubarak, Mr. Haughey made a decision by way of return for that payment, which accordingly was a decision within the meaning of Term of Reference (d).

GLEN DING

23-160 There is no connection between Mr. Charles Haughey and the disposal in 1990 of State owned lands at Deerpark, Blessington, County Wicklow, to Roadstone Dublin Limited, a member of the Cement Roadstone Holdings Plc Group of Companies. Nor is there any connection between the operation of the Ansbacher accounts and this disposal.

23-161 The Tribunal's inquiries into the disposal, and particularly the conduct of the sale, of the Glen Ding lands were prompted by the part played by Cement Roadstone Holdings in the operation of the Ansbacher accounts; the role of Mr. Desmond Traynor, as Mr. Haughey's close associate and financial adviser in providing banking operations through which these accounts were conducted; the fact that these banking operations from which Mr. Haughey benefited were conducted from 1987 onwards from the Head Offices of Cement Roadstone Holdings, and the fact that at various times up to eight directors of Cement Roadstone Holdings benefited from the services provided by Mr. Traynor in the operation of these accounts.

23-162 Aspects of the disposal, already in the public domain, suggested that there may have been a departure from normal procedures in the conduct of the sale. Of these the most important were first, that, in 1988 in response to a Parliamentary Question, the then Minister for Energy, Mr. Ray Burke, stated that the lands would not be sold save by public tender, the competition to be advertised in the national press; secondly, the related representations made orally and in writing by the Department to various interested parties to the same effect.

23-163 The Tribunal's inquiries examined the transaction. From the evidence it appeared that whilst there had been a deviation from the parliamentary commitment this was the consequence of a number of administrative lapses which, however regrettable, were not connected to Mr. Charles Haughey. The manner in which the sale was conducted was complicated by certain confusion over ministerial directives but, these were not reflected in any favouritism towards Roadstone. Nor did the manner in which the sale was conducted prevent the officials from achieving a price within the order of achievable values at the time.

HOW REVENUE TAXED (PART 1)

23-164 By virtue of Term of Reference (j), the Tribunal was required to inquire into "*whether the Revenue Commissioners availed fully, properly and in a timely manner in exercising the powers available to them in collecting or seeking to collect the taxation due [in respect of]..the gifts received by Mr. Charles Haughey identified in Chapter 7 of the Dunnes Payments Tribunal Report and any other relevant payments or gifts identified at paragraph (a) above.*" In order to discharge this aspect of its remit, the Tribunal was obliged to review all of Mr. Haughey's dealings with Revenue dating from 1979, including the taxation of the payments identified by the McCracken Tribunal and further, including the taxation of payments or gifts identified by this Tribunal.

23-165 Prior to the establishment of the McCracken Tribunal, Mr. Haughey had dealings with Revenue in connection with Income Tax, Capital Gains Tax, Residential Property Tax, and Capital Acquisitions Tax. Aspects of

Revenue's dealings with Mr. Haughey regarding these heads of taxation have to be regarded as unimpressive.

23-166 As regards Income Tax, Mr. Haughey dealt with Revenue on the footing that the sole source of his income for tax purposes was his State entitlements. This was accepted by Revenue notwithstanding the clear discrepancy between that income and Mr. Haughey's evident lifestyle, of which Revenue was fully cognisant, and further notwithstanding significant payments of Capital Gains Tax well in excess of the entire of Mr. Haughey's then gross annual income made in the late 1980s, and the source of which was never queried by Revenue.

23-167 Mr. Haughey's liability to Capital Gains Tax was consequent on the purported agreement of January, 1980 between Mr. and Mrs. Haughey and the Gallagher Group, which agreement was brought to the attention of Revenue by the Receiver of the Group, and on the much earlier disposal in 1977 of Rath Stud, a farm in County Meath which had been owned by Mr. Haughey. No returns were made at any time by Mr. Haughey in relation to either of these transactions, and it was only after a protracted exchange of correspondence between Revenue and Mr. Pat Kenny, then of Haughey Boland & Company, who was Mr. Haughey's tax agent, that in 1986 Revenue raised an assessment to Capital Gains Tax for an aggregate sum of £102,330.00. The tax was paid in three instalments, the last of which was made in January, 1988. Despite the considerable number of years that had elapsed between each transaction, and the payment of tax due, which in the case of the sale of Rath Stud was some eleven years, and despite the fact that Mr. Haughey had omitted to make returns, no amount was levied, or sought, by way of either interest or penalties.

23-168 There were also certain shortcomings in Mr. Haughey's dealings with Revenue in connection with the discharge of Residential Property Tax on Abbeville. Whilst returns were made, and Residential Property Tax paid, the valuations submitted by Mr. Haughey were all revisited in the aftermath of the McCracken Tribunal, and exponentially increased valuations arose for the years subsequent to 1987, culminating in a sum for the final year 1996 which more than quadrupled the submitted valuation. There were certain unsatisfactory elements in Revenue dealings with Mr. Haughey in connection with Capital Acquisitions Tax which arose following the disposal in 1989 by Mr. and Mrs. Haughey of a substantial part of the lands at Abbeville, to their four children.

23-169 Despite the existence of undoubted mitigating factors, including concealment on the part of Mr. Haughey, serious limitations in the statutory powers then vested in Revenue, serious shortcomings in liaison and communication between different branches of Revenue, a comparative want of effectiveness which then affected Revenue generally, and a disinclination to pursue interest and penalties, there remains evident in many of the relevant dealings between Revenue and Mr. Haughey, a

preparedness to let Mr. Haughey's liabilities drift over the course of lengthy and repetitious correspondence, without recourse to interest or penalties where applicable, and a reluctance to confront Mr. Haughey when meaningful responses were not provided by his agents. It is understandable that it was not easy at the time to address the contingency of a very powerful political leader whose co-operation and disclosure left a great deal to be desired, but even in retrospect the apparent passivity shown in aspects of the relationship appears inordinate.

23-170 The response of Revenue in seeking to tax Mr. Haughey in respect of the payments that emerged at the McCracken Tribunal was significantly more thorough, systematic and strategic than what had preceded it. A joint team of senior officials from different branches of Revenue, which was directly accountable to the Board of Revenue and its Chairman, was assembled in July, 1987. Having regard to all of the circumstances, including previous shortcomings in communication between different branches of Revenue, this course made eminent sense and was overdue.

23-171 On 10th December, 1987, Revenue raised an aggregate assessment to Capital Acquisitions Tax, on the payments by Mr. Ben Dunne to Mr. Haughey, in the sum of £1,164,739.00. The assessment was appealed by Mr. Haughey to the Appeal Commissioners, and the appeal was heard on 29th July, 1998. The Appeal Commissioners reserved their decision, and in December, 1998, they ruled in favour of Mr. Haughey, and reduced the assessment to nil. Notwithstanding that adverse outcome, Revenue proceeded to prepare professionally and carefully for an Appeal to the Circuit Court, and when the focus turned to negotiations with Mr. Haughey's tax agents, these were conducted in a capable and balanced fashion. The assessment was resolved and a settlement was finalised in a written agreement drawn up on 3rd April, 2000. By the terms of this agreement, Mr. Haughey accepted liability for a Revenue debt in the sum of £1,009,435.00 and undertook to discharge this sum by no later than 1st October, 2000, in default of which interest would thereafter accrue. Further, Revenue was entitled to comment publicly upon the terms of the agreement in a Press Release, reflecting the high level of public interest as to what transpired on foot of the relevant findings of the McCracken Tribunal.

23-172 Given the initial adverse outcome before the Appeal Commissioners, the ongoing elements of risk in contested litigation, and the intense public interest following upon the McCracken Report and attendant publicity, it cannot seriously be doubted that the settlement procured, representing a secured commitment on the part of the Mr. Haughey to pay the entire Gift Tax due, plus almost 100% by way of interest, represented a reasonable and satisfactory outcome.

23-173 It appears to the Tribunal that the lessons that had been learned within Revenue in preparation for taxing the McCracken-related payments were applied even more capably and professionally to the collection of tax

due by Mr. Haughey on payments and gifts, of which evidence had been heard by this Tribunal. The main individuals who had previously been involved in the joint team remained, thereby providing high level expertise in relation to the different categories of tax, as well as representation from the investigative side in a context of possible criminal connotations; apart from remaining accountable to the Board and Chairman of Revenue, the team was also augmented by including as its head the Assistant Secretary, Mr. Gillanders, and the internal legal research undertaken was reinforced by frequent recourse to external legal advice.

23-174 In the first instance, a decision was taken by Revenue that there was no realistic prospect of recovering Income Tax on the payments in question, so that any sustainable assessment had to be based upon Capital Acquisitions Tax. The Tribunal is satisfied that this decision was correct. Revenue then set about preparing an estimate of Mr. Haughey's potential liability to Gift Tax on the payments and gifts in question. Revenue calculated that Mr. Haughey's maximum potential tax liability was £6.5 million (€8.25 million), assuming that interest was capped at 100%. However, having regard to a number of factors, it was considered that a figure in the region of £3.25 million (€4.126 million) to £3.8 million (€4.825 million) was more realistically attainable. Following lengthy negotiations which ensued between Revenue officials and Mr. Haughey's representatives, Mr. Haughey's liability was settled at £3.94 million (€5 million). A formal written agreement was concluded on 18th March, 2003, and the agreed tax and interest was duly paid to Revenue by Mr. Haughey on 1st September, 2003.

23-175 Given the statutory provisions then in force, and the established Revenue practice of capping interest at 100% of the Capital Acquisitions Tax assessed, the decision to confine the interest sought on a similar basis was justified and understandable. It is correct that Mr. Haughey had enjoyed the benefit of many of the gifts for lengthy periods, and that a successful ultimate outcome from contested litigation would have enabled a higher interest entitlement. But the Tribunal accepts that the risks inherent in such litigation were very real, at least in a context of succeeding in an amount equal or even near to the settlement actually procured. Apart from the initial unsuccessful outcome in regard to the McCracken-related payments before the Appeal Commissioners, it can scarcely have gone unnoticed in the course of Revenue's later preparations, that the prosecution against Mr. Haughey for obstructing the McCracken Tribunal had been deferred.

23-176 It is further accepted that the then absence of provision for tax-gear penalties in the Capital Acquisitions Tax Code precluded the imposition of penalties on a scale which would have entitled Revenue to publish Mr. Haughey's name in any list of tax defaulters. In ensuring as part of the eventual written agreement that the principal details of the settlement were conveyed in a contemporaneous press release, Revenue adequately

acknowledged and made provision for the high level of legitimate public interest in the outcome of these dealings with Mr. Haughey. Similarly, whilst an investigation of the magnitude of that conducted into Mr. Haughey's tax affairs would normally have included an interview with the taxpayer in person, its absence in the light of all that transpired, and the reasons given, is not viewed as matter of consequence.

23-177 In the light of the foregoing, and all other matters heard in evidence, the Tribunal is of the view that the actions of Revenue at all stages in regard to these payments were diligent and appropriate, that the general strategy and specific negotiations with Mr. Haughey's agents were ably and astutely conducted, that the amount of the settlement obtained probably exceeded any amount likely to be obtained in contested litigation and justified its acceptance, and that the detailed provisions subsequently incorporated into the written agreement adequately secured and reinforced that basis of settlement.

THE OPERATION OF THE ANSBACHER ACCOUNTS

23-178 The Tribunal was not mandated by its Terms of Reference to conduct an inquiry into the Ansbacher accounts, or the persons who held funds off-shore in the accounts. The Tribunal's sole purpose in reviewing the accounts was to assist in conducting its own inquiries pursuant to its Terms of Reference, and in particular those inquiries dictated by paragraphs (b) and (c) of its Terms of Reference, which were defined by reference to the Ansbacher accounts. Prior to the establishment of the Tribunal, a large amount of information had already come into the public domain concerning the development of the Ansbacher accounts in the course of evidence given to the McCracken Tribunal. Furthermore, this aspect of the Tribunal's inquiries has, to a very considerable extent, been superseded by the very thorough investigation undertaken by the Inspectors appointed to Enquire into the Affairs of Ansbacher, whose Report was published by Order of the High Court made on 24th June, 2002.

23-179 The manner in which the activities of the Ansbacher accounts were conducted featured in evidence at various stages of the Tribunal's proceedings and is reflected in a number of different portions of this Report. This Chapter however contains an overall narrative account of the operation of the accounts but also makes particular reference to a document entitled "*a note to John Furze*", which was examined at length in the course of the evidence. The document was prepared by a Dublin businessman following meetings with Mr. Traynor and Mr. Furze in which the facilities on offer through the Ansbacher accounts were extensively described.

23-180 The note contains an overall description of the mechanics of the operation, and in many respects correlates with evidence regarding the actual operation and character of the accounts. From other parts of this Report, it will be clear that the activities involved in the operation of the

accounts were characterised by irregular and improper banking practice, together with a catalogue of evasion; evasion of exchange control, evasion of income tax and evasion of the Central Bank Regulatory Authorities. From the document it was clear that the hallmark of the services being provided by Mr. Traynor and Mr. Furze was secrecy, not confidentiality in the normal and legitimate sense in which that term is understood in banking practice but secrecy calculated to assist in evasion of the kind mentioned above. Just as the abuse of good banking practice, both domestic and international was a central feature of the activities of Mr. Traynor and Mr. Furze, so also was the abuse of or distortion of the main legal device deployed in the conduct of these activities, namely the discretionary trust. While on the face of it, funds, which Mr. Furze was seeking to attract, would be held in a discretionary trust, the reality is that what was being marketed was a guarantee that the Trust could be used as a cover for avoiding scrutiny by various regulatory authorities.

23-181 The Chapter goes on to show that inevitably the depth of secrecy on offer was bound to attract funds from sources desirous not only of avoiding taxation, exchange control and banking regulation, but wishing to avoid criminal investigation specifically in the case of accounts connected with illegal drugs activities. Whilst nowhere in this Report is it suggested that Mr. Furze or Mr. Traynor or any of their associates or any of the banks under the umbrella of the generic description, the “*Ansbacher accounts*” were knowingly involved in or in any way connected with illegal drug activities, the fact remains, as was evident from other documents referred to in this Chapter, that to maintain the level of secrecy desired in the operation of these accounts, there was a concomitant risk of exposure to this form of illegal activity. It was obviously of concern that the accounts being operated by Mr. Traynor, Mr. Furze and Mr. Collins involved backing deposits, which secured loans to a convicted drug dealer and his associates and may at one time have been deposited in Guinness and Mahon in a system of accounts operated by them to hold funds for Mr. Haughey who was then Taoiseach.

THE CENTRAL BANK AND GUINNESS & MAHON

23-182 In the course of evidence heard at public sittings, the Tribunal focused on the relationship between the Central Bank and Guinness & Mahon in the years between 1976, and 1982, and in particular with regard to a number of inspections carried out by the Central Bank on Guinness & Mahon during that period. These inspections arose in the context of the Central Bank’s role as the supervisory authority for licensed banks. The Central Bank’s supervisory role has as its objective both what are termed macro-prudential issues and micro-prudential issues, the former being the protection of the banking and financial system as a whole, and the latter being the protection of depositors’ funds. In discharging this function, the Central Bank conducts on-site inspections of supervised banks. It reviews the books and records of the bank, and its inspectors interact with the

bank's key personnel. On completion of an on-site inspection, an Inspection Examination Report is prepared and is submitted, to senior management of the Central Bank. Following consideration of the Report, the Central Bank would normally communicate with the Chairman of the supervised bank about any matters of significance that may have arisen in the course of the inspection. In discharging all of its function, officials of the Central Bank were bound by an oath of secrecy until 1989, and with the passing of the Central Bank Act, an alternative confidentiality regime was introduced. In consequence, information acquired by the Central Bank in the course of on-site inspections could not be disclosed to such agencies as the Revenue Commissioners.

23-183 In both the 1976 and 1978 inspections of Guinness & Mahon, serious issues arose regarding the activities of the Bank in connection with its off-shore subsidiaries in both the Cayman Islands and the Channel Islands. These activities came to the attention of Central Bank inspectors in the context of their review of Guinness & Mahon's loan book, and in the light of certain limited information furnished by Mr. Traynor, consequent on inquiries made by the Central Bank, about the back-to-back loans extended by Guinness & Mahon to Irish resident customers on the security of deposits held by their off-shore subsidiaries. The Central Bank's concern was that Guinness & Mahon was facilitating a tax avoidance scheme, and indeed, in the view of one of the inspectors, that this scheme was tantamount to facilitating tax evasion.

23-184 These concerns were raised formally in correspondence with the then Chairman of Guinness & Mahon, Mr. John Guinness, and were also addressed at meetings with Mr. Traynor, and with his then joint Managing Director, Mr. Maurice O'Kelly. Explanations were given by Mr. Traynor on behalf of Guinness & Mahon regarding these arrangements which were accepted by the Central Bank. Likewise, instead of requiring Guinness & Mahon to wind down those activities, an assurance given by Mr. Traynor that the level of loans was likely to be reduced in the future, was accepted. On the strength of that commitment, the Central Bank took no further action: nor did it impose any conditions on Guinness & Mahon's banking licence.

23-185 It is abundantly clear that Guinness & Mahon failed abjectly to afford due or proper disclosure and co-operation to the Central Bank in respect of loans to Irish residents backed by off-shore deposits, and supplied materially false and deficient information in connection therewith. Whilst the Tribunal has had regard to the possibility of importing in hindsight an untowardly high duty of care on the part of the Central Bank inspectors, and to the various reasons, advanced in evidence for not having taken more decisive action on the matter, yet it appears to the Tribunal that, in the course of the succeeding inspections and meetings had with Guinness & Mahon personnel, sufficient of a concerted and clandestine course of dealings designed to circumvent substantial tax payments was so clearly apparent to the Central Bank as to have rendered a more positive

and proactive response on its part imperative. It was acknowledged by senior officers of the Central Bank in evidence that, had the actions on the part of Guinness & Mahon constituted tax evasion, it would have been incumbent on them to have taken action in relation to Mr. Traynor's ongoing position. In the light of what was known, it is difficult indeed to see how what was involved was other than tax evasion. Even if what was apparent fell short in strict terms of coming within the category of tax evasion, its nature, persistence and potential repercussions necessitated firmer and more concerted action than was apparent.

23-186 The Central Bank was of course at that time precluded from disclosure of the information required by it to the Revenue Commissioners or other Irish agencies, but as the statutory licensing authority in relation to banks, its entitlement and duty to address what had become apparent, whether by conditions attached to the licence or otherwise, was beyond doubt. Had this course been taken, it would in all probability have accelerated the rate and level of response on the part of regulatory authorities generally to abuses of this nature within Irish banking, that were probably not unique to Guinness & Mahon.

23-187 The Tribunal heard some further conflicting evidence regarding a matter which arose in the course of a much later Central Bank inspection of Guinness & Mahon in 1988. The Tribunal's views regarding that matter are fully set forth in Chapter 21 of the Report.

BRIEF CONCLUDING OBSERVATIONS

23-188 Chapter 22, Brief Concluding Observations, seeks to draw together a number of substantive matters addressed in earlier Chapters, and express or confirm related conclusions. It touches briefly upon the Tribunal's relationship with the Media, but in general sets forth little that has not been more extensively set forth previously. Its length is such as to render a summary superfluous.

Appendix A

TRIBUNAL OF INQUIRY (DUNNES PAYMENTS)

Extract From Report Page 37-41

Operation of Ansbacher Accounts

As the Tribunal has not yet had access to the files of Ansbacher Cayman Limited, nor to those of the late Mr. John Furze, it is impossible to detail with certainty the workings of the Ansbacher accounts. However, from the evidence of Ms. Sandra Kells of Guinness & Mahon (Ireland) Limited and of Mr. Padraig Collery, together with an internal audit report of a review of Guinness & Mahon (Ireland) Limited conducted in 1989 by its then parent company Guinness Mahon & Co. of London, and a review of the local audit of Ansbacher Cayman Limited by the auditors to Guinness Mahon & Co. in 1987, it is possible to give a broad outline of how the system operated. According to Mr. Padraig Collery the system had been operating since at least the early 1970s.

Mr. Desmond Traynor was both Deputy Chairman of Guinness & Mahon (Ireland) Limited, and its effective Chief Executive, and at the same time was one of the founders of Ansbacher Cayman Limited. While he held these two positions he appears to have acted on behalf of a number of Irish persons who wished to deposit their money off-shore, and this money was deposited in Ansbacher Cayman Limited by Mr. Desmond Traynor on their behalf. In effect, Mr. Desmond Traynor was acting as the Irish agent of Ansbacher Cayman Limited in this regard. It is not clear whether a separate deposit account was opened in Ansbacher Cayman Limited in respect of each of these depositors, or whether the money was all placed in an account in the name of or under the control of Mr. Desmond Traynor, or a combination of both. Whichever way it operated, Mr. Desmond Traynor was the link man, and would take instructions from the clients in Dublin and ensure that they were complied with in Ansbacher Cayman Limited.

At the same time, Ansbacher Cayman Limited deposited the monies which it had received from Irish clients in its own name with Guinness & Mahon (Ireland) Limited. Again, it is not clear whether all such monies were deposited back in Guinness & Mahon (Ireland) Limited, or only a part of them. The arrangement was that Ansbacher Cayman Limited paid to the Irish clients interest calculated at one eighth per cent per annum less than the interest which it received from Guinness & Mahon (Ireland) Limited, thus generating a small profit for Ansbacher Cayman Limited. It is not known in what currency the money was deposited with Ansbacher Cayman Limited by the Irish clients, but most of the Ansbacher Cayman Limited deposits in Guinness & Mahon (Ireland) Limited were in sterling, although there were some deposits in other currencies.

This was a very ingenious system whereby Irish depositors could have their money off-shore, with no record of their deposits in Ireland, and yet obtain an interest rate which was only one eighth of one per cent less than they would have obtained had they deposited it themselves in an Irish bank. It is not the function of this Tribunal to examine these deposits in any detail, and it may well be that a number of the Irish depositors may have been people engaged in international business which was greatly facilitated by having a sterling account abroad which did not require exchange control permission to operate. No doubt there were others who deposited the monies in this way from other motives.

As the client base for these Ansbacher deposits was Irish, it was very important to have the contact person in Ireland. Mr. Desmond Traynor performed that role while he was alive, and while the records of Guinness & Mahon (Ireland) Limited merely recorded a large deposit or a number of large deposits in the name of Ansbacher Cayman Limited, Mr. Desmond Traynor appears to have kept a record of the Irish clients of Ansbacher Cayman Limited whose money had been re-deposited in Guinness & Mahon (Ireland) Limited. These records were referred to as memorandum accounts, that is they were in one sense sub-accounts within the deposit made by Ansbacher Cayman Limited, and a memorandum was kept for each such sub-account. Mr. Pdraig Collery, who was particularly skilled at computerising records, was in charge of keeping these memorandum accounts, and according to him, such accounts actually existed when he first joined Guinness & Mahon (Ireland) Limited in 1974. He took over responsibility for keeping the records of these accounts in the late 1970's. These records were kept by reference to codes, and the name of the Irish client did not appear on any of the records. These records were such that they would be a mirror image of records kept by Ansbacher Cayman Limited in the Cayman Islands.

While Mr. Pdraig Collery, was in charge of keeping the records, during Mr. Desmond Traynor's lifetime, he did not either accept or give instructions in relation to the accounts. He was instructed by Mr. Desmond Traynor to debit or credit specific memorandum accounts. If, for example, one of the customers wanted to withdraw a sum of money, Mr. Desmond Traynor would instruct Mr. Pdraig Collery to that effect, a withdrawal would be made, either by cheque or in cash, from the account of Ansbacher Cayman Limited in Guinness & Mahon (Ireland) Limited, and the memorandum accounts kept by Mr. Pdraig Collery would be adjusted accordingly. Presumably at the same time the equivalent account of the client with Ansbacher Cayman Limited would be adjusted in the Cayman Islands. It also appears from some of the transactions with which this report is concerned that deposits were made on behalf of a client directly into an account of Ansbacher Cayman Limited, and the Tribunal has not been able to ascertain whether these were treated as separate deposits by the Irish client in the records of Ansbacher Cayman Limited.

While Mr. Desmond Traynor was Deputy Chairman of Guinness & Mahon (Ireland) Limited, he was in fact acting in a dual capacity in relation to these transactions. In managing the memorandum accounts he was acting on behalf of Ansbacher Cayman Limited. After he left Guinness & Mahon (Ireland) Limited in 1985, Mr. Pádraig Collery remained on, and the system operated largely as before. Instructions would be given by Mr. Desmond Traynor to Mr. Pádraig Collery in respect of these memorandum accounts, and Mr. Pádraig Collery would act on those instructions, and continued to keep the records of the memorandum accounts. It is also interesting to note that when these records became computerised, they were maintained on a bureau system which shared the same hardware as, but was totally independent of, the system of Guinness & Mahon (Ireland) Limited. The system was controlled solely by Mr. Pádraig Collery, and had a password which was unknown to the staff of Guinness & Mahon (Ireland) Limited, and accordingly could only be accessed by Mr. Pádraig Collery or, presumably, by Mr. Desmond Traynor.

When Guinness Mahon & Co. Limited sold Ansbacher Cayman Limited to its management, it was a condition of the sale that the Ansbacher deposits would be left for a period in Guinness & Mahon (Ireland) Limited, and would be withdrawn only in stages. The reason for this was that by 1989 it appears there would be some £38 million deposited by Ansbacher Cayman Limited in Guinness & Mahon (Ireland) Limited, and this in fact represented almost 35% of the liabilities of Guinness & Mahon (Ireland) Limited. If this entire sum had been withdrawn at one time this could have proved fatal for Guinness & Mahon (Ireland) Limited. Accordingly, the funds were withdrawn over a period of about two years, and a considerable portion of those funds were put on deposit by Ansbacher Cayman Limited, or by other Cayman Islands companies as will be described later, with Irish Intercontinental Bank in Dublin, which is a merchant bank rather than a retail bank.

As a further part of the shifting of the deposits, in September 1992 an account was opened on the instructions of Mr. Desmond Traynor in Irish Intercontinental Bank in the name of a company called Hamilton Ross Co. Limited. This was a company registered in the Cayman Islands, which was under the control of Mr. John Furze. Some of the monies in the Ansbacher Cayman Limited account were transferred into the account in the name of Hamilton Ross Co. Limited. Hamilton Ross Co. Limited had different accounts for different currencies. It would appear, although the Tribunal cannot be certain without access to the information in the Cayman Islands, that Mr. John Furze, possibly in anticipation of his departure from Ansbacher Cayman Limited, in effect transferred the Irish clients to a trust company of his own, namely Hamilton Ross Co. Limited, and continued to operate what was a banking service on behalf of those clients, but through Hamilton Ross Co. Limited rather than through Ansbacher Cayman Limited.

It should be said that Guinness Mahon & Co. Limited had been very unhappy with the situation. Its auditors reviewed the 1987 audit of Ansbacher Cayman Limited, and the relevant extract from the auditor's report is set out in the Eleventh Schedule hereto. In addition, in 1989 Guinness Mahon & Co. Limited carried out an internal audit of Guinness & Mahon (Ireland) Limited, and the relevant extract from that report is set out in the Twelfth Schedule to this report. Both Ms. Sandra Kells on behalf of Guinness & Mahon (Ireland) Limited and Mr. Padraig Collery have confirmed in evidence that these documents are factually accurate.

After the death of Mr. Desmond Traynor in 1994, these accounts, both when they were in the name of Ansbacher Cayman Limited and when they were transferred into the name of Hamilton Ross Co. Limited, continued to be operated by Mr. Padraig Collery. His evidence, which the Tribunal accepts, is that during the lifetime of Mr. Desmond Traynor he acted on the instructions of Mr. Desmond Traynor, and occasionally on those of Mr. John Furze, and that after Mr. Desmond Traynor's death he acted on the instructions of Mr. John Furze.

Poinciana Fund Limited

Poinciana Fund Limited is a trust company registered in the Cayman Islands, which was controlled by Mr. John Furze. Initially, there were deposits in Guinness & Mahon (Ireland) Limited under an account name "Ansbacher Limited re Poinciana Fund Limited". This was an account in the name of Ansbacher Limited but with the description or designation "Poinciana Fund Ltd." Later, accounts in the name of "Poinciana Fund Ltd." were opened although Guinness & Mahon (Ireland) Limited continued to classify these as part of the Ansbacher deposits. Again, without access to documents and information in the Cayman Islands, it is not possible to ascertain the exact purpose of these accounts, or the exact nature of Poinciana Fund Limited. It would appear to be a trust company which held and invested money on behalf of clients, and some of the monies held by it in Guinness & Mahon (Ireland) Limited were held for the benefit of Mr. Charles Haughey. It seems probable that Poinciana Fund Limited deposited its clients monies with Ansbacher Cayman Limited, and they were re-deposited by Ansbacher Cayman Limited in a separate account with Guinness & Mahon (Ireland) Limited. However, within the Poinciana Fund Limited account there were again sub-accounts or memorandum accounts, the records of which, so far as they affected Irish clients, were kept by Mr. Desmond Traynor and Mr. Padraig Collery. These included accounts designated by code by the letters S2 to S9 inclusive. S8 was a sterling account out of which payments were made for the benefit of Mr. Charles Haughey, and S9 was a deutschmark account out of which payments were made for his benefit. When the funds were moved to Irish Intercontinental Bank and the Hamilton Ross Co. Limited account opened, it appears that the Poinciana Fund Limited monies were transferred as part of the Ansbacher Cayman Limited funds transferred to the Hamilton Ross

Co. Limited account. The S accounts continued to be operated as sub-accounts of Poinciana Fund Ltd. which itself operated as a sub-account of the Hamilton Ross Co. Limited account. In some cases, separate accounts were opened for such S accounts and in particular, the deutschmark money in the S9 account was held in an account entitled “Hamilton Ross Limited S9”. While the S8 memorandum account may have included monies held beneficially for Mr. Charles Haughey and others, the S9 account appears to have been used exclusively for Mr. Haughey’s benefit.

Appendix B
ORGANISATION OF MR HAUGHEY'S FINANCES — CHAPTER 2

MR HAUGHEY'S INCOME FROM STATE SALARIES AND PENSIONS

YEAR	TD'S ANNUAL SALARY (£)	MINISTERIAL ANNUAL SALARY (£)	TAOISEACH'S ANNUAL SALARY (£)	TD'S PENSION (£)	MINISTERIAL PENSION (£)
1979	6,775.00 on 01/01/79	7,942.00 on 01/01/79	16,930.00 on 12/12/79 (Taoiseach from 12/12/79)		
1980	9,590.00 on 01/01/79		16,930.00 on 01/01/80		
1981	12,899.00 on 01/01/81		21,956.00 on 01/01/81 (Taoiseach until 30/06/81)		4,117.00 gross payment received
1982	13,802.00 on 01/01/82		23,493.00 on 09/03/82 (Taoiseach from 09/03/82 to 14/12/82)		3,187.00 gross payment received
1983	13,802.00 on 01/01/83				10,174.00 gross payment received
1984	16,413.00 on 01/01/84				13,613.00 gross payment received
1985	17,454.00 on 01/01/85				13,570.00 gross payment received
1986	17,978.00 on 01/01/86				13,805.00 gross payment received
1987	18,887.00 on 01/01/87		32,149.00 on 10/03/87 (Taoiseach from 10/03/87)		2,754.00 gross payment received

MR HAUGHEY'S INCOME FROM STATE SALARIES AND PENSIONS — continued

YEAR	TD'S ANNUAL SALARY (£)	MINISTERIAL ANNUAL SALARY (£)	TAOISEACH'S ANNUAL SALARY (£)	TD'S PENSION (£)	MINISTERIAL PENSION (£)
1988	19,713.00 on 01/01/88		33,448.00 on 01/01/88		
1989	23,177.00 on 01/01/89		39,234.00 on 01/01/89		
1990	25,335.00 on 01/01/90		41,839.00 on 01/01/90		
1991	28,894.00 on 01/01/91		46,354.00 on 01/01/91		
1992	29,155.00 on 01/01/92 (retired from politics on 24/11/92)		47,745.00 on 01/01/92 (resigned as Taoiseach on 11/02/92)	See 1993 below re. monthly payments for period from 24/11/92 to 24/05/93	18,566.00 gross payment received
1993				11,252.00 divided into six monthly payments for 24/11/92 to 24/05/93 and 46,219.00 lump sum on 25/05/93	28,548.00 gross payment received
1994				13,148.56 gross amount year ending 01/04/94	34,294.00 gross payment received
1995				16,245.08 gross amount year ending 01/04/95	37,105.00 gross payment received
1996				16,622.50 gross amount year ending 01/04/96	38,705.00 gross payment received

Appendix C

CHARLES HAUGHEY'S FINANCES 1979-1986 — CHAPTER 4

LODGEMENTS TO GUINNESS & MAHON ACCOUNTS IN MR. CHARLES J. HAUGHEY'S NAME

Lodgements to Guinness & Mahon Residential Current Account No. 1 — 28500/01/50
(later 0335600) in Mr. Charles Haughey's name

DATE	PARTICULARS	VALUE DATE	CREDIT (£)
13/02/79	Lodged		15,000.00
20/02/79	Lodged		18,750.00
23/02/79	Lodged		20,000.00
07/03/79	Lodged		3,575.00
12/03/79	Lodged		2,425.00
21/09/79	Lodged	24/09/79	34,998.58
26/10/79	Chq lodged	30/10/79	10,000.00
10/09/80	Lodged	10/09/80	40,000.00
31/12/80	Lodged		150,000.00
04/08/81	Lodged	31/07/81	33,726.81
12/08/81	LDG	31/07/81	13,726.81
04/03/82	Lodged		67,135.37
22/06/82	Lodged		1,000.00
09/09/82	Lodged		100,000.00
13/09/82	Lodged	15/09/82	75,000.00
04/01/83	Lodged		200,000.00
10/01/83	Lodged		100,000.00
04/05/83	Reversal		20,000.00
19/05/83	Lodged		30,000.00
20/01/84	Lodged		500.00
	Lodged		2,447.69
08/03/84	CHQS Lodged		1,008.09
11/12/84	Lodged		911.33
02/01/85	Lodged		326.23
09/04/85	Lodged		20,000.00
29/05/87	Lodged		285,000.00

Lodgements to Guinness & Mahon Residential Current Account No. 2 — 3356019 in
Mr. Charles Haughey's name

DATE	PARTICULARS	VALUE DATE	CREDIT (£)
09/05/83	Lodged		30,000.00
09/05/83	Lodged		80,000.00
13/05/83	Lodged		10,000.00
02/06/83	Lodged		10,000.00
14/09/83	Lodged	16/09/83	80,000.00

Lodgements to Guinness & Mahon Joint Account No. 02318008 in the name of Mr. Harry Boland and Mr. Charles Haughey

DATE	PARTICULARS	VALUE DATE	CREDIT (£)
18/01/82	Lodged	21/12/81	53,897.76
05/05/83	Lodged		10,000.00
20/01/84	Lodged	19/01/84	50,000.00
11/09/84	Lodged		115,859.06

Lodgements to Loan Account No. 86256/01/11 in Mr. Charles Haughey's Name

DATE	PARTICULARS	VALUE DATE	CREDIT (£)
01/10/81	Lodged		74,996.83

Appendix D

CHARLES HAUGHEY'S FINANCES 1979-1986 — CHAPTER 4

PAYMENTS FROM GUINNESS & MAHON ACCOUNTS IN MR. CHARLES HAUGHEY'S NAME

Payments from Guinness & Mahon Residential Current Account No. 1 — 28500/01/50
(later 0335600) in Mr. Charles Haughey's name

DATE	PARTICULARS	VALUE DATE	DEBIT (£)
22/01/79	Re: Belgian Franc Notes		500.00
21/03/79	Withdrawn		3,750.00
26/03/79	Withdrawn		5,000.00
11/05/79	US\$2,000 @ 1.98		1,010.10
06/06/79	Withdrawn		25,000.00
25/06/79	Withdrawn	30/06/79	2,091.00
29/06/79	Withdrawn	30/06/79	20,000.00
27/07/79	Withdrawn		2,000.00
06/09/79	Haughey Boland & Co.		10,000.00
10/09/79	Agric Credit Co.		35,159.03
30/11/79	Haughey Boland		2,000.00
15/01/80	Haughey Boland		10,000.00
06/05/80	Haughey Boland & Co.		10,000.00
??/09/80	Withdrawn	03/09/80	41,490.40
??/12/80	Haughey Boland & Co. No. 3 A/C		70,000.00
??/01/81	Withdrawn		30,000.00
18/02/81	Haughey Boland & Co.		10,000.00
19/03/81	Haughey Boland		10,000.00
28/04/81	NBFC		7,777.39
04/05/81	Haughey Boland		20,000.00
31/07/81	Haughey Boland		20,000.00
04/08/81	Withdrawn	31/07/81	13,726.81
11/08/81	Withdrawn	31/07/81	20,000.00
01/09/81	Withdrawn		13,726.81
02/10/81	PUR of FF 4,300 at 8.57		501.76
29/10/81	DFT Northern BK Fin		13,382.60
04/01/82	Withdrawn	31/12/81	1,081.03
06/01/82	Drawn	31/12/81	19,061.84
09/03/82	Withdrawn		1,007.21
25/03/82	Withdrawn		9,605.33
22/04/82	IR Helicopters		10,615.00
03/05/82	NTH Bank Fin Corp		15,365.36
20/05/82	FX Contract 515382		502.00
04/06/82	Merchant Banking Ltd		11,836.74
04/06/82	Merchant Banking Ltd		6,541.78

**Payments from Guinness & Mahon Residential Current Account No. 1 — 28500/01/50
(later 0335600) in Mr. Charles Haughey's name — continued**

DATE	PARTICULARS	VALUE DATE	DEBIT (£)
12/06/82	Merchant Banking Ltd		4,717.94
16/06/82	Merchant Banking		129.55
17/06/82	Withdrawn		1,116.07
17/06/82	Withdrawn		1,393.02
17/06/82	Withdrawn		1,031.66
22/06/82			20,000.00
04/08/82			494.78
06/09/82	M/S Haughey Boland & Co.		10,000.00
14/09/82	Drawn	02/09/82	88,568.14
22/09/82	Haughey Boland & Co.		10,000.00
07/10/82	Haughey Boland & Co.		10,000.00
03/11/82	Northern Bank Finance Corp. Ltd		15,871.14
04/01/83	NBFC		154,433.88
05/04/83	Haughey Boland & Co.		10,000.00
08/04/83	Withdrawn		20,000.00
05/05/83	Haughey Boland & Co.		20,000.00
25/05/83	Haughey Boland & Co.		10,000.00
02/06/83	Drawn		10,000.00
09/09/83	Drawn Re: Inv Dept		6,005.52
11/01/84	Drawn		500.00
24/02/84	Re: 125 Atlantic		1,008.09
03/07/84	French Francs 9,300 at 9.275		1,002.69
24/07/84	Cash Drawn		870.15
11/09/84	Withdrawn		115,859.06
04/10/84	Drawn		1,420.94
17/10/84	MS SB Dillion No. 1 a/c		1,339.47
02/11/84	FFCS 9,450 at 9.4550		999.47
03/04/85	Haughey Boland		20,000.00
09/06/87	Drawn		2,119.27

Payments from Guinness & Mahon Residential Current Account No. 2 — 3356019 in Mr. Charles Haughey's name

DATE	PARTICULARS	VALUE DATE	DEBIT (£)
04/05/83	Drawn		20,000.00
09/05/83	Draft Issued		30,000.00
11/05/83	General Input		12,376.95
02/06/83	Drawn		3,000.00
09/06/83	Drawn		30,000.00
16/06/83	Haughey Boland No. 3 A/C		10,000.00
15/07/83	Haughey Boland & Co.		10,000.00
28/07/83	Haughey Boland		10,000.00
01/09/83	ACC		87,187.45
20/01/84	Drawn		2,447.69

Payments from Guinness & Mahon Joint Account No. 02318008 in the name of Mr. Harry Boland and Mr. Charles Haughey

DATE	PARTICULARS	VALUE DATE	DEBIT (£)
02/11/81	Haighy Boland		70,000.00
29/01/82	Draft H Boland		50,000.00
13/05/83	Drawn		10,000.00
20/01/84	Drawn		5,000.00
20/01/84	Haughey Boland & Co. 3/ACC		15,000.00

Payments from Loan Account No. 86256/01/11 in Mr. Charles Haughey's name

DATE	PARTICULARS	VALUE DATE	DEBIT (£)
01/10/81	Withdrawn	02/09/81	58,490.58
01/10/81	DFT ISS		15,600.05

Appendix E

THE PARTY LEADER'S ALLOWANCE ACCOUNT — CHAPTER 7

LODGEMENTS TO HAUGHEY AHERN & MACSHARRY AIB ACCOUNT NO. 30208 — 062

15th February, 1984 — 31st December, 1984

DATE	PARTICULARS	AMOUNT (£)
24th February, 1984	Lodgment	14,664.42
28th February, 1984	From Dep	10,000.00
2nd March, 1984	Lodgment	15,141.00
5th April, 1984	Lodgment	15,141.00
13th April, 1984	Dep	6,000.00
4th May, 1984	Lodgment	15,141.00
11th May, 1984	From 140 ACC	10,000.00
1st June, 1984	Lodgment	15,141.00
6th July, 1984	Lodgment	15,141.00
2nd August, 1984	Lodgment	15,141.00
13th August, 1984	From DE	20,000.00
10th September, 1984	Lodgment	15,141.00
1st October, 1984	Lodgment	15,141.00
1st November, 1984	Lodgment	15,141.00
6th December, 1984	Lodgment	15,141.00
TOTAL		212,074.42

1st January, 1985 — 31st December, 1985

DATE	PARTICULARS	AMOUNT (£)
7th January, 1985	Lodgment	15,141.00
31st January, 1985	Lodgment	15,141.00
7th March, 1985	Lodgment	15,141.00
29th March, 1985	Lodgment	16,503.75
7th May, 1985	Lodgment	16,445.24
31st May, 1985	Lodgment	15,595.25
28th June, 1985	Lodgment	15,595.25
2nd August, 1985	Lodgment	16,063.08
27th August, 1985	REV CK	35.45
5th September, 1985	Lodgment	16,063.08
2nd October, 1985	Lodgment	16,090.53
31st October, 1985	Lodgment	16,063.08
29th November, 1985	Lodgment	16,063.08
TOTAL		189,940.79

1st January, 1986 — 31st December, 1986

DATE	PARTICULARS	AMOUNT (£)
2nd January, 1986	Lodgment	16,063.08
31st January, 1986	Lodgment	16,063.08
28th February, 1986	Lodgment	16,063.08
20th March, 1986	Lodgment	450.00
27th March, 1986	Lodgment	16,063.08
7th April, 1986	Lodgment	50,000.00
30th April, 1986	Lodgment	16,563.08
22nd May, 1986	ACC	8,000.00
23rd May, 1986	Lodgment	300.00
3rd June, 1986	Lodgment	16,063.08
1st July, 1986	Lodgment	16,213.08
31st July, 1986	Lodgment	26,063.00
29th August, 1986	Lodgment	16,063.08
15th September, 1986	Lodgment	5,000.00
30th September, 1986	Lodgment	16,063.08
22nd October, 1986	Lodgment	50,000.00
31st October, 1986	Lodgment	16,063.08
1st December, 1986	Lodgment	19,436.52
15th December, 1986	Lodgment	10,000.00
TOTAL		330,530.32

1st January, 1987 — 31st December, 1987

DATE	PARTICULARS	AMOUNT (£)
8th January, 1987	Lodgment	16,545.00
27th January, 1987	Lodgment REV CHQ	11,432.07 4,296.01
2nd February, 1987	ACC	7,000.00
10th March, 1987	Lodgment	15,000.00
23rd April, 1987	Lodgment	4,790.62
30th April, 1987	Lodgment	6,750.42
2nd June, 1987	Lodgment	6,885.42
1st July, 1987	Lodgment	6,885.42
31st July, 1987	Lodgment	6,885.42
1st September, 1987	Lodgment	6,885.42
1st October, 1987	Lodgment	6,885.42
30th October, 1987	Lodgment	6,885.42
1st December, 1987	Lodgment	6,885.42
23rd December, 1987	Lodgment	3,000.00
TOTAL		117,012.06

1st January, 1988 — 31st December, 1988

DATE	PARTICULARS	AMOUNT (£)
5th January, 1988	Lodgment	6,885.42
2nd February, 1988	Lodgment	7,028.34
7th March, 1988	Lodgment	7,028.34
31st March, 1988	Lodgment	7,028.34
2nd May, 1988	Lodgment	7,028.34
31st May, 1988	Lodgment	7,028.34
5th July, 1988	Lodgment	7,028.34
2nd August, 1988	PMG	8,082.59
1st September, 1988	Lodgment	8,082.59
3rd October, 1988	Lodgment	8,082.59
28th October, 1988	Lodgment	8,082.59
30th November, 1988	Lodgment	8,082.59
TOTAL		89,468.41

1st January, 1989 — 31st December, 1989

DATE	PARTICULARS	AMOUNT (£)
3rd January, 1989	Lodgment	8,082.59
1st February, 1989	Lodgment	8,249.42
13th March, 1989	Lodgment	8,249.42
31st March, 1989	Lodgment	8,249.42
11th April, 1989	Lodgment	5,000.00
28th April, 1989	Lodgment	8,249.42
25th May, 1989	Lodgment	25,042.00
1st June, 1989	Lodgment Lodgment	6,652.76 40,000.00
8th June, 1989	Lodgment	9,288.63
14th June, 1989	Lodgment	57,600.00
20th June, 1989	Lodgment Lodgment	7,288.63 36,000.00
29th June, 1989	Lodgment	7,000.00
4th September, 1989	Lodgment	18,185.63
22nd September, 1989	Lodgment	25,000.00
2nd October, 1989	Lodgment	8,817.84
31st October, 1989	Lodgment	8,817.84
1st December, 1989	Lodgment	8,817.84
22nd December, 1989	Lodgment	8,817.84
TOTAL		313,409.28

1st January, 1990 — 31st December, 1990

DATE	PARTICULARS	AMOUNT (£)
2nd February, 1990	Lodgment	8,999.42
2nd March, 1990	Lodgment	8,999.42
30th March, 1990	Lodgment	8,999.42
1st May, 1990	Lodgment	9,433.84
5th June, 1990	Lodgment	9,433.84
29th June, 1990	Lodgment	9,433.84
1st August, 1990	Lodgment	9,433.84
4th September, 1990	Lodgment	9,433.84
1st October, 1990	Lodgment	9,433.94
3rd October, 1990	Lodgment	5,000.00
31st October, 1990	Lodgment	1,000.70
1st November, 1990	Lodgment	9,868.50
4th December, 1990	Lodgment	9,868.50
21st December, 1990	Lodgment	9,868.50
TOTAL		119,207.50

1st January, 1991 — 31st December, 1991

DATE	PARTICULARS	AMOUNT (£)
1st February, 1991	Lodgment	9,868.50
4th February, 1991	Lodgment	5,000.00
13th February, 1991	Lodgment	25,000.00
1st March, 1991	Lodgment	9,868.50
7th March, 1991	Lodgment	15,000.00
28th March, 1991	Lodgment	9,868.50
4th April, 1991	Lodgment	10,000.00
1st May, 1991	Lodgment	9,868.50
16th May, 1991	From D/	4,000.00
31st May, 1991	Lodgment	11,820.62
28th June, 1991	Lodgment	10,263.25
31st July, 1991	Lodgment	10,263.25
2nd September, 1991	Lodgment	50,263.25
30th September, 1991	Lodgment	10,263.25
18th October, 1991	Lodgment	1,423.47
1st November, 1991	Lodgment	10,263.25
29th November, 1991	Lodgment	10,263.25
19th December, 1991	Lodgment	10,263.25
TOTAL		223,560.84

1st January, 1992 — 13th March, 1992

DATE	PARTICULARS	AMOUNT (£)
22nd January, 1992	TFR	3,000.00
3rd February, 1992	Lodgment	10,263.25
6th March, 1992	Lodgment	6,872.34
TOTAL		20,135.59

Appendix F

THE PARTY LEADER'S ALLOWANCE ACCOUNT — CHAPTER 7

DRAWINGS FROM HAUGHEY AHERN & MCSHARRY AIB ACCOUNT 30208-062

DATE	AMOUNT (£)
28/02/84	12,310.45
05/03/84	2,500.00
26/03/84	10,000.00
11/04/84	1,000.00
10/05/84	20,000.00
11/05/84	2,500.00
22/06/84	5,000.00
06/07/84	5,246.00
03/08/84	10,000.00
08/08/84	3,000.00
10/08/84	12,828.47
25/10/84	5,400.00
02/01/85	5,000.00
01/03/85	1,000.00
09/04/85	5,821.20
15/07/85	1,000.00
30/07/85	1,000.00
02/09/85	1,000.00
20/09/85	5,338.20
07/10/85	5,000.00
01/11/85	2,000.00
07/11/85	1,000.00
02/12/85	1,000.00
10/12/85	2,000.00
12/12/85	1,600.00
04/02/86	3,000.00
23/04/86	10,000.00
29/04/86	10,000.00
13/05/86	2,000.00
21/05/86	20,000.00
23/07/86	4,000.00
05/08/86	10,000.00
05/09/86	5,666.81
19/09/86	2,500.00
29/10/86	25,000.00

**DRAWINGS FROM HAUGHEY AHERN & MCSHARRY AIB ACCOUNT 30208-062 —
continued**

DATE	AMOUNT (£)
12/11/86	10,000.00
02/12/86	2,200.00
19/12/86	10,000.00
30/12/86	1,200.00
09/01/87	5,000.00
16/02/87	1,000.00
28/04/87	1,500.00
08/05/87	4,000.00
05/06/87	4,500.00
14/10/87	1,500.00
04/01/88	7,509.27
06/04/88	5,700.00
14/04/88	1,000.00
03/05/88	1,000.00
31/05/88	1,000.00
14/07/88	6,649.95
26/09/88	6,832.82
23/11/88	4,988.78
01/12/88	5,767.11
27/02/89	6,995.55
24/04/89	11,173.76
21/06/89	25,000.00
22/06/89	5,758.95
20/07/89	47,090.56
21/09/89	25,000.00
05/10/89	10,720.00
21/09/89	1,029.91
29/09/89	4,933.59
11/10/89	20,000.00
02/11/89	5,000.00
07/12/89	619.96
12/12/89	9,724.37
12/12/89	12,400.00
23/01/90	1,100.00
25/01/90	1,100.00
28/12/89	5,073.53
07/03/90	5,727.23
22/03/90	13,600.00
29/06/90	3,845.09
30/03/90	1,000.00
30/04/90	8,830.37

**DRAWINGS FROM HAUGHEY AHERN & MCSHARRY AIB ACCOUNT 30208-062 —
continued**

DATE	AMOUNT (£)
02/08/90	1,000.00
03/10/90	1,000.00
12/10/90	2,400.00
19/10/90	5,440.00
13/11/90	2,220.00
20/12/90	2,403.90
04/02/91	8,332.32
04/04/91	4,532.81
04/04/91	5,000.00
15/05/91	4,570.49
28/06/91	4,106.08
31/07/91	2,000.00
11/09/91	10,000.00
18/09/91	7,500.00
26/09/91	2,027.94
10/10/91	5,750.00
29/10/91	2,726.00
29/10/91	1,757.40
29/10/91	1,000.00
19/12/91	2,660.29

Appendix G
MR. HAUGHEY'S FINANCES JANUARY, 1987 — JANUARY, 1991 — CHAPTER 8

CREDITS TO HAUGHEY BOLAND TO NO. 3 AIB ACCOUNT NO. 30065-271 AND CORRESPONDING DEBITS TO GUINNESS & MAHON AMIENS AND KENTFORD ACCOUNTS

1987

CREDITS TO HAUGHEY BOLAND NO. 3 ACCOUNT		DEBITS TO GUINNESS & MAHON ACCOUNTS	
DATE	AMOUNT (£)	DATE	AMOUNT (£)
26/01/87	10,000.00	26/01/87	7,000.00
26/01/87	See above	26/01/87	3,000.00
23/02/87	10,060.00	20/02/87	10,000.00
15/04/87	10,011.14	14/04/87	10,000.00
04/05/87	20,000.00	05/05/87	20,000.00
05/06/87	10,000.00	08/06/87	10,000.00
23/07/87	10,020.00	24/07/87	10,000.00
30/07/87	40,000.00	29/07/87	20,000.00
30/07/87	See above	29/7/87	20,000.00
31/08/87	10,000.00	01/09/87	10,000.00
23/09/87	10,000.00	24/09/87	10,000.00
15/10/87	20,000.00	16/10/87	20,000.00
18/12/87	30,000.00	22/12/87	30,000.00
22/12/87	10,000.00	23/12/87	10,000.00

1990

CREDITS TO HAUGHEY BOLAND NO. 3 ACCOUNT		DEBITS TO GUINNESS & MAHON ACCOUNTS		
DATE	AMOUNT (£)	DATE	AMOUNT (£)	ACCOUNT NAME AND NUMBER
20/04/90	50,000.00	23/04/90	50,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001
28/05/90	25,000.00	29/05/90	25,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001
21/06/90	60,000.00	22/06/90	60,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001
13/07/90	50,000.00	16/07/90	50,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001
11/10/90	25,000.00	12/10/90	25,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001
05/12/90	20,000.00	06/12/90	20,000.00	Kentford Securities Limited No. 1 Account, Account No. 12460001

1991

CREDITS TO HAUGHEY BOLAND NO. 3 ACCOUNT		DEBITS TO GUINNESS & MAHON ACCOUNTS	
DATE	AMOUNT (£)	DATE	AMOUNT (£)
14/01/91	20,000.00	15/01/91	20,000.00
			Kentford Securities Limited No. 1 Account, Account No. 12460001

Appendix H
CHARLES HAUGHEY FINANCES FEBRUARY, 1991 TO DECEMBER, 1996 — CHAPTER 9

**CREDITS TO BEL SECRETARIAL LIMITED, AIB ACCOUNT NO. 01826-056
AND CORRESPONDING DEBITS TO VARIOUS IRISH INTERCONTENTAL BANK ACCOUNTS**

1991

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
20/02/91	IR£100,000.00	20/02/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£91,720.00
09/04/91	IR£25,000.00	08/04/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,550.00
14/05/91	IR£25,000.00	14/05/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,687.50
26/06/91	IR£25,000.00	25/06/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,975.00
30/07/91	IR£25,000.00	29/07/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,837.50
07/08/91	IR£15,000.00	06/08/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£13,702.50
30/08/91	IR£25,000.00	28/08/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,887.50
25/09/91	IR£15,000.00	24/09/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£13,822.50
07/11/91	IR£20,000.00	07/11/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,510.00
18/11/91	IR£2,500.00	15/11/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£2,321.00
05/12/91	IR£25,000.00	04/12/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,400.00

1992 — January-September

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
08/01/92	IR£25,000.00	07/01/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,420.00
05/02/92	IR£25,000.00	04/02/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,337.50
18/02/92	IR£25,000.00	17/02/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,337.50
12/03/92	IR£25,000.00	10/03/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,430.00
14/04/92	IR£20,000.00	14/04/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,470.00
29/04/92	IR£20,000.00	28/04/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,348.00
18/05/92	IR£25,000.00	18/05/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,537.50
22/06/92	IR£20,000.00	18/06/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,794.00
24/07/92	IR£20,000.00	23/07/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,876.00
24/08/92	IR£20,000.00	21/08/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,990.00
09/09/92	IR£20,000.00	08/09/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,968.00
18/09/92	IR£20,000.00	18/09/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£20,000.00

1992 — October-December

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
20/10/92	IR£20,000.00	20/10/92	Hamilton Ross DM Account 04/39231/81	DM52,636.00
13/11/92	IR£20,000.00	12/11/92	Hamilton Ross DM Account 04/39231/81	DM53,150.00
21/12/92	IR£15,000.00	18/12/92	Hamilton Ross Sterling Account 02/01354/81	Stg.£16,185.00

1993

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
07/01/93	IR£20,000.00	06/01/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£21,412.00
04/02/93	IR£20,000.00	03/02/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£20,550.00
25/02/93	IR£20,000.00	23/02/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£20,600.00
26/03/93	IR£20,000.00	24/03/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£20,170.00
22/04/93	IR£20,000.00	22/04/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£19,870.00
01/06/93	IR£20,000.00	01/06/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£19,500.00
11/06/93	IR£20,000.00	08/06/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£19,860.00
09/07/93	IR£20,000.00	08/07/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£19,100.00
		22/07/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM49,278.00
04/08/93	IR£20,000.00	04/08/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£18,880.00
		13/08/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM47,432.40
07/09/93	IR£20,000.00	06/09/93	Hamilton Ross Deutschemark Account 04/39236/81	DM46,360.00
23/09/93	IR£20,000.00	22/09/93	Hamilton Ross Sterling Account 02/01354/81	Stg.£19,000.00
		06/10/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM46,835.00
15/10/93	IR£20,000.00	14/10/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM46,960.00
15/11/93	IR£20,000.00	11/11/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM47,590.00
06/12/93	IR£20,000.00	03/12/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM48,640.00
17/12/93	IR£25,000.00	14/12/93	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM64,000.00

1994

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
02/02/94	IR£20,000.00	31/01/94	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM50,150.00
14/02/94	IR£40,000.00	11/02/94	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM49,560.00
		14/02/94		DM49,700.00
14/02/94	IR£42.40	10/02/94	Hamilton Ross Sterling Account 02/01354/81	Stg.£41.00
21/02/94	IR£20,000.00	21/02/94	Hamilton Ross S9 Deutschemark Account 04/39236/81	DM48,980.00
29/03/94	IR£20,000.00	28/03/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,200.00
11/05/94	IR£20,000.00	05/05/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,770.00
14/06/94	IR£20,000.00	13/06/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM49,200.00
15/07/94	IR£20,000.00	14/07/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM47,700.00
22/07/94	IR£20,000.00	19/07/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,050.00
26/08/94	IR£20,000.00	25/08/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM47,450.00
13/09/94	IR£20,000.00	12/09/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM47,700.00
10/10/94	IR£20,000.00	06/10/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,600.00
20/10/94	IR£20,000.00	19/10/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,250.00
10/11/94	IR£20,000.00	08/11/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM49,000.00
08/12/94	IR£20,000.00	07/12/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,400.00
19/12/94	IR£20,000.00	15/12/94	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM48,400.00

1995

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
16/01/95	IR£47,000.00	16/01/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM112,095.00
08/12/95	IR£10,000.00	08/02/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM23,710.00
21/02/95	IR£20,000.00	21/02/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM46,580.00
06/03/95	IR£55,000.00	02/03/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM46,400.00
		03/03/95		DM81,550.00
14/03/95	IR£20,000.00	13/03/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM44,600.00
30/03/95	IR£20,000.00	30/03/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,200.00
04/04/95	IR£20,000.00	31/03/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,200.00
04/05/95	IR£20,000.00	02/05/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,220.00
19/05/95	IR£30,000.00	17/05/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM69,180.00
02/06/95	IR£30,000.00	31/05/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM68,820.00
02/06/95	IR£12,000.00	31/05/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM27,528.00
04/07/95	IR£20,000.00	30/06/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,500.00
25/07/95	IR£20,000.00	20/07/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,750.00
02/08/95	IR£20,000.00	31/07/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,900.00
26/09/95	IR£20,000.00	21/09/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM47,000.00
06/10/95	IR£20,000.00	05/10/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM46,600.00
26/10/95	IR£10,000.00	24/10/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM22,650.00
10/11/95	IR£20,000.00	07/11/95	Hamilton Ross Company Ltd S9 Deutschemark Account 04/39236/81	DM45,900.00
11/12/95	IR£20,000.00	07/12/95	Hamilton Ross Company Ltd S9 Sterling Account 02/01354/81	Stg.£20,800.00

1996

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT		
DATE	AMOUNT	DATE	A/C No.	AMOUNT
18/01/96	IR£20,000.00	17/01/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£20,730.00
14/02/96	IR£10,000.00	09/02/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,350.00
23/02/96	IR£10,000.00	21/02/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,300.00
12/03/96	IR£10,000.00	07/03/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,300.00
10/04/96	IR£10,000.00	04/04/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,350.00
23/04/96	IR£10,000.00	22/04/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,375.00
16/05/96	IR£20,000.00	13/05/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£26,975.00
22/05/96	IR£10,000.00	17/05/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,400.00
30/05/96	IR£20,000.00	28/05/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£20,800.00
24/06/96	IR£10,000.00	20/06/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,395.00
10/07/96	IR£10,000.00	05/07/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,350.00
25/07/96	IR£10,000.00	23/07/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Part of Stg.£35,496.00
21/08/96	IR£20,000.00	20/08/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£20,900.00
04/09/96	IR£20,000.00	30/08/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£20,900.00
24/09/96	IR£10,000.00	23/09/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,350.00
09/10/96	IR£32,000.00	04/10/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Part of Stg.£50,249.50
19/12/96	IR£10,000.00	16/12/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg.£10,030.00

Appendix I
CHARLES HAUGHEY FINANCES FEBRUARY, 1991 TO DECEMBER, 1996: CHAPTER 9

PAYMENTS TO BEL SECRETARIAL LIMITED AIB ACCOUNT NO. 01826-056 AND CORRESPONDING DEBITS TO VARIOUS IRISH INTERCONTINENTAL BANK ACCOUNTS AND STERLING MEMORANDUM ACCOUNTS.

1991

CREDIT TO BEL ACCOUNT		DEBIT TO IIB			ACCOUNT DEBIT TO MEMORANDUM ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT
20/02/91	IR£100,000.00	20/02/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£91,720.00			
09/04/91	IR£25,000.00	08/04/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,550.00			
14/05/91	IR£25,000.00	14/05/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,687.50			
26/06/91	IR£25,000.00	25/06/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,975.00			
30/07/91	IR£25,000.00	29/07/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,837.50			
07/08/91	IR£15,000.00	06/08/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£13,702.50			
30/08/91	IR£25,000.00	28/08/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,887.50			
25/09/91	IR£15,000.00	24/09/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£13,822.50			
07/11/91	IR£20,000.00	07/11/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,510.00			
18/11/91	IR£2,500.00	15/11/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£2,321.00			
05/12/91	IR£25,000.00	04/12/91	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,400.00			

1992

CREDIT TO BEL ACCOUNT		DEBIT TO IIB			ACCOUNT DEBIT TO CONFIDENTIAL ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT
08/01/92	IR£25,000.00	07/01/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,420.00			
05/02/92	IR£25,000.00	04/02/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,337.50			
18/02/92	IR£25,000.00	17/02/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,337.50			
12/03/92	IR£25,000.00	10/03/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£23,430.00			
14/04/92	IR£20,000.00	14/04/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,470.00			
29/04/92	IR£20,000.00	28/04/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,348.00			
18/05/92	IR£25,000.00	18/05/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£22,537.50			
22/06/92	IR£20,000.00	18/06/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,794.00			
24/07/92	IR£20,000.00	23/07/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,876.00			
24/08/92	IR£20,000.00	21/08/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,990.00			
09/09/92	IR£20,000.00	08/09/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£18,968.00			
18/09/92	IR£20,000.00	18/09/92	Ansbacher Ltd Sterling Account 02/01087/81	Stg.£20,000.00			
20/10/92	IR£20,000.00	20/10/92	Hamilton Ross DM Account 04/39231/81	DM 52,636.00			
13/11/92	IR£20,000.00	12/11/92	Hamilton Ross DM Account 04/39231/81	DM 53,150.00			
21/12/92	IR £15,000.00	18/12/92	Hamilton Ross Sterling A/C 02/01354/81	Stg.£16,185.00	31/12/92	S8 Sterling Account	Stg.£16,185.00

1993

CREDIT TO BEL ACCOUNT			DEBIT TO IIB ACCOUNT			DEBIT TO MEMORANDUM ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT	
07/01/93	IR£20,000.00	06/01/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£21,412.00	06/01/93	S8 Sterling Account	Stg.£21,412.00	
04/02/93	IR£20,000.00	03/02/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£20,550.00	08/02/93	S8 Sterling Account	Stg£20,550.00	
25/02/93	IR£20,000.00	23/02/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£20,600.00	23/02/93	S8 Sterling Account	Stg£20,600.00	
26/03/93	IR£20,000.00	24/03/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£20,170.00	01/04/93	S8 Sterling Account	Stg£20,170.00	
22/04/93	IR£20,000.00	22/04/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£19,870.00	20/04/93	S8 Sterling Account	Stg£19,870.00	
01/06/93	IR£20,000.00	01/06/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£19,500.00	25/05/93	S8 Sterling Account	Stg£19,500.00	
11/06/93	IR£20,000.00	08/06/93	Hamilton Ross Sterling A/C 02/01354/81	Stg£19,860.00	09/06/93	S8 Sterling Account	Stg£19,860.00	
09/07/93	IR£20,000.00	08/07/93	Hamilton Ross Sterling Account No. 02/01354/81	Stg.£19,100.00				
		22/07/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 49,278.00				
04/08/93	IR£20,000.00	04/08/93	Hamilton Ross Sterling Account No. 02/01354/81	Stg.£18,880.00				
		13/08/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,432.40				
07/09/93	IR£20,000.00	06/09/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,360.00				
23/09/93	IR£20,000.00	22/09/93	Hamilton Ross Sterling Account No. 02/01354/81	Stg.£19,000.00				
		16/10/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,835.00				
15/10/93	IR£20,000.00	14/10/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,960.00				
15/11/93	IR£20,000.00	11/11/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,590.00				
06/12/93	IR£20,000.00	03/12/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,640.00				
17/12/93	IR£25,000.00	14/12/93	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 64,000.00				

1994

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT			DEBIT TO MEMORANDUM ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT
02/02/94	IR£20,000.00	31/01/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 50,150.00			
14/02/94	IR£40,000.00	11/02/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 49,560.00			
		14/02/94		DM49,700.00			
14/02/94	IR£42.40	10/02/94	Hamilton Ross Stg. Account 02/01354/81	Stg. £41.00	10/02/94	S8 Sterling Account	Stg£41.00
21/02/94	IR£20,000.00	21/02/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,980.00			
29/03/94	IR£20,000.00	28/03/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,200.00			
11/05/94	IR£20,000.00	05/05/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,770.00			
14/06/94	IR£20,000.00	13/06/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 49,200.00			
15/07/94	IR£20,000.00	14/07/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,700.00			
22/07/94	IR£20,000.00	19/07/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,050.00			
26/08/94	IR£20,000.00	25/08/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,450.00			
13/09/94	IR£20,000.00	12/09/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,700.00			
10/10/94	IR£20,000.00	06/10/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,600.00			
20/10/94	IR£20,000.00	19/10/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,250.00			
10/11/94	IR£20,000.00	08/11/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 49,000.00			
08/12/94	IR£20,000.00	07/12/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,400.00			
19/12/94	IR£20,000.00	15/12/94	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 48,400.00			

1995

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT			DEBIT TO MEMORANDUM ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT
16/01/95	IR£47,000.00	16/01/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 112,095.00			
08/12/95	IR£10,000.00	08/02/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 23,710.00			
21/02/95	IR£20,000.00	21/02/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,580.00			
06/03/95	IR£55,000.00	02/03/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,400.00			
		03/03/95		DM 81,550.00			
14/03/95	IR£20,000.00	13/03/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 44,600.00			
30/03/95	IR£20,000.00	30/03/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,200.00			
04/04/95	IR£20,000.00	31/03/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,200.00			
04/05/95	IR£20,000.00	02/05/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,220.00			
19/05/95	IR£30,000.00	17/05/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 69,180.00			
02/06/95	IR£30,000.00	31/05/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 68,820.00			
02/06/95	IR£12,000.00	31/05/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 27,528.00			
04/07/95	IR£20,000.00	30/06/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,500.00			
25/07/95	IR£20,000.00	20/07/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,750.00			
02/08/95	IR£20,000.00	31/07/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,900.00			
26/09/95	IR£20,000.00	21/09/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 47,000.00			
06/10/95	IR£20,000.00	05/10/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 46,600.00			
26/10/95	IR£10,000.00	24/10/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 22,650.00			
10/11/95	IR£20,000.00	07/11/95	Hamilton Ross S9 Deutschmark Account 04/39236/81	DM 45,900.00			
11/12/95	IR£20,000.00	07/12/95	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£20,800.00	05/12/95	S8 Sterling	Stg£20,800.00

1996

CREDIT TO BEL ACCOUNT		DEBIT TO IIB ACCOUNT			DEBIT TO MEMORANDUM ACCOUNT		
DATE	AMOUNT	DATE	A/C NO.	AMOUNT	DATE	A/C NO.	AMOUNT
18/01/96	IR£20,000.00	17/01/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£20,730.00	18/01/96	S8 Sterling	Stg£20,730.00
14/02/96	IR£10,000.00	09/02/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,350.00	08/02/96	S8 Sterling	Stg£10,351.00
23/02/96	IR£10,000.00	21/02/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,300.00	20/02/96	S8 Sterling	Stg£10,300.00
12/03/96	IR£10,000.00	07/03/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,300.00	08/03/96	S8 Sterling	Stg£10,300.00
10/04/96	IR£10,000.00	04/04/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,350.00	04/04/96	S8 Sterling	Stg£10,350.00
23/04/96	IR£10,000.00	22/04/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,375.00	22/04/96	S8 Sterling	Stg£10,375.00
16/05/96	IR £20,000.00	13/05/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Part of Stg£26,975.00	13/05/96	S8 Sterling	Stg£20,750.00
22/05/96	IR£10,000.00	17/05/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,400.00	17/05/96	S8 Sterling	Stg£10,400.00
30/05/96	IR£20,000.00	28/05/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£20,800.00	28/05/96	S8 Sterling	Stg£20,800.00
24/06/96	IR£10,000.00	20/06/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,395.00	24/06/96	S8 Sterling	Stg£10,395.00
10/07/96	IR£10,000.00	05/07/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,350.00	02/07/96	S8 Sterling	Stg£10,350.00
25/07/96	IR£10,000.00	23/07/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Part of Stg£35,496.00	23/07/96	S8 Sterling	Stg£10,440.00
21/08/96	IR£20,000.00	20/08/96	Hamilton Ross Company Ltd Sterling Account 02/01354/81	Stg£20,900.00	20/08/96	S8 Sterling	Stg£20,900.00
04/09/96	IR£20,000.00	30/08/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£20,900.00	30/08/96	S8 Sterling	Stg£20,900.00
24/09/96	IR£10,000.00	23/09/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,350.00	23/09/96	S8 Sterling	Stg£10,350.00
09/10/96	IR£32,000.00	04/10/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Part of Stg£50,249.50	04/10/96	S8 Sterling	Stg£32,816.00
19/12/96	IR£10,000.00	16/12/96	Hamilton Ross Company Ltd. Sterling Account 02/01354/81	Stg£10,030.00	16/12/96	S8 Sterling	Stg£10,030.00

Appendix J

FUNDS IDENTIFIED BY THE TRIBUNAL AS AVAILABLE TO MR. HAUGHEY FROM 1979 TO 1996

FUNDS	IR£	STERLING/ OTHER CURRENCIES	COMMENT
Indebtedness foregone by Allied Irish Banks Plc	393,839.18		
Settlement with Allied Irish Banks	750,000.00		Inclusive of funds provided by Mr. Patrick Gallagher and funds debited to JD Special Account
Balance of funds in JD Special Account	35,862.55		
Lodgements to accounts in Mr. Haughey's name in Guinness & Mahon	1,186,633.74		Net of proceeds of Northern Bank Finance Corporation and Agricultural Credit Corporation loans and PV Doyle payment
PV Doyle payment	301,957.27		Inclusive of interest on loan accounts
Mahmoud Fustok payment	50,000.00		
Proceeds of Ansbacher Cayman loan and interest payments	68,000.00	Stg.400,000.00 Stg.95,613.50	
Haughey Boland bill-paying service 1985 — January, 1990	1,407,000.00		
Purchase of Yacht "Celtic Mist"	167,073.94		
Cost of repairs to "Celtic Mist" borne by Mr. Dermot Desmond	75,546.00		
Part of Payment made by Mr. Ben Dunne — November, 1987 (*See Note 1)	164,000.00		Portion of payment applied in discharge of ACC loan and to cash withdrawals from Guinness & Mahon. Balance excluded as applied to bill-paying service
Final instalment of Capital Gains Tax payment, January, 1988	27,330.00		Payment was not funded from Haughey Boland No. 3 account.
Withdrawal from NCB investment account in May, 1990	206,613.57		No evidence that proceeds lodged to Ansbacher Cayman accounts or otherwise applied to bill-paying service

FUNDS	IR£	STERLING/ OTHER CURRENCIES	COMMENT
BEL Secretarial Services bill-paying service, February, 1991 to December, 1996	1,998,080.23		
Additional payments funded from S8 Sterling Account, 1992-1996		Stg.81,566.21	
Additional payments funded from S8 Deutschmark Account made in IR£, 1992-1996	35,000.00		
Balance on S8 Sterling Account as of 31 st December, 1996		Stg.29,910.75	Inclusive of Carlisle payment, Dermot Desmond payment and balance of funds on NCB investment account
Balance on S8A Sterling Account as of 31 st December, 1996		Stg.101,260.27	
Balance on S9 Deutschmark Account as of 31 st December, 1996		DM971,818.64	
Balance on S9 Dollar Account as of 31 st December, 1996		\$89,354.88	
Payments by Dr. Edmund Farrell	140,000.00		
Payments by Dr. Edmund Farrell routed through account of Celtic Helicopters	40,000.00		Inclusive of £20,000.00 intended for the Lenihan Fund
Proceeds of Leader's Allowance cheque dated 20 th June, 1989	25,000.00		
Proceeds of Michael Smurfit and Paul Kavanagh payments retained	85,000.00		
Approximate application of funds from Leader's Allowance account for personal use (*See Note 2)	175,000.00		Assuming £25,000.00 per year for each year from 1984 to 1991 being years for which statements of account were available to Tribunal
Indirect payments in respect of Celtic Helicopters	623,197.00		
Personal payment made by Mr. Ben Dunne — May, 1993	20,000.00		

Note 1: All payments by Mr. Ben Dunne, with the exception of part of the payment in November, 1997, and the personal payment in May, 1993, have been excluded to avoid double-counting.

Note 2: The Tribunal considers that the figure of £25,000.00 per year is a highly conservative figure in view of the scale of drawings made in 1990.

First Schedule

LIST OF PARTIES GRANTED REPRESENTATION

No	Applicant	Date of Application/ Order Granted	Order Granted
1	The Revenue Commissioners	31st October 1997	Representation Granted
2	Mr Pdraig Collery	31st October 1997	Representation Granted
3	The Institute of Chartered Accountants	31st October 1997	Representation Granted
4	Ms Joan Williams	17th December 1997	Representation Granted
5	Mr Conor Haughey	24th September 1998	Representation Granted
6	Mr Ciaran Haughey	24th September 1998	Representation Granted
7	Mr Sean Haughey	24th September 1998	Representation Granted
8	Ms Eimear Mulhern	24th September 1998	Representation Granted
9	Mr Jack Stakelum	24th September 1998	Representation Granted
10	Samuel Field-Corbett	24th September 1998	Representation Granted
11	The Public Interest	5th November 1998	Representation Granted
12	Irish Intercontinental Bank	9th December 1998	Representation Granted
13	Guinness & Mahon (Ireland) Ltd	9th December 1998	Representation Granted
14	Mr Charles Haughey	28th January 1999	Representation Granted
15	Mrs Maureen Haughey	28th January 1999	Representation Granted
16	Oliver Freaney & Company Ltd Mr Noel Fox	28th January 1999	Representation Granted
17	Mr Bernard Dunne	28th January 1999	Representation Granted
18	Dunnes Stores	28th January 1999	Representation Granted
19	Celtic Helicopters	28th January 1999	Representation Granted
20	Dr John O'Connell	28th January 1999	Representation Granted
21	Mr John Byrne/Carlisle Trust	28th January 1999	Representation Granted
22	Mr Patrick McCann	28th January 1999	Representation Granted
23	Deloitte & Touche	4th February 1999	Representation Granted

No	Applicant	Date of Application/ Order Granted	Order Granted
24	Larchfield Securities Ltd	9th February 1999	Representation Granted
25	Michael Murphy & M Murphy Insurance Services Ltd	9th February, 1999	Representation Granted
26	Mr Joseph Malone	12th February 1999	Representation Granted
27	AIB Plc	16th February 1999	Representation Granted
28	Mr Xavier McAuliffe	3rd March 1999	Representation Granted
29	Dr Michael Dargan	3rd March 1999	Representation Granted
30	Mr David Gresty	18th May 1999	Representation Granted
31	ACC Bank Plc	19th May 1999	Representation Granted
32	Mr Tony Traynor	19th May 1999	Representation Granted
33	Mr Seamus Purcell	19th May 1999	Representation Granted
34	Central Bank	21st May 1999	Representation Granted
35	Mr Patrick Gallagher and Mr John Cousins	21st May 1999	Representation Granted
36	Mr Laurence Crowley	24th May 1999	Representation Granted
37	Mr Seamus O'Neill	29th June 1999	Representation Granted
38	Whelan Frozen Foods Ltd	6th July 1999	Representation Granted
39	The Doyle Group	9th July 1999	Representation Granted
40	Mr Harry Boland	13th July 1999	Representation Granted
41	Ms Eileen Foy	14th July 1999	Representation Granted
42	Mr Peter Fitzpatrick	15th July 1999	Representation Granted
43	Dr Edmund A Farrell	16th July 1999	Representation Granted
44	Fianna Fáil	20th July 1999	Representation Granted
45	Mr John Ellis TD	6th October 1999	Representation Granted
46	Mr Laurence Goodman & Goodman International	19th October 1999	Representation Granted
47	Ms Catherine Butler	20th October 1999	Representation Granted

No	Applicant	Date of Application/ Order Granted	Order Granted
48	NCB Stockbrokers Ltd	30th November 1999	Representation Granted
49	Dermot Desmond	1st December, 1999	Representation Granted
50	Mr John Stakelum	2nd December 1999	Representation Granted
51	Mr Martin Keane	27th January 2000	Representation Granted
52	Mr Denis Foley	27th January 2000	Representation Granted
53	Mr Raymond Mc Loughlin	18th February 2000	Representation Granted
54	Mr Timothy O'Grady-Walsh	8th March 2000	Representation Granted
55	Mr Ken O'Reilly-Hyland	9th March 2000	Representation Granted
56	Mr Bernie Cahill	26th May 2000	Representation Granted
57	Mr Thomas Clifford And Princes Investments Limited	1st June 2000	Representation Granted
58	Mr Mark Kavanagh	27th June 2000	Representation Granted
59	Mr Michael Smurfit	25th July 2000	Representation Granted
60	Mr Terry Donovan	6th November, 2000	Representation Granted
61	Ms Ann Horan	6th November, 2000	Representation Granted
62	Margaret Heffernan	14th June, 2005	Representation Granted
63	Trustees of the Dunnes Settlement Trust	14th June, 2005	Representation Granted
64	Department of Agriculture and Food	27th April, 2006	Representation Granted
65	Roadstone/CRH	27th April, 2006	Representation Granted
66	Kieran O'Malley	27th April, 2006	Representation Granted

Second Schedule

LIST OF WITNESSES WHO APPEARED BEFORE THE TRIBUNAL

Thursday 28th January 1999 (Day 1)

Mr Matthew Price

Accountant and Former Director of Dunnes Stores (Bangor) Limited

Mr Samuel Field-Corbett

Director of Management Investment Services Limited

Friday 29th January 1999 (Day 2)

Ms Sandra Kells

Certified Public Accountant

Financial Director of Guinness & Mahon (Ireland) Limited

Mr Pdraig Colleary

Former Banker with Guinness & Mahon (Ireland) Limited

Mr Ross McCarter

Chief Manager

College Green Branch, Ulster Bank Limited

Mr Kevin Drumgoole

Chartered Accountant

Audit Manager,

Oliver Freaney & Company Limited

Mr Paul Wyse

Chartered Accountant

Audit Partner

Oliver Freaney & Company Limited

Tuesday 2nd February 1999 (Day 3)

Mr Noel Fox

Chartered Accountant

Senior Partner,

Oliver Freaney & Company Limited and Trustee of the Dunnes Settlement Trust

Mr Bernard Dunne

Former Chairman and Executive Director of Dunnes Holding Company

Wednesday 3rd February 1999 (Day 4)

Mr Bernard Dunne

Former Chairman and Executive Director of Dunnes Holding Company

Mr Patrick O'Donoghue

Chartered Accountant

Director & Company Secretary of Dunnes Stores Group

Ms Sandra Kells

Certified Public Accountant

Financial Director of Guinness & Mahon (Ireland) Limited

Thursday 4th February 1999 (Day 5)

Mr Paul Carty

Managing Partner of Deloitte & Touche

Mr Bernard Dunne

Former Chairman and Executive Director of Dunnes Holding Company

Mr Noel Fox

Chartered Accountant

Senior Partner

Oliver Freaney & Company Limited and Trustee of the Dunnes Settlement Trust

Mr Patrick O'Donoghue

Chartered Accountant

Director & Company Secretary of Dunnes Stores Group

Mr Patrick McCann

Certified Public Accountant

Director of Management Investment Services Limited

Mr Samuel Field-Corbett

Director of Management Investment Services Limited

Friday 5th February 1999 (Day 6)

Mr Joe Cummins

Former Accountant with Dunnes Stores Group

Mr Pdraig Colley

Former Banker with Guinness & Mahon (Ireland) Limited

Mr John Byrne

Director of Carlisle Trust Limited

Mr Peter Lacey

Chartered Accountant

Partner in Pricewaterhouse Coopers

Mr Brendan Vaughan

Senior Manager

Bank of Ireland

Mr Patrick Monaghan

Solicitor

Bank of Ireland

Mr Patrick O'Donoghue

Chartered Accountant

Director & Company Secretary of Dunnes Stores Group

Tuesday 9th February 1999 (Day 7)

Mr Bernard Dunne

Former Chairman and Executive Director of Dunnes Holding Company

Mr John Barnicle

Director of Celtic Helicopters

Dr John O'Connell

Former Minister, TD and Senator

Wednesday 10th February 1999 (Day 8)

Mr Paul McHale

Official of Bank of Ireland

Mr Michael Murphy

Chief Executive Officer of M Murphy Insurance Services Limited

Mr Ciaran Haughey

Director of Celtic Helicopters

Thursday 11th February 1999 (Day 9)

Mr Kieran Ryan

Chartered Accountant

Mr Paul Carty

Managing Partner of Deloitte & Touche

Mr Ralph MacDarby

Director & Secretary of Secretarial Trust Company, Deloitte & Touche

Friday 12th February 1999 (Day 10)

Mr Joseph Malone

Business Executive

Mr Tony Barnes

Associate Director, Operations Department of Irish Intercontinental Bank

Mr Pdraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Mr Conor Haughey

Businessman

Mr Sean Haughey

TD

Tuesday 16th February 1999 (Day 11)

Mr Bryan Sheridan

Solicitor

Group Law Agent

AIB plc

Wednesday 17th February 1999 (Day 12)

Mr Bryan Sheridan

Solicitor

Group Law Agent

AIB plc

Mr Gerard A O'Donnell

Former Manager, AIB Plc

Mr Michael D Kennedy

Former Central Service Executive, AIB Plc

Mr Gerald B Scanlan

Former Deputy Chairman & Group Chief Executive, AIB Plc

Thursday 18th February 1999 (Day 13)

Mr Gerald B Scanlan

Former Deputy Chairman & Group Chief Executive, AIB Plc

Ms Sandra Kells

Certified Public Accountant

Financial Director of Guinness & Mahon (Ireland) Limited

Tuesday 2nd March 1999 (Day 14)

Mr Gerard F Hughes

Chartered Company Secretary,

Senior Manager, Oliver Freaney and Company Limited

Mr Michael Irwin

Chartered Accountant,

Former Chief Accountant of Dunnes Stores Group

Mr Michael Curneen

Former Employee of Smurfit Paribas Bank

Mr Owen J Binchy

Solicitor, Binchys Solicitors

Personal Representative of Mr Patrick Butler, deceased

Mr William Corrigan

Solicitor, Corrigan & Corrigan Solicitors

Personal representative of Mr PV Doyle, deceased

Mr John Barnicle

Director of Celtic Helicopters

Mr Tony Barnes

Associate Director,

Operations Department of Irish Intercontinental Bank

Mr John Byrne

Director of Carlisle Trust Limited

Ms Sandra Kells

Certified Public Accountant

Financial Director of Guinness & Mahon (Ireland) Limited

Wednesday 3rd March 1999 (Day 15)

Mr Gerald Kean

Solicitor, Keans Solicitors

Mr Xavier Mc Auliffe

Businessman

Mr Ciaran Haughey

Director of Celtic Helicopters

Dr Michael Dargan

Retired Company Director and Bloodstock Breeder

Thursday 4th March 1999 (Day 16)

Mr Ernan Rory O'Connor

Solicitor

Former Law Agent of AIB Plc

Dr Liam St. John Devlin
Former Deputy Chairman of AIB Plc

Dr Patrick Lynch
Former Deputy Chairman of AIB Plc

Mr Thomas Kavanagh
Former Director of AIB Plc

Mr James E Fitzpatrick
Former Director of AIB Plc

Mr Robert D Ryan
Former Public Relations Officer for AIB Plc

Mr Joseph McGlynn
Former Director of AIB Plc

Mr Joseph B Carr
Former Director of AIB Plc

Mr Charles Greyston
Former Director of AIB Plc

Tuesday 18th May 1999 (Day 17)

Mr Michael D Kennedy
Former Central Service Executive of AIB Plc

Dr Michael W J Smurfit
Former Director AIB Plc

Mr Denis J Murphy
Director of AIB Plc

Mr John B McGuckian
Director of AIB Plc

Ms Sandra Kells
*Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited*

Mr Gerry Grehan
*Manager
Rotunda Branch, Bank of Ireland*

Wednesday 19th May 1999 (Day 18)

Ms Assumpta Reid
*Manager
Bank of Ireland*

Mr Gerry Grehan
*Manager
Rotunda Branch, Bank of Ireland*

Mr John Hickey
Former Deputy Chief Executive of ACC Bank Plc

Mr Tony Traynor
Executor of the Estate of J Desmond Traynor, deceased

Mr Seamus Purcell
Businessman

Mr Bernard Dunne

Former Chairman and Executive Director of Dunnes Holding Company

Mr Michael Murphy

Chief Executive Officer of M Murphy Insurance Services Limited

Thursday 20th May 1999 (Day 19)

Mr Michael Murphy

Chief Executive Officer of M Murphy Insurance Services Limited

Mr David Gresty

Managing Director of DB Agencies

Mr John Barnicle

Director of Celtic Helicopters

Friday 21st May 1999 (Day 20)

Mr David Gresty

Managing Director of DB Agencies

Mr Patrick Gallagher

Former Managing Director of the Gallagher Group

Mr John Cousins

Former Financial Director of the Gallagher Group

Ms Genevieve Tracy

*Acting Manager
Ballsbridge Branch, Bank of Ireland*

Mr Louis O'Byrne

Authorised Officer of the Central Bank of Ireland

Mr Paul O'Brien

Authorised Officer of the Central Bank of Ireland

Monday 24th May 1999 (Day 21)

Mr Laurence Crowley

*Former Partner in Kennedy Crowley/Stokes Kennedy Crowley, Receiver to the
Gallagher Group*

Mr Terry Quigley

Partner in Gorman Quigley Penrose Accountants

Mr Paul Carty

Managing Partner of Deloitte & Touche

Mr David Deasy

Partner in Deloitte & Touche

Mr Noel Fox

*Chartered Accountant
Senior Partner, Oliver Freaney & Company Limited and Trustee of the Dunnes
Settlement Trust*

Thursday 8th July 1999 (Day 27)

Mr Patrick Shortall

Former Official Liquidator of Merchant Banking Limited

Mr Patrick Gallagher

Former Managing Director of the Gallagher Group (evidence on affidavit)

Mr John Trethowan
Senior Manager of National Irish Bank Limited

Ms Sandra Kells
Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited

Friday 9th July 1999 (Day 28)

Ms Sandra Kells
Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited

Mr George Carville
Former Deputy Managing Director & Secretary of the Doyle Hotel Group

Dr John O'Connell
Former Minister, TD and Senator

Mr Brian Halpin
Authorised Officer of the Central Bank of Ireland

Tuesday 13th July 1999 (Day 29)

Mr Harry Boland
Former Partner in Haughey Boland

Mr David Doyle
Former Director of the Doyle Hotel Group

Wednesday 14th July 1999 (Day 30)

Ms Sandra Kells
Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited

Ms Eileen Foy
Former Employee of Fianna Fáil and Former Administrator of Leader's Allowance Account

Mr Patrick Mackey
Assistant Accountant
Accounts Branch, Department of Finance

Mr Alan Kelly
Manager
Lower Baggot Street Branch, AIB Plc

Ms Sandra Kells
Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited

Mr David Doyle
Former Director of the Doyle Hotel Group

Thursday 15th July 1999 (Day 31)

Mr Paul Carty
Managing Partner of Deloitte & Touche

Mr Peter Fitzpatrick
Official Liquidator of Merchant Banking Limited

Thursday 16th July 1999 (Day 32)

Dr Edmund A Farrell

Former Chief Executive & Executive Chairman of the Irish Permanent Building Society

Mr J Enda Hogan

Former Director of the Irish Permanent Building Society

Mr John Barnicle

Director of Celtic Helicopters

Tuesday 20th July 1999 (Day 33)

Mr Bertie Ahern TD

An Taoiseach

Mr Sean Fleming TD

Former Financial Executive of Fianna Fail

Wednesday 6th October 1999 (Day 34)

Dr Edmund A Farrell

Former Chief Executive & Executive Chairman of the Irish Permanent Building Society

Mr Ciaran Haughey

Director of Celtic Helicopters

Mr John Ellis

TD

Ms Mary O'Connor

Official of AIB Plc

Friday 8th October 1999 (Day 35)

Mr Patrick R. Douglas

(Statement Read into the Record)

Former Director of the Irish Permanent Building Society

Mr T. George Tracey

Former Director of the Irish Permanent Building Society

Mr Sean Fleming

TD and Former Financial Executive of Fianna Fail

Mr John Barnicle

Director of Celtic Helicopters Limited

Mr Alan Kelly

Manager

Lower Baggot Street Branch, AIB Plc

Mr Pdraic MacKernan

Secretary General

Department of Foreign Affairs

Mr Brian Spain

Principal Officer

Department of Defence

Tuesday 12th October 1999 (Day 36)

Mr Brian Dennis

Former Director of the Voluntary Health Insurance Board

Mr H Desmond Cashell

Former Non-Executive Chairman of the Voluntary Health Insurance Board

Mr Thomas Ryan

Former Chief Executive of the Voluntary Health Insurance Board

Mr Anthony F Mitchell

Former Company Secretary and Assistant General Manager Services of the Voluntary Health Insurance Board

Mr Noel Fox

Former Director of the Voluntary Health Insurance Board

Mr Paul Carty

Managing Partner of Deloitte & Touche

Mr Paul Kavanagh

Former Fundraiser for the Fianna Fail Party

Mr David Deasy

Partner in Deloitte & Touche

Mr Philip Dalton

Authorised Officer of the Central Bank of Ireland

Friday 15th October 1999 (Day 37)

Mr Tom Greene

Internal Audit Manager of EBS Building Society

Ms Eileen Foy

Former Administrator of the Leader's Allowance Account

Tuesday 19th October 1999 (Day 38)

Mr Laurence Goodman

Businessman

Ms Eileen Foy

Former Administrator of the Leader's Allowance Account

Wednesday 20th October 1999 (Day 39)

Mr Eileen Foy

Former Administrator of the Leader's Allowance Account

Ms Catherine Butler

Former Special Advisor of Charles J Haughey

Tuesday 26th October 1999 (Day 40)

Mr Alan Kelly

Manager

Lower Baggot Street Branch, AIB Plc

Mr Patrick R. Douglas

Former Director of the Irish Permanent Building Society

Mrs Ann Lenihan

Tuesday 12th October 1999 (Day 41)

Mr John Keilthy

*Director of NCB Stockbrokers Ltd
Head of Private Client Division*

Mr Ross McCarter

*Chief Manager
College Green Branch
Ulster Bank Limited*

Mr Philip Dalton

Authorised Officer of the Central Bank of Ireland

Wednesday 1st December 1999 (Day 42)

Mr Tony Barnes

*Associate Director,
Operations Department of Irish Intercontinental Bank*

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Mr Tom Buckley

*Customer Accounts Manager,
International Division, Bank of Ireland*

Ms Sandra Kells

*Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited*

Mr Paul Carty

Managing Partner of Deloitte & Touche

Thursday 2nd December 1999 (Day 43)

Mr Jack Stakelum

*Chartered Accountant
Retired Financial Consultant with Business Enterprises Limited*

Mr Tony Barnes

*Associate Director
Operations Department
Irish Intercontinental Bank*

Mr Dermot Desmond

Businessman

Friday 3rd December 1999 (Day 44)

Mr Dermot Desmond

Businessman

Tuesday 7th December 1999 (Day 45)

Mr Conor Haughey

Businessman

Mr Kieran Ryan

Chartered Accountant

Tuesday 21st December 1999 (Day 46)

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Thursday 27th January 2000 (Day 47)

Miss Dominique Cleary

Solicitor

Bank of Ireland

Mr Martin Keane

Former Banker with Guinness & Mahon (Ireland) Limited

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Friday 28th January 2000 (Day 48)

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Tuesday 1st February 2000 (Day 49)

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Wednesday 2nd February 2000 (Day 50)

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Thursday 3rd February 2000 (Day 51)

Mr Padraig Collery

Former Banker with Guinness & Mahon (Ireland) Limited

Mr Denis Foley

TD

Thursday 3rd February 2000 (Day 52)

Mr Denis Foley

TD

Thursday 8th February, 2000 (Day 53)

Mr Denis Foley

TD

Mr Tony Barnes

Associate Director, Operations

Department of Irish Intercontinental Bank

Mr Samuel Field-Corbett

Director of Management Investment Services Limited

Ms Sandra Kells

Certified Public Accountant Financial Director of Guinness & Mahon (Ireland) Limited

Wednesday 9th February, 2000 (Day 54)

Mr Patrick McCann

Certified Public Accountant Director of Management Investment Services Limited

Mr John Byrne
Director of Carlisle Trust Limited

Mr Paul Carty
Managing Partner of Deloitte & Touche

Thursday 10th February, 2000 (Day 55)

Ms Margaret Keogh
Bank Official

Ms Sandra Kells
*Certified Public Accountant Financial Director of Guinness & Mahon (Ireland)
Limited*

Mr Frank O'Flynn
Solicitor

Friday 11th February 2000 (Day 56)

Ms Sandra Kells
*Certified Public Accountant Financial Director of Guinness & Mahon (Ireland)
Limited*

Mr Peter Sutherland
Businessman

Mr Don Reid
Tax Consultant — (Retired)

Thursday 17th February, 2000 (Day 57)

Ms Sandra Kells
*Certified Public Accountant Financial Director of Guinness & Mahon (Ireland)
Limited*

Mr Martin Keane
Former Banker with Guinness & Mahon (Ireland) Limited

Friday 18th February, 2000 (Day 58)

Mr Raymond McLoughlin
Chief Executive with Crean Plc

Mr Samuel Field-Corbett
Director of Management Investment Services Limited

Tuesday 22nd February, 2000 (Day 59)

Mr Don Reid
Tax Consultant — (Retired)

Ms Joan Williams
Secretary

Wednesday 23rd February, 2000 (Day 60)

Mr Patrick O'Dwyer
Former Bank Official with Guinness & Mahon (Ireland) Limited.

Mr Tony Barnes
*Associate Director, Operations
Department of Irish Intercontinental Bank*

Mr John Reynolds
Executive Director, Irish Intercontinental Bank

Mr Liam Donlon
Director, Irish Intercontinental Bank

Thursday 24th February, 2000 (Day 61)

Mr Tony Barry
Chairman of CRH plc

Ms Angela Malone
Company Secretary of CRH plc

Mr Andrew Brennan
*Senior Manager, Bank of Ireland,
Private Banking.*

Tuesday 7th March, 2000 (Day 62)

Mr John Keilthy
Director of NCB Stockbrokers Limited Head of Private Client Division

Mr Adrian Byrne
Central Bank Official

Wednesday 8th March, 2000 (Day 63)

Mr Adrian Byrne
Central Bank Official

Ms Sandra Kells
*Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Limited*

Mr Patrick O'Dwyer
Bank Official

Deirdre Devane
Financial Controller of Guinness & Mahon

Timothy O'Grady-Walsh
Former General Manager of the Central Bank

Thursday 9th March, 2000 (Day 64)

Mr Timothy O'Grady-Walsh
Former General Manager of the Central Bank

Mr Philip Dalton
Head of Investigation Unit in the Pensions Board

Mr Ken O'Reilly-Hyland
Former Governor of the Central Bank

Friday 10th March, 2000 (Day 65)

Mr Charles Murray
Former Governor of the Central Bank

Mr Martin Keane
Former Banker with Guinness & Mahon (Ireland) Limited

Mr Maurice O'Kelly
Former Director of Guinness & Mahon (Ireland) Limited

Wednesday 24th May, 2000 (Day 66)

Mr Bernard Dunne
*Former Chairman and Executive
Director of Dunnes Holding Company*

Thursday 25th May, 2000 (Day 67)

Mr Bernard Dunne
*Former Chairman and Executive
Director of Dunnes Holding Company*

Mr Noel Fox
*Chartered Accountant
Senior Partner, Oliver Freaney & Company Limited and Trustee of the Dunnes
Settlement Trust*

Mr Jack Stakelum
*Chartered Accountant Retired
Financial Consultant with Business Enterprises Limited*

Friday 26th May, 2000 (Day 68)

Mr Trevor Watkins
*Company Director
Computershare Services Limited*

Mr Gerry Magee
*Accountant
Deloitte & Touche*

Mr Ralph MacDarby
*Director & Secretary of
Secretarial Trust Company, Deloitte & Touche*

Mr Michael Murphy
*Chief Executive Officer of
M Murphy Insurance Services Limited*

Mr Bernie Cahill
Company Director

Tuesday 30th May, 2000 (Day 69)

Mr Emmett O'Connell
Company Director

Mr Conor Haughey
Businessman

Mr Graham O'Brien
Financial Director N.C.B. Stockbrokers

Ms Sandra Kells
*Certified Public Accountant
Financial Director of Guinness & Mahon (Ire) Limited*

Ms Marion Wilson
A.I.B. Official

Wednesday 31st May, 2000 (Day 70)

Mr Pdraig Collery
Former Banker with Guinness and Mahon (Ireland) Limited

Mr John Byrne
Director of Carlisle Trust Limited

Thursday 1st June, 2000 (Day 71)

Mr Paul Carty
Managing Partner
Deloitte and Touche

Mr Thomas Clifford
Businessman

Mr Walter McGuire
District Operations Officer Bank of Ireland

Wednesday 7th June, 2000 (Day 72)

Mr Tony Barnes
Associate Director of Operations Department of Irish Intercontinental Bank

Mr Padraig Collery
Former Banker with Guinness & Mahon (Ireland) Limited

Dr Eamon De Valera
Former Managing Director of Irish Press Newspapers Group

Mr Dan Mc Ging
Businessman

Mr Brian Lenihan
TD

Thursday 8th June, 2000 (Day 73)

Mr Paul Kavanagh
Former Fundraiser for Fianna Fail Party

Mr Edmund Farrell
Former Chief Executive & Executive Chairman of the Irish Permanent Building Society

Mr Seamus Tully
Businessman

Tuesday 27th June, 2000 (Day 74)

Mr Nicholas Fitzpatrick
Company Director

Ms Sandra Kells
Certified Public Accountant
Financial Director of Guinness & Mahon (Ireland) Ltd

Mr Sean Fleming
TD

Mr Mark Kavanagh
Company Director

Mr Padraig Burke
Company Director

Wednesday 28th June, 2000 (Day 75)

Mr Sean Fleming

TD

Mr Bill Cunningham

Partner

PriceWaterhouseCoopers

Mr Paul Kavanagh

Former Fundraiser for Fianna Fail Party

Mr Frank Lynch

A.I.B. Manager

Dr Michael Smurfit

Businessman

Mrs Noirin McKeon

Head of Compliance

Davys Stockbrokers

Mr Eoin Ryan

S.C. and Former Fundraiser for Fianna Fail Party

Thursday 29th June, 2000 (Day 76)

Mr Bertie Ahern TD

An Taoiseach

Mr John Trethowan

Senior Manager of National Irish Bank Limited

Thursday 20th July, 2000 (Day 77)

Mr Bernard Dunne

Former Chairman and Executive

Director of Dunnes Holding Company

Mr Hugh Dolan

Financial Controller of the Fianna Fáil Party

Mr John Magnier

Businessman

Friday 21st July, 2000 (Day 78)

Mr Charles J Haughey

Former Taoiseach

Monday 24th July, 2000 (Day 79)

Mr Gus Kearney

Businessman

Mr Charles J Haughey

Former Taoiseach

Tuesday 25th July, 2000 (Day 80)

Mr Charles J Haughey

Former Taoiseach

Mr Vincent Jennings

Former Managing Director of Irish Press

Dr Michael Smurfit
Businessman

Wednesday 26th July, 2000 (Day 81)

Mr Charles J Haughey
Former Taoiseach

Thursday 27th July, 2000 (Day 82)

Mr Charles J Haughey
Former Taoiseach

Mr Frank Lynch
AIB Bank Manager

Mr Oliver Murphy
Businessman

Mr Dermot Desmond
Businessman

Thursday 21st September, 2000 (Day 83)

Mr Charles J Haughey
Former Taoiseach

Friday 22nd September, 2000 (Day 84)

Mr Charles J Haughey
Former Taoiseach

Monday 25th September, 2000 (Day 85)

Mr Charles J Haughey
Former Taoiseach

Wednesday 27th September, 2000 (Day 86)

Mr Charles J Haughey
Former Taoiseach

Thursday 28th September, 2000 (Day 87)

Mr Charles J Haughey
Former Taoiseach

Monday 2nd September, 2000 (Day 88)

Mr Charles J Haughey
Former Taoiseach

Monday 2nd October, 2000 (Day 89)

Mr Charles J Haughey
Former Taoiseach

Tuesday 3rd October, 2000 (Day 90)

Mr Charles J Haughey
Former Taoiseach

Tuesday 31st October, 2000 (Day 91)

Mr Philip Monaghan

Businessman

Mr Paul Kavanagh

FF Party Fundraiser

Frank Lynch

Manager, AIB, Baggot Street.

Wednesday 1st November, 2000 (Day 92)

Mr Roy Donovan

Fianna Fail Party Fund Raiser

Mr James Stafford

Businessman

Monday 6th November, 2000 (Day 93)

Mr Richard Robinson

Former Director Guinness Mahon (Ireland) Limited.

Mr Terry Donovan

Central Bank Official

Tuesday 7th November, 2000 (Day 94)

Mr Terry Donovan

Central Bank Official

Ms Ann Horan

Former Central Bank Official

Mr Adrian Byrne

Central Bank Official

Mr Brian Halpin

Central Bank Official

Mr Micheal Deasy

Central Bank Official

Ms Elaine Byrne

Central Bank Official

Monday 3rd December, 2000 (Day 95)

Mr Thomas Clifford

Businessman

Mr Jack Stakelum

Chartered Account

Retired Financial Consultant with Business Enterprise Limited.

Mr Tony Traynor

Executor of the Estate of J Desmond Traynor

Mr Vincent Clifford

AIB Official

Tuesday 5th December, 2000 (Day 96)

Mr Peter Nugent

AIB Official

Mr Joseph Malone
Businessman

Wednesday 6th December 2000, (Day 97)

Mr Tom Barry
*Former Chief Manager AIB,
Capital Markets Branch*

Mr Garret Fitzgerald
Former Taoiseach

Mr Pat Dowling
AIB Official

Monday 18th December, 2000 (Day 98)

Mr Pdraig O'Donoghaille
Revenue Official

Mr Christopher Clayton
Revenue Official

Tuesday 19th December, 2000 (Day 99)

Mr Christopher Clayton
Revenue Official

Mr Seamus Páirceir
Former Chairman of the Revenue Commissioners

Wednesday 20th December, 2000 (Day 100)

Mr Christopher Clayton
Revenue Official

Mr Seamus Páirceir
Former Chairman of the Revenue Commissioners

Mr David Fitzpatrick
Revenue Official

Mr Robert Harrington
Revenue Official

Thursday 21st December, 2000 (Day 101)

Mr Christopher Clayton
Revenue Official

Mr Robert Harrington
Revenue Official

Mr Noel Lyons
Deputy Collector General of Revenue Commissioners

Mr Fergus Carroll
Revenue Official

Friday 22nd December, 2000 (102)

Mrs Eimear Mulhern
Businesswoman

Mr Patrick Kenny
Partner in Deloitte & Touche

Friday 9th February, 2001 (103)

Ms Iris O'Donovan
Revenue Official

Mr Christopher Clayton
Revenue Official

Mr Dermot Quigley
Chairman of Revenue Commissioners

Tuesday 13th February, 2001 (104)

Mr Dermot Quigley
Chairman of Revenue Commissioners

Mr Brian McCabe
Revenue Official

Wednesday 14th February, 2001 (Day 105)

Mr Stephen Treacy
Revenue Official

Mr Maurice O'Donoghue
Revenue Official

Mr Patrick Kenny
Partner in Deloitte & Touche

Friday 16th March, 2001 (Day 106)

Mr Brian McCabe
Revenue Official

Mr Robert Harrington
Revenue Official

Mr Seamus Rodgers
Valuation Office Official

Wednesday 21st March, 2001 (Day 107)

Mr John Hussey
Revenue Official

Mr Fergus Carroll
Revenue Official

Ms Kathleen Maher
Revenue Official

Thursday 22nd March, 2001 (Day 108)

Mr Liam Liston
Revenue Official

Mr Pdraig O'Donghaile,
Revenue Official

Tuesday 22nd May, 2001 (Day 109)

Mr Charles J Haughey
Former Taoiseach
(Commission evidence read into record of tribunal)

Wednesday 23rd May, 2001 (Day 110)

Mr Charles J Haughey
Former Taoiseach
(Commission evidence read into record of tribunal)

Thursday 24th May, 2001 (Day 111)

Mr Michael Smurfit,
Businessman

Mr Charles J Haughey
Former Taoiseach
(Commission evidence read into record of tribunal)

Friday 25th May 2001 (Day 112)

Mr Charles J Haughey
Former Taoiseach
(Commission evidence read into record of tribunal)

Tuesday 29th May 2001, (Day 113)

Mr Charles J Haughey
Former Taoiseach
(Commission evidence read into record of tribunal)

Ms Eileen Foy
Former Administrator of Leaders Allowance A/C

Mr Paul Carty
Managing Partner in Deloitte and Touche

Mr Pat Kenny
Partner in Deloitte and Touche

Mr John Stakelum
Chartered Accountant (Retired)
Financial Consultant with Business Enterprises Limited

Wednesday 30th May 2001 (Day 114)

Mr Des Peelo,
Accountant

Mr Sean Fleming
TD

Mr Paul Kavanagh
Former Fianna Fail Fundraiser

Dr Edmund Farrell
Former Chief Executive and Executive Chairman of the Irish Permanent Building Society

Mr Patrick Kevans
Solicitor

Wednesday 15th June 2005 (Day 290)

Dr Don Thornhill
Revenue Official

Thursday 16th June 2005 (Day 291)

Mr Liam Horgan
Tax Consultant

Mr Sean O’Cathain
Revenue Official

Friday 17th June 2005 (Day 292)

Mr Sean O’Cathain
Revenue Official

Tuesday 21st June 2005 (Day 293)

Mr Christopher Clayton
Former Civil Servant in the Office of the Revenue Commissioners

Wednesday 22nd June 2005 (Day 294)

Mr Christopher Clayton
Former Civil Servant in the Office of the Revenue Commissioners

Mr Philip Curran
Former Chairman of the Revenue Commissioners

Thursday 23rd June 2005 (Day 295)

Mr Tadhg O’Connell
Former Revenue Official

Mr Michael O’Grady
Former Revenue Official

Mr Cathal MacDomhnaill
Former Revenue Commissioner

Friday 24th June 2005 (Day 296)

Mr Frank Bowen
Retired Managing Partner, Deloitte & Touche

Mr Bernard Uniacke
Retired Trustee of the Dunnes Trust

Tuesday 28th June 2005 (297)

Mr Noel Fox
Trustee of the Dunnes Trust

Mr Frank Bowen
Retired Managing Partner, Deloitte & Touche

Mr Sean O’Catháin
Revenue Official

Wednesday 29th June 2005 (Day 298)

Mr Bernard Dunne
Businessman

Thursday 30th June 2005 (Day 299)

Mr Bernard Dunne

Businessman

Mr Seamus Pairceir

Former Chairman of the Revenue Commissioners

Friday 1st July 2005 (300)

Mr Seamus Pairceir

Former Chairman of the Revenue Commissioners

Friday 16th December 2005 (313)

Mr Bryan O'Brien

Principal Officer

Department of Justice, Equality and Law Reform

Mr Michael Mellett

Former Assistant Secretary

Department of Justice, Equality and Law Reform

Ms Paula Connolly

Executive Officer

Department of Justice, Equality and Law Reform

Mr David McAuliffe

Higher Executive Officer

Department of Justice, Equality and Law Reform

Tuesday 20th December 2005 (314)

Mr Cathal Crowley

Former Assistant Secretary

Department of Justice, Equality and Law Reform

Mr Stephen Magner

Assistant Secretary

Department of Justice, Equality and Law Reform

Mr Gerard Collins

Former Minister for Justice

Mr Ray Burke

Former Minister for Justice

Friday 27th January 2006 (315)

Mr John Olden

Assistant Secretary

Department of Justice, Equality and Law Reform

Thursday 16th March 2006 (317)

Dr John O'Connell

Former TD and Ceann Comhairle

Thursday 23rd March 2006 (318)

Mr Norman Gillanders

Assistant Secretary, Revenue

(Capital Taxes Division)

Friday 24th March 2006 (319)

Mr Brian McCabe
*Principal Officer, Revenue
(Capital Taxes Division)*

Tuesday 28th March 2006 (320)

Mr Stephen Treacy
Principal Officer, Revenue

Tuesday 4th April 2006 (321)

Mr Aidan Nolan
Principal Officer, Revenue

Wednesday 5th April 2006 (Day 322)

Mr Aidan Nolan
Principal Officer, Revenue

Mr Liam Liston
Principal Officer, Revenue

Mr Patrick Donnolly
Assistant Secretary, Revenue

Thursday 6th April 2006 (Day 323)

Mr Tony Barnes
*Programme Officer
Irish Intercontinental Bank*

Mr Frank Daly
Chairman of the Revenue Commissioners

Friday 28th April 2006 (Day 326)

Mr Sean Fitzgerald
*Former Assistant Secretary,
Department of Energy (now under the auspices of the Department of
Communications, Marine & Natural Resources)*

Tuesday 2nd May 2006 (Day 327)

Mr Philip Carroll
*Former Assistant Principal Officer
Forestry Service (now under the Department of Agriculture & Food)*

Wednesday 3rd May 2006 (Day 328)

Paddy Donnelly
Assistant Secretary, Revenue Commissioners

Paddy McMahon
*Principal Solicitor (retired)
Office of the Chief State Solicitor*

Robert Molloy
Former Minister for Energy

John Loughrey

Former Secretary General

*Department of Energy (now under the auspices of the Department of
Communications, Marine & Natural Resources)*

Thursday 4th May 2006 (Day 329)

Mr Brendan Johnston

Businessman

Friday 5th May 2006 (Day 330)

Donal Dempsey

Financial Director and Company Secretary, of Roadstone Dublin Limited

Mairtin MacAodha

Former Managing Director, of Roadstone Dublin Limited

Seamus Breathnach

Former Production Director of Roadstone Dublin Limited

Tuesday 9th May 2006 (Day 331)

Mr John Barnett

Minerals and Environmental Sciences Consultant

Mr Kieran O'Malley

Consultant Engineer

Wednesday 10th May 2006 (332)

Mr Christopher Lockwood

Partner, GVA Grimley

Mr Donal Dempsey

*Financial Director and Company Secretary
Roadstone Dublin Limited*

Thursday 11th May 2006 (Day 333)

Dr Peadar McArdle

Director

Geological Survey of Ireland

Mr Joe Behan

Civil Engineer

Mr Tony Barry

Former Chairman of CRH Plc