

THE TRIBUNAL RESUMED ON THE 29TH JUNE, 2005 AS FOLLOWS:

MR. COUGHLAN: Mr. Bernard Dunne.

BERNARD DUNNE, PREVIOUSLY SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Dunne, and thank you for attending on what I hope will be the last occasion you'll be asked to assist here. And of course you are already sworn from earlier attendances.

MR. MOLONEY: Liam Moloney from Noel Smyth & Partners for Mr. Dunne. I understand from solicitors for the Tribunal we have to reapply for representation again today.

CHAIRMAN: Oh, I don't think so. I think the representation order that I made at a much earlier stage

MR. MOLONEY: I just double-checked with the solicitor this morning, and I just suggested that I apply this morning.

If it's fine from the previous times, that's fine.

CHAIRMAN: I can't see any problem arising. If anything were to transpire, of course, I'd give you an opportunity to be heard; but as far as I am concerned, you are fully at liberty to act on the basis that the order is ongoing.

Q. MR. COUGHLAN: Now, Mr. Dunne, I think you provided the Tribunal with a Memorandum of Intended Evidence dealing with certain matters, queries raised by the Tribunal; isn't that correct?

A. That's correct, sir.

Q. I wonder, do you have it there with you, Mr. Dunne?

A. No, I don't.

Q. Perhaps we'll get you a copy of it. You know the procedure: We'll go through this in the first instance, and then we'll come back and deal with certain matters in due course.

A. Okay, sir.

Q. Now, I think if we deal with 1, and then the Roman numeral 1.

I think you were asked for meetings between you and the Chairman of the Revenue Commissioners at the instigation of Mr. Charles Haughey. You were then asked for details of all dealings, meetings or contacts which Mr. Dunne had with Mr. Charles Haughey prior to May of 1987.

I think you have informed the Tribunal that you, at the request of the Tribunal, furnished a statement setting out an account of your dealings with Mr. Charles Haughey and your dealings with Mr. Noel Fox insofar as they pertained to Mr. Haughey. In your evidence to the McCracken Tribunal, you stated that you did not know or recall exactly the first time you met Mr. Haughey, but you believe that that was in or around 1986/1987 period, and Mr. Noel Fox would have introduced you to Mr. Haughey; is that correct?

A. That's correct, sir.

Q. And I think, now that I remember and having read some of the evidence you gave here previously, I think you seemed to think that this was probably in 1986 or thereabouts, wasn't it, that you first met Mr. Haughey?

A. I wasn't really sure, but I think I weighed more on '86

Q. When you gave evidence?

A. That's correct, sir.

Q. I think you were then asked whether, as appears from the documents available to the Tribunal, and as confirmed by Mr. Pairceir, you were asked: "Mr. Dunne agrees that his meetings with Mr. Pairceir in early May or 1987 was arranged at the request of Mr. Charles Haughey". And you say that having reviewed the documents now made available, you accept Mr. Pairceir's confirmation that the meeting in early May 1987 was arranged at the request of Mr. Charles Haughey; is that correct?

A. That's correct, from the documentation that I looked at, that's correct.

Q. And then you were asked, if you accepted that, details of all your dealings with Mr. Charles Haughey in relation to the taxation affairs of the Dunnes Settlement Trust, or any other aspect of your taxation affairs or the taxation affairs of any member of your family or any company within the Dunnes Stores Group.

I think you informed the Tribunal that you have no recollection of any dealings with Mr. Haughey in relation to taxation affairs of the Dunnes Settlement Trust, or any other aspect of your taxation affairs or the taxation affairs of members of your family or any company within the Dunnes Stores Group; is that correct?

A. That's correct, sir.

Q. I think you were asked for the date or approximate date of each meeting you had with Mr. Pairceir during his tenure in the Revenue Commissioners. And you have informed the Tribunal that you have no attendances of any meetings or details of any dates of meetings you had with Mr. Pairceir during his tenure as Chairman of the Revenue Commissioners, and you are relying solely on Mr. Pairceir's attendance, or the Revenue documents, in other words; is that correct?

A. That's correct, sir.

Q. I think you were asked for details of all steps taken by you following your discussion with Mr. Pairceir on or about the 4th June, 1987, at which Mr. Pairceir appears to have agreed to settle the Revenue Commissioners assessment for 38.8 million in consideration for the payment of  $\frac{1}{2}$ 16 million, including all contacts which you had with the Trustees, any professional advisers, any members of your family, and any other person, including Mr. Charles Haughey.

And you have informed the Tribunal that you have no recollection or any details of what steps you took, if any, following discussions with Mr. Pairceir on or about the 4th June, 1987, and you are relying solely on the various memoranda and attendances furnished by the Tribunal; is that correct?

A. That's correct, sir.

Q. I think, turning to another issue now, and it is a question of interest on the Discretionary Trust Tax payment; we have

been dealing with it over the last fortnight here, and it relates to the Revenue forgiving  $\pounds 62,500$ , approximately, in respect of tax which would have been due arising out of a settlement in relation to the Discretionary Trust Tax. I think we'll deal with the issue. You understand the issue?

A. I do understand the issue, sir.

Q. I think you were asked for your knowledge, direct or indirect, of Mr. Pairceir's agreement to waive interest in the sum of  $\pounds 62,450$  payable by the Trustees, and you have informed the Tribunal that you have no knowledge of Mr. Pairceir's agreement to waive interest as evidenced in the documentation received from the Tribunal.

I think you were asked for details of all contact or dealings which you or any person on your behalf had with Mr. Pairceir in relation to his agreement to waive the interest due, and you have informed the Tribunal that you had no contact or dealings with Mr. Pairceir in relation to this matter, and you have no records or contacts of dealings of any person purporting to act on your behalf in this regard. Is that correct?

A. Sorry

Q. I'll just go through that again.

A. I just lost you.

Q. You were asked for details of contacts which you or any person on your behalf had with Mr. Pairceir about this question of an agreement to waive the interest.

A. Oh, right, yes, sorry.

Q. You say you have no record of

A. That's correct.

Q. of any dealings yourself or anyone on your behalf having such dealings. That's what you are saying?

A. That's correct, sir.

Q. I know this was done with the assistance of solicitors, so I understand that the language is very formal, and it follows precisely queries that are raised by the Tribunal.

But that's what you are saying here; isn't that right?

A. That's correct, sir.

Q. I think you were then asked for your knowledge of all contact or dealings which the Trustees or any person on their behalf had with Mr. Pairceir in relation to Mr. Pairceir's agreement to waive the  $\frac{1}{2}$ 62,500. And you say that you have no recollection of any contacts or dealings between the Trustees, or any person on behalf of the Trustees, with Mr. Pairceir in relation to this question of the waiver of the interest; however, you do accept that you could have been told about it at the time. Is that right?

A. That's correct, sir.

Q. I think you were asked for details of all contact or dealings which you or any person on your behalf had with Mr. Haughey, if any, in relation to this question of the waiver of interest. And you have informed the Tribunal that you had no contact with Mr. Haughey in relation to the waiver of interest, and you had no record or recollection of any contact by any person with Mr. Haughey on your

behalf in relation to this question. Is that correct?

A. That's correct, yes.

Q. I think you were then asked for your knowledge of all contact or dealings which the Trustees or any person on behalf of the Trustees had with Mr. Haughey, if any, in relation to the question of the waiver of interest. And you have informed the Tribunal that you have no recollection or knowledge of any contacts or dealings between the Trustees or any person on behalf of the Trustees with Mr. Haughey in relation to this question of the waiver of interest. Is that correct?

A. That's correct, yes, sir.

Q. Now, I want to turn now to another issue, and I'll just explain, it's under the heading "Income Tax Assessed on Trustees." I think, just to explain, and I think you are probably now aware of the issue involved here: The Trustees had no money themselves in the trust; the only way they could get money was by the Dunnes Stores holding company declaring a dividend, giving that money to the Trustees to enable them to pay the Discretionary Trust Tax. And a question arose, then, as to whether the Trustees would be and should pay income tax in respect of this dividend money which was given to them. You know the issue that we are talking about?

A. Yes, yes, sir.

Q. And I think you were asked whether, to your knowledge, at the time of the settlement of the Discretionary Trust Tax

assessment in March of 1987, whether it was agreed by the Revenue Commissioners or that the Trustees were otherwise assured by the Revenue Commissioners that there would be no further liability to income tax on distributions made for the sole purpose of discharging Discretionary Trust Tax as it fell due. And you have informed the Tribunal that you have no knowledge of any agreement or assurance in March 1987 in relation to further liability to income tax or distribution made for the sole purpose of discharging Discretionary Trust Tax as it fell due, but you accept that you could have been told about it?

A. That's correct, sir.

Q. Now, I think you were asked for details of all dealings which you had or which, to your knowledge, the Trustees or any person on behalf of them had with Mr. Pairceir in relation to the matter of income tax payable by the Trustees. And you have informed the Tribunal that you have no recollection of any dealings, nor do you have any knowledge of any dealings of any Trustee or any person on behalf of the Trustees with Mr. Pairceir in relation to the matter of income tax payable by the Trustees, but you accept that you could have been told about it?

A. Correct, yes, sir.

Q. And then I think you were asked for details of all dealings or contacts, if any, which you had, directly or indirectly, or which, to your knowledge, the Trustees or any person on behalf of the Trustees had with Mr. Charles Haughey in

relation to this question of the income tax. And you say that you have no recollection of any dealings, nor do you have any knowledge of any dealings or contacts of any Trustee or any person on behalf of the trustees with Mr. Haughey in relation to this matter of income tax; is that correct?

A. That's correct, sir.

Q. Now, turning to another issue now, and it's the question of the engagement of Mr. Seamus Pairceir. And I think you were asked the person or persons who proposed that Mr. Pairceir be retained to advise in relation to the Capital Gains Tax appeal which was then pending. And you say that you have no recollection of who proposed that Mr. Pairceir would be retained, but you accept that Mr. Pairceir's retention was sanctioned by you; is that correct?

A. Can I make a comment here, sir?

Q. Indeed you may.

A. Having looked at it, I would have said that the it would have been either me or Mr. Fox. So it's not right to say I have no recollection who proposed; it would have been either been me or Fox. But I would have certainly sanctioned it.

Q. That's fair, then.

A. Okay, sir.

Q. And I think you were then asked the services which it was envisaged that Mr. Pairceir would be in a position to

provide over and above the services already available to you and the Trustees. And you say that it is your recollection that Mr. Pairceir was engaged to provide tax advice; is that correct?

A. Yeah, that's correct, yes.

Q. We can come and deal with it, and you can expand as the case may be.

A. Okay, sir.

Q. I think you were asked for details of all contacts or dealings which you had with Mr. Pairceir in connection with the services which Mr. Pairceir was retained to provide, and you say that you have no details of any contacts or dealings which you may have had with Mr. Pairceir in connection with the services which Mr. Pairceir was retained to provide.

And I think you were asked for details of all contacts or dealings which you had with any person whatsoever, including Mr. Charles Haughey, in connection with the retention of Mr. Pairceir or the advices or services rendered by Mr. Pairceir. And you have informed the Tribunal that "The person that Mr. Dunne believes he had contact with dealing with in connection with the retention of Mr. Pairceir was Mr. Noel Fox". And that ties up with what you were saying in respect of the other matters.

A. Correct, sir.

Q. I think you were then asked, and I'm dealing with evidence which you gave to the McCracken Tribunal. This is another

heading under which you were asked some questions. And you were asked whether you informed the McCracken Tribunal of your earlier meetings with Mr. Pairceir, and that such meetings had been arranged at the request of Mr. Charles Haughey.

And you have informed the Tribunal that the McCracken Tribunal was not informed of your meetings with Mr. Pairceir. You had no recollection of the same until the evidence of Mr. Pairceir to this Tribunal was furnished to you; is that correct?

A. That's correct, sir.

Q. I think you were then asked whether you had any contact or dealings with Mr. Pairceir or with any other person, including any of the Trustees or any representative of the Trustees, at the time of the McCracken Tribunal in relation to the meeting between Mr. Dunne and Mr. Pairceir in 1987. And you have informed the Tribunal that you had no such contact or dealings; is that correct?

A. That's correct, sir.

Q. And I think you included with your statement, then, and it was a statement made by you on the 2nd February, 2000, and that deals with various meetings you had with Mr. Haughey; isn't that correct?

A. That's correct, sir.

Q. We needn't go through it again, I think.

A. Okay, sir.

Q. The weddings, dinners, Mater Hospital, Government

Buildings, Christmas Eve, lunches, Saturday morning golf, Government event receptions, Dunnes Stores Golf Classic, and matters of that nature, and we have in fact been over that previously.

A. Correct, sir.

Q. Now, Mr. Dunne, I am going to ask you to you would have received, through your solicitor, I think, a book of documents which the Tribunal put together.

A. Yes, sir.

Q. And they are behind certain folder numbers or tab numbers.

A. Correct, sir.

Q. I wonder, could you get that, please, and I'm going to ask you to look at a few documents?

CHAIRMAN: Mr. Moloney, I am not sure if you'd rather get a seat somewhere nearer the front in the event that you might be able to be of more assistance to Mr. Dunne, if that's of any use to you.

Q. MR. COUGHLAN: Now, I think

A. Excuse me sir, which book are we talking about first? 64, is it?

Q. It's 65. Do you have Book 65?

A. I have, yeah, I have two here.

Q. You can put the other one down and get it out; you won't need it at the moment.

I think the evidence before this Tribunal, and if I might describe it, where the story begins is that your father and your mother set up a trust in 1964; is that correct?

A. That's correct, sir.

Q. And it was a Discretionary Trust?

A. Yes, sir.

Q. And the objects, or the people who were potential beneficiaries under that trust, were you and your brother and sisters, isn't that right, in broad terms?

A. Yeah, and any children born before 1985.

Q. And any children born before 1985.

A. Yes, sir.

Q. And by the terms of that trust, it was to last for 21 years; isn't that right?

A. That's correct, sir.

Q. And I think in the 1970s, the Coalition Government of that period, first of all, introduced wealth tax; isn't that right? Or do you remember?

A. Yeah, I have a recollection. I mean, there was a lot of taxes being introduced.

Q. Capital-type taxes being introduced?

A. Heavy taxes, I'd say.

Q. Okay. Heavy taxes. And can I take it you would have been aware that there were discussions between perhaps your father and the Trustees, perhaps you mightn't have been so intimately involved in those days, about these taxes?

A. I

Q. In general terms.

A. I would have been, yeah, I'd have been aware there was discussions about the future, yeah.

Q. About the future?

A. Yes, sir.

Q. Now, I think your father died in 1983; is that correct?

A. That's correct, sir.

Q. I think it was 1983. And

A. '83.

Q. Sorry, I beg your pardon, '83.

A. Yes, sir.

Q. And in the Finance Act of 1984, a Discretionary Trust Tax was introduced that made Discretionary Trusts liable for 3% tax on the value of the property or assets in the trust on the death of a settlor or one of the settlors; isn't that correct?

A. Yeah, I recall the once-off 3%, and then a 1% annual. I do recall that, sir.

Q. So in respect of your father, there would be a liability for 3% in respect of his death. And then your mother died in 1986, I think, and she was another settlor, and there was a liability, a once-off 3% liability in respect of that; isn't that right?

A. Yeah. I don't recall that as clearly as I remember the one of my father being discussed, definitely. But I know they both apply.

Q. You know what the issue was?

A. Yes, sir, do I.

Q. I think, then, in the Finance Act of 1986, there was further tax imposed on Discretionary Trusts, and this was

the annual 1%; isn't that right?

A. That's correct, sir.

Q. I take it you were aware of all of that, and it was a matter that you would have been discussing with the Trustees?

A. The 1%, one would certainly have had a lot of discussion.

Q. Have had a lot of discussion?

A. Because of it being an annual tax. When I say "a lot", not with all the Trustees, but with some of the Trustees.

Q. Some of the Trustees?

A. Yes, sir.

Q. Who in particular? Was it with Mr. Fox and Mr. Bowen?

A. I'd say Eddie Montgomery, and Mr. Fox, and a bit with Mr. Bowen. That would be my recollection on it.

Q. Very good. Sorry, I beg your pardon, the Finance Act was '84, Mr. Healy corrects me, but we are talking about the introduction of the 1%, in any event?

A. Yes.

Q. Now, I think would there have been discussion about what was going to happen now, coming up to I think it was the 14th or 15th March of 1985, the 21 years was going to be up in relation to the trust, and the question was arising as to whether the Trustees would have to make an appointment or whether the assets in the trust would vest on the beneficiaries if they didn't make such an appointment; do you remember such a discussion taking place around that type of issue?

A. Yeah, I do. But it was always up in the air, is what my recollection is, because to get the five of us who were involved in the business together on a even a half-regular basis at the time, I recall, was very difficult. So there was discussion, but it was kind of fragmented discussion; that's the way I would put it, sir.

Q. Right. You were certainly what role were you fulfilling at that time, in the mid-1980s? Would you have been the most active of the

A. No, I recall saying to Eddie that there was Eddie Montgomery, that is that there was a lot of time being wasted on the trust, and if we weren't careful, if we don't run our business right, there'll be nothing to discuss.

And that's what I when I look back and when I go through all these files, that's where I see myself, that was I could see myself I was conscious of the trust, but I was far more conscious that the business, if it wasn't managed and if we didn't watch our business, there'd be nothing to talk about.

So whilst I was involved in the trust, I was kind of saying, "Look", a lot of times, would somebody make decisions, could we get the thing sorted out, or but I was saying it "Look, there is too much time being wasted on that, and if we are not careful, we won't have a business".

That would be my recollection of it.

Q. Fair enough. You were concerned with the operation and

running and growing of the Dunnes Stores Group?

A. That's what my main concern was, I would believe.

Q. The trust was something that was there?

A. The trust was a big annoyance, because there was no decision being made on it. And if you can understand, if there was no if a thing wasn't put to bed, and if your main business was retail, it was a source of big annoyance, because it was a problem but it wasn't being dealt with in any way. I suppose that's the way I would put it to you, sir.

Q. Right. Well, how did you see it, or how did you understand it to be a problem, from your perspective?

A. What I when I think back over it, what I understood the problem to be is the Trustees couldn't get a collective decision from the family.

Q. I see.

A. That's what I understood the problem to be.

Q. Fair enough. That's what you understood the problem to be.

From your point of view, what did you want? Can you remember?

A. To get on with the running of the business.

Q. Yes, but in relation to the trust?

A. I certainly wanted the thing extended, because I never envisaged that I'd be out of Dunnes Stores, so it didn't worry me that the trust was going to be extended at all, because and that would have been my preferred option all the time, because I was deeply involved in the running of

the business; I'd been there since 16 years of age. I don't know what age I was then, but I never saw myself out of Dunnes Stores at that particular stage of my life.

Q. Now, in February of 1985, we have been told by Mr. Bowen that on the introduction of Mr. Hugh Coveney, an introduction was made to Mr. Alan Dukes, who was then the Minister for Finance, and that you, Mr. Bowen and I don't know who else was present; perhaps some other Trustees met Mr. Dukes. Do you remember that?

A. I do, yes, sir.

Q. And I think, according to Mr. Bowen, your side let their views be known about the particular tax, the position of the trust and the position of the company; would that be generally your recollection of the type of matters that were discussed?

A. Well, again, since all this has been put in front of me, I have really gone in and gone back over my brain. What I recall, I'm not sure whether it was one or two meetings, but I do recall Mr. Dukes' approach was that we if you look at what you had spent over the last five years on store development this is a recollection I have, and it was, I believe, in his office, and I'm not sure whether it was the meet with Frank Bowen or whether it was another meeting, I am not sure whether I had one or two meetings with Mr. Dukes, but I'm going back over my memory, but I certainly recall Mr. Dukes saying that if he had done his homework, or whatever, and that he had seen that over

the last X number of years, we had spent 30 million on store development, and he said, "Look, if you want to do if you want to pay your tax and break your trust up, all it will mean is stop store development for a year or two, but that mightn't be a bad thing", or words to that effect.

But he was pointing out, to the best of my recollection, that the company had the capability of paying it, sir.

That's what I recall.

Q. That's what you recall. All right.

A. Based on what we had spent over the last three years on store development.

Q. On growing the business?

A. Correct, sir.

Q. I think anyway, we know from Mr. Bowen that after this meeting, after the meeting, anyway, that he was at, that you attended with Mr. Dukes, Mr. Bowen made contact or had a telephone conversation with Mr. Seamus Pairceir, the Chairman of the Revenue Commissioners, and an appointment was made to meet him. Do you remember being informed of that?

A. I'm sure I was told that there was a meeting with the Revenue. I think that's what I can recall.

Q. Now, I know it was your view, or you have said it was your view at the time; you didn't have your preference or your view was that let the trust continue, because you didn't intend being out of Dunnes Stores, as subsequently transpired, and that the Trustees, as far as you were

concerned, the Trustees seemed to be having difficulty in their communications with other members of the family.

That was your

A. That would be my understanding of it, yes, sir.

Q. Now, do you remember Mr. Bowen and Mr. Uniacke being of a view that the preferable way of dealing with matters would be if the trust could be brought to an end, and if value if it could be done at a reasonable price; do you remember that sort of discussion taking place amongst the Trustees with you?

A. What I recall is that the members of the family who had children, and this is now I'm going back a long time, and I want to preface it here, but I believe this to be the trust that the members of the family who had children had no difficulty with the thing being put into the Bernard Dunne Fund, the Margaret Heffernan Fund, the Elizabeth but certainly members of the family, where there was a fund set up and there was no children born before March 1985, I certainly remember there was difficulty on that. It was maybe I am using the wrong word, "difficulty", but it was a point that was discussed quite a lot, sir.

Q. It was an issue; there was an issue about it?

A. Yes, sir.

Q. In any event, I think the question of the 1% continuing Discretionary Trust Tax was also a matter which was of concern to the Trustees well, to Mr. Bowen and Mr. Uniacke anyway, as far as we know from their evidence?

A. From what I can remember, the big concern was that and I remember this being said; by who, I don't know but, look, like all taxes, it will go up. And I remember somebody saying it will go from 1% to 2%, and it's our capital is being taken away on a yearly basis, and I think that was the big concern. We could live with the 1%, but you know, who is to say down the road it wouldn't go to 2% or 3%. And I remember that point being made by some of the Trustees. That's my recollection.

Now, just to make a point, sir, this is within the context I was running the business, and that is what I'm saying, it was kind of a source of I don't know, what I'd call it, but I'm saying I was of the view and this is the way in a lot of cases I would have been talking to Eddie Montgomery and saying, "Eddie, there is so much talk about this and that, and if we're not careful" and I would have been saying it to Fox "if we are not careful, we'll take our eye off the ball and we'll have no business". So I just want to give you the way that I can recall the situation, sir.

Q. And I appreciate that, Mr. Dunne. And I am just drawing a few strands together, if I might at this stage.

Now, you remember somebody saying that, about this 1% annual Discretionary Trust Tax, that "Look, as the way with all taxes, there is a danger they could go up"?

A. From my recollection, I would say that that was the big concern. The introduction of the 1%, that was established.

The concern was that it would go up. Now, you know, whether anybody else at Trustee level or Dunnes but that's my recollection.

Q. I don't think there is probably any dispute; I think that probably would have been perhaps in anybody's mind dealing with their advising in respect of a Discretionary Trust of this nature. But you also used the expression that to pay this, you were using the capital of the business?

A. Yeah, it was 1%. You can't create capital every year. I remember that point being made. Now, I was a retailer, but this was being made by the Trustees were accountants, and so that point was being made.

Q. What the Trustees had was that they held the ordinary shares; isn't that right?

A. They had the ordinary shares, that's correct, yeah.

Q. And some of the I think 100 of the preference shares, but they held the ordinary shares. And there was when you use term "capital", what was happening, because the ordinary shares were held in the trust, there was no dividend being declared in the holding company; isn't that right?

A. That's correct.

Q. And everything was being reinvested within the group; would that be a fair way of putting it? So what was happening was the company was growing by not declaring a dividend, but the value of the ordinary or the value of the asset was appreciating?

A. Yeah, yes.

Q. Now, I think in respect of this Discretionary Trust Tax, first of all dealing with the 3% and the 1%, I think a return was made, and we needn't go to it, in respect of Discretionary Trust Tax. A payment on account was made of I think  $\frac{1}{2}$ 500,000 at the time, and this was based on a valuation submitted by the Trustees to the Revenue of 33 and a half million, or there or thereabouts, and I think an assessment was raised in respect of this by the Revenue, based on valuation for Discretionary Trust Tax purposes as of 1984, they put a value on the company of 100 million. That was appealed. Before the appeal hearing, discussions took place between lawyers for the Trustees, lawyers for the Revenue, and for the purpose of Discretionary Trust Tax, a value was agreed of 82 million, and the various calculations were done arising from that. Would all that have been brought to your attention around that time?

A. I'm sure it would, but I wouldn't have any great recollection of it. But I am sure it would be a normal thing that I would have been told about, yeah. I can kind of I can definitely recall something about it, yeah.

Q. And you have or do you have any recollection then that this agreement was written down by the barristers on both sides?

A. No.

Q. The terms of the agreement were noted?

A. None whatsoever, sir.

Q. You have none.

Now, I think Mr. Bowen then wrote the cheque I'm going to ask you just because you had some involvement wrote the cheque for the Discretionary Trust Tax, and he sent the cheque up to you; do you remember any of that? And you may have gone off with the cheque in your pocket on holidays, or anything like that?

A. Well, I can only recall it from what took place in the Tribunal here, and I don't know why the point was made, because if I had gone off with the cheque in my pocket, which I am sure was possible, he could have cancelled I wasn't the only cheque signatory; he could have cancelled that cheque and written a new one. That's the only I'm just making the point.

Q. Who were the other signatories who could have

A. Any member of the family.

Q. Any member of the family?

A. Yes, sir.

Q. But in any event, for whatever reason, the money wasn't paid on the date that it was agreed to be paid?

A. Well, it certainly wasn't my fault. Sorry, I just wanted to

Q. I'm not laying blame at anyone's door. But for whatever reason, it wasn't paid on the day it was supposed to be paid?

A. I don't know. I have no idea of any of this except what I read in or what I have seen taking place as evidence

here, sir.

Q. All right. But you do now know that, because it wasn't paid, that there should have been another 62.5 thousand interest paid arising out of the settlement?

A. I am aware of that now, yes, sir.

Q. You say that you don't know anything about any dealings the Trustees had in relation to the waiving of that particular interest by Mr. Pairceir on behalf of the Revenue Commissioners?

A. No, I don't. I mean, I may have been told about it, because it wasn't accountants, one of the things that would have happened, and it was to justify their fees, that they would come forward with something where they'd save the company money, and that's why I'm saying I could have been told, "Look, you know, we have saved you 60 thousand", and it was kind of a way "Oh, you have done a good job", to justify. So it's in that context that I believe I could have been told, because every so often they'd come up with ideas that would save the company tax or one thing or another.

Q. Okay, I take your point.

If anybody told you, who do you believe would have told you about that? Would it have been Mr. Bowen, Mr. Fox?

A. Either Bowen or Fox, definitely.

Q. Now, coming up to the 14th March, 1985, that was the that would have been the 21 years up from the time your mother and father set up the trust in 1964. Do you

remember advice being taken by the Trustees? Were you informed of advice being taken by the Trustees from lawyers in London and accountants in London and lawyers here?

A. I do. And there was a senior counsel man, I can't think of his name, an Irish name, but I do remember it, yeah.

Q. And this was all do you remember that it was all advice about the question of the continuation of the trust; isn't that right?

A. Yeah, yes, sir.

Q. And I think you are aware that in I think it's the 14th or 15th March, I am not sure of the exact date 1985, the Trustees, under the 1964 trust, settled the property, the assets, the shares on themselves in the 1985 trust, isn't that right, to be held beneficially for you and I think four other of your siblings?

A. I remember it quite well, because we were in head office, and I think they had to be signed before twelve o'clock.

And I remember it quite clearly, because I don't know why I think this, but there was a phone call we still thought that maybe Mr. Dukes was going to come back. There was a reason why we waited up to the last hour before we didn't sign until after eleven o'clock, would be my recollection.

Q. What do you think Mr. Dukes would come back to you about?

A. I forget. There was something where maybe there was a better I can't remember the detail, but I do remember that particular point that Mr. Dukes and I think the ACC

or some big there was a big problem with some insurance company in Ireland at the time, and

Q. The Insurance Corporation of Ireland, the ICI.

A. Yes. But there was some reason why we didn't sign it until eleven o'clock, after eleven o'clock at night. And

Q. You can't

A. Well, I think

Q. help us as to

A. I think one was waiting for my brother Frank to come in, and I certainly have I have a thing that there was a phone call to come from Department of Finance or maybe to come; I don't want to say but there was something, there was something held it up. I mean, we could have signed if a day or two before, so there was something that made it wait until the 11th hour, sir.

Q. All right.

Now, would you have been kept aware that during after the signing of the particular document, or whatever documents that needed to be signed, do you remember whether it was one document or a number of documents or

A. I can't remember, no.

Q. But anyway, after that, that there were dealings between the Trustees and tax advisers with the Revenue in relation to trust matters?

A. Can you repeat that question again, sir?

Q. Can you remember, after the signing of this, whether there was contact between

A. I would have thought that after and this is my recollection; after the thing was signed, there was a kind of a quietening-down period as far as the family were concerned. A decision had now been made; the trust was extended. And I don't remember anything like the same amount of discussion. It's like an anti-climax, after the whole thing was done and dusted, so I don't recall

Q. But can I take it that were you aware that or was it the case that the Trustees anticipated that the Revenue would have discussions with them about this particular matter, about the 1985 settlement?

A. Yeah, I remember Eddie Montgomery saying, "We have got to wait and see now." I certainly my discussions after the document was signed, if I was to speak trust, outside of I think it stopped now becoming an issue at board meetings, and we started getting on. But I used to meet Eddie Montgomery, I think every Tuesday, and any discussions that I'd have was mainly with Eddie, I would have thought, for a period of time afterwards, and Eddie's attitude is we'll wait and see. And that's the way I that's what I can recall, sir.

Q. When you say you met him every Tuesday, was this in his capacity as the senior Trustee?

A. Oh, it was in his capacity as Trustee, yeah. He'd come in and it was a kind of a cup of tea meeting after lunch every Tuesday. I'd collect him over in his office and bring him over, and we'd have a chat for somewhere around

an hour, I would think, and it was a kind of a general discussion, and everything came up.

Q. Like what type of matter would you be discussing? Would it be family matters, business matters?

A. I mean, I'm not trying to say the things about the trust didn't come up, but I remember the time your man Higgins won the world championship, and you know you know, it was everything; sport it was a general discussion. I think I got on well with Eddie, and I think that Eddie understood some of the difficulties I was experiencing in the running of Dunnes Stores.

Q. Was that

A. Just family difficulties and

Q. Family difficulties?

A. That's correct, sir.

Q. Difficulties with your brothers and sisters?

A. Yeah, people maybe not attending, and you know, just big business another thing that came up regularly, he was giving out that there was no probate in my father's will; my father was dead at this stage two or three years. I remember all that sort of stuff, you know, but very general.

Q. But your recollection is that you'd have met him, to the best of your recollection, anyway, either on a weekly basis

A. Either on a weekly or fortnightly, one or the other, sir.

Q. All right.

Now, I am going to ask you now to look at a document, and I know sometimes you'd prefer you can turn around and read it there if you wish; I know sometimes you'd prefer to read it off the monitor. Whatever suits you best now.

And this is a letter dated the 17th April, 1986. It's Book 65, Tab 12. Would you turn it up as well, and you can use both then.

A. Okay.

Q. And this is a letter to the Revenue from Oliver Freaney & Co, and it's re the Dunnes Settlement Trust/Capital Gains Tax.

And it reads: "Dear sir,

"We have received your request for a return in respect of the capital assets included in the indenture of the 16th March, 1964, which were appointed by the deed of appointment of the 14th March 1985, and we have referred your request to the solicitors acting for the Trustees of the 1964 settlement, namely Matheson Ormsby Prentice, 20 Upper Merrion Street, Dublin 2.

"We are informed by these solicitors that the deed of appointment was drawn by senior counsel after consultation with four other independent senior counsel, and that they are advised and are themselves satisfied that the appointment effected does not create a disposition of the trust assets which would give rise to a claim for Capital Gains Tax. Furthermore, as the transactions of the 14th March 1985 did not create a new and separate settlement, it

is inappropriate to complete the attached C.G.T. return form.

"Yours faithfully. Oliver Freaney."

I think would you have become aware around this time that the Revenue were now raising an issue, or at least wanted a return in respect of matters?

A. I'm not I don't know, is the answer, sir. I am certainly aware, or was aware at some stage that the Revenue were going to be raising an assessment. But and so at some stage I was aware that they were going to be raising an assessment, but I can't say what time it was.

Q. All right. Well, let's go to that so. It's Tab 17.

A. 17?

Q. Yes. You can see, first of all, that is the sorry, I beg your pardon, this is if you just go to Tab 17 first, that's just the assessment, the September 1986 assessment in respect of Discretionary Trust Tax. I can take it that everybody anticipated that, and there was no difficulty that facing up to it, that that was going to have to be dealt with; it was just a question of how much.

Discretionary Trust Tax, that is, now. Can you remember that?

A. Is this the 1% ?

Q. Yes, the 3%, 1% tax, as opposed to the C.G.T., which was going to be at a far greater or higher level, of course, or rate. Do you remember the 3%, 1% assessment being raised?

A. Not particularly.

Q. All right.

A. I mean, I am sure I was aware of it, but not particularly, sir.

Q. Because that was something that was going to have to be dealt with anyway?

A. You know, it was a fait accompli, but I don't recall it, no, but I am sure I was aware of it?

Q. If you go to Tab 22 in the first place.

A. Yes.

Q. That was a letter written sorry, first of all, before I just come to that, would you have been aware of the Chairman of the Revenue Commissioners dealing with Mr. Bowen up to this time on the question of Capital Gains Tax and the whole question of the 1985 settlement?

A. No, sir. I might have been aware of some meetings that Bowen and other Trustees were having with the Revenue.

Q. With the Revenue, about the 1985 settlement and whether it gave rise to tax?

A. I don't know about what, to tell you the truth. I am sure it was maybe about the 3%, about the I can certainly say that I remember there was meetings with the Revenue, but I was definitely more involved with the running of the business, and I can't I haven't I can't remember the detail.

Q. Well, could I just put it to you this way, that what might help you in remembering that perhaps you might have had an awareness of what was going on. If there was going to be a

liability for Capital Gains Tax, if the Revenue were to succeed

A. What I recall on that is that this was a "wait and see".

Q. I understand that. But that there was discussion going on between the Revenue, as you understood it, and Mr. Bowen, or Mr. Bowen and other Trustees, about this, up to the time that the assessment was raised?

A. I don't know how much aware I was of it, or I can't recall how much aware I was of it, sir.

Q. Could I put it to you that it might be what might have been of interest to you was that if Capital Gains Tax had to be paid, that that was going to require a very large sum of money, and to use your own expression of what you had heard previously about capital, that that would have to come from somewhere; isn't that right?

A. What I was aware of is that Eddie Montgomery was telling me that if and that was a tax certainly that I was aware of; the big tax, let's call it and Eddie Montgomery was saying, "Look, there is nothing to worry about there, because we will win it on appeal". And that was going on opinions that he had, and maybe got from somebody else, but that was Eddie Montgomery's constant comment that I can recall, sir.

Q. But you knew that there was discussion going on about the big tax, if we call it that?

A. I'm not so sure whether I knew there was discussions going on with Frank Bowen and the Revenue. I knew there was

discussions going on with Frank Bowen and the Revenue, but about what, I don't know. That's the honest to God truth, sir.

Q. All right. Well, let's go, so, to Tab 22.

Would Noel Fox have told you anything, do you think, at the time? Or Mr. Bowen? Because this was a period of time I think when you have given evidence previously, the bearer-cheque system was in operation, and Mr. Bowen would have been around?

A. That had nothing to do. The bearer-cheque system had been there for years.

Q. I know, and we have dealt with that. But you'd have had contact with Mr. Bowen and you'd contact with Mr. Fox at this time?

A. I'd have had a lot of contact with Mr. Fox. I'd have met him every morning.

Q. And you'd have had contact with Mr. Bowen?

A. I'm not sure whether Bowen was attending board meetings on a weekly basis at this stage. I think that took place later. I would have had some contact with Mr. Bowen, yes. I don't think anything like the I would say I had more contact with Eddie Montgomery than with Mr. Bowen, sir.

Q. All right.

A. At this stage, we are talking about the mid-80s; isn't that right?

Q. 1986

A. 1986, I would have said that I had a lot of contact with

Noel Fox. I was meeting Eddie Montgomery on either a weekly or a fortnightly basis. I was meeting Mr. Bowen, I don't know, I would say maybe three or maybe five times a year, and maybe Ollie Freaney periodically and Bernard Uniacke periodically. Frank Bowen and Ollie Freaney maybe about the same. Periodically Bernard Uniacke. And Noel Fox and Eddie Montgomery, one on a very regular basis and the other on a regular basis.

Q. Let's look at Tab 22, anyway. I just want to look at Tab Number 22 for the moment.

This is a letter which was sent to Oliver Freaney's from the Revenue. It was sent by Mr. Clayton, as we know, who was the Superintending Inspector of Taxes, and he said: "I refer to your letter dated 17 April 1986 and subsequent discussions concerning Capital Gains Tax liability."

And we know from the notes there were discussions.

A. Correct, we do, yes, sir.

Q. "It is the Revenue view that disposals of the 99,000 ordinary shares of  $\pounds 1$  each and 100 6% preference shares of  $\pounds 1$  each in Dunnes Holding Company occurred in March 1985 and that chargeable gains accrued on those disposals in accordance with the provisions of the Capital Gains Tax 1975. The amount of those chargeable gains depends largely on the market value of the shares at 6 April 1974 and at 14 March 1985, and it is the Revenue's view that those values were  $\pounds 5.5$  million and  $\pounds 120$  million respectively. Having regard to the relevant 'Indexation relief' multiplier

(4.140) and to possible expenses and assessment in the amount of  $\text{€}38.8$  million, chargeable at the rate of 40% (tax 38.8 million) appears appropriate.

"The District Inspector involved in this matter is Mr. O'Siochain, Dublin No. 1 (Income Tax) District. He is dealing personally with the matter, and he proposes to make the appropriate assessment on you, as Trustee, within the next week. Notice of the assessment is to be sent to you personally by registered post."

Do you remember that issue arising?

A. What I remember was actually seeing the form with the 38 million on it.

Q. We'll go to the next tab, so.

A. I don't remember seeing the letter, sir. I am not saying that I didn't see it.

Q. All the letter is doing, it's a courtesy letter, and it's explaining what's about to happen and why it's about to happen and the terms of what's going to happen.

The form, anyway, is at the next tab, that's Tab Number 23, and you remember seeing that, and that assessed Capital Gains Tax at 38.8 million; isn't that correct?

A. Yes.

Q. You remember seeing that?

A. I do. And I remember, I think it was Ollie Freaney showed it to me, and Ollie Freaney I don't know whether things were printed or typed, but Ollie Freaney certainly made a comment to me, and I don't know who else, that he found it

interesting that it was handwritten. I remember that even about that document there.

Q. I see. I suppose this isn't an issue taken up, but security was a big issue surrounding you and your affairs, I think, in the Revenue?

A. From my recollection of the way Ollie made it, sir, he wasn't thinking of the security. He was kind of saying, "They don't mean this". That was the emphasis that I took up from the way he said it. Now, that's purely just when I see this, when I saw it, it came back to me, that particular point came back to me.

Q. Well, in fairness to the Revenue, I think the notes show they were asked to take special care. But that's

A. I'm only just making an observation.

Q. I am saying that that is

CHAIRMAN: Well, it was a period that wasn't too many years after your pretty traumatic event.

A. I am just saying what Eddie said. Very soon I had been kidnapped in '81, and my father had died in '83, and I certainly had taken far more care of myself with security issues and had people protecting me because of the whole scenario, yeah.

Q. MR. COUGHLAN: I think and I'll just briefly deal with this; I am not going to go into the details. At Tab Number 25, then, there is the compromise of the hearing for what we might call the 3%, 1% tax, and that's there. And you have dealt with that.

Now, what do you remember happening after you saw the handwritten assessment, in the immediate aftermath, what were you being told?

A. What I remember obviously it was a big blow to people, to family, when you'd see something like this, and I don't want to use the word "mayhem", but you know, people were distressed, I suppose. I might be even over but if you get something like that

Q. I think you are conveying, there was an element of concern?

A. Concern. And that was one side, and on the other side, you had Eddie Montgomery, who just said, "Look, there is nothing to worry about here".

That's like, that was, if I was to say now, and I am dividing it between family members and Trustees. There was certainly no big panic with the Trustees I am talking about Noel Fox or Frank Bowen, but Noel Fox, who was in on a regular basis I would have said there was I want to be careful of the word I am using; "panic" mightn't even be the right word. But there was concern at family level that this thing is a huge problem, and at very senior trustee level, for want of a better word, mature man, Eddie Montgomery saying, "Look, will you get on with the running of your business, stop worrying, this thing is going to take care of itself". That was the position that I would have said that I the initial reaction when this thing came out, sir.

Q. Right. Would you go now to Tab 30A.

A. Yes, sir.

Q. And this is a note which was made internally in the Revenue. And the man making this note records that on the 13/4/87, he received a call from John Reid; that's an official, another official in Revenue, in the capital side of things. Their tax has not yet been paid. That's the 3%, 1% tax.

"BD" that's a reference to you, Ben Dunne

A. I assume so.

Q. "Has arranged a meeting with the Chairman for the 27th. John Reid wants to know what liability would be thrown up by an 82 million value of" and I think that relates to what we'll describe as the big tax issue.

A. Yeah.

Q. And if you then go to Tab 32, and what the person here again, it's Mr. O'Cathain he is recording a meeting he had with the Chairman, that was with Mr. Pairceir.

"Arranged for 10.30 on Monday next, Christopher Clayton and myself to attend." Then he is recording, "Per Christopher Clayton"; that was his senior officer. "Per Christopher Clayton, An Cathaoirleach met Ben Dunne and had a full and frank discussion. He does not accept" that would be a reference to you "that there is a disposal, but would rather not gamble on the outcome, especially in view of the fact that it might take some years to resolve. The Chairman pointed out that Revenue believed there was a disposal and have to pursue it. Apparently BD would like

to settle no indication of what figure might bring a settlement. Only figure was that mentioned of 23.6 million as being our revised claim based on the 82 million valuation as of 1985."

And then, if you go to Tab Number 33, there is a note dated the 11/5/87. It's a meeting with the Chairman:

"Christopher Clayton and myself from this office. He had met Ben Dunne and Mr. Fox recently at the request of the Taoiseach. It was the C.G.T. they wished to talk about.

The C.A.T. blank million would be paid" that's the 3%, 1%.

"They had a frank discussion. Ben Dunne did not believe on his advice that there was any C.G.T. due, but he did not want a long drawn-out appeal, and he recognised that at best the full tax would only be deferred. 23 million was too much for him to pay now. He would like to come to some agreement if possible. The Chairman pointed out that Revenue's claim was for the full amount and he was only a nominee for the Dail and the Board in this matter, but he would seek further advice on the matter.

"BD intimated that with the grandchildren coming up, he was considering hiving off the properties into an unlimited company and passing shares in it out to them. It would charge rental to the trading companies. He wanted this appointment to be done through the trust, but is also part of his desire to reduce the exposure to public scrutiny of the trading empire when disclosure requirements are

introduced. We discussed generally the latter point and agreed to examine the implication of it with a multiplier of almost 5 since 1974, might not receive much C.G.T."

And the rest goes on, then, to recount "The Chairman was interested in the idea of treating the disposal as being to five separate trusts and discounting" this is going on to recount the meeting the officials were having with the Chairman. The first part is recounting what the Chairman is telling them about his meeting with you and Mr. Fox.

A. And I take it that the meeting on the 5/5/87, where An Cathaoirleach met BD, that on this the Chairman where he met BD and Fox recently, so is it I can't remember this meeting. But before I say anything further, is it accepted that Mr. Fox was at this meeting on the 5/5?

Q. Mr. Fox says yes, because Mr. Fox accepted everything in the papers in relation to the Revenue matters.

A. I didn't know, sir. It's just that that note reads as if it was a meeting with me alone.

Q. Well, which note are you talking about?

A. The 5/5/87.

Q. What tab is that you are talking about?

A. Tab 33.

Q. Maybe it's Tab 32 you are talking about.

A. Maybe it's Tab 32, yes, sir. Read in isolation

Q. It appears that the meeting seems to have taken place on the 27th April. That was sorry, that's what the note indicates the date was arranged to take place.

A. I don't know, but

Q. Now. Continuing with the note: "The Chairman was interested in the idea of treating the disposal as being to five separate trusts and discounting 20% holdings for nonmarketability with the consequential deduction in the deemed acquisition, cost of those holdings of the new trust. He was also fairly sure there would be no C.A.T. on such disposition by the trust, and on checking, it seems that for trust tax purposes, such holdings would be continued to be valued at a proportion of the 100% of the company with no discounting. He was not as enthusiastic about the value for the" and for the 8 million; that is the base figure for 1974 which was 5.5 million, they had been working on figures.

"He was not enthusiastic about having a value for '74 at 8 million, but he would like to hear more about it.

"We looked at the trust deed setting up the five funds and saw that they were on the one hand the trustees were given power to appoint if they wish. Each of the 5 children would nominate what grandchildren of the original settlor would benefit from each named fund consequent on the nominator's death. We discussed the possible levels of discounting for the 20% holding for nonmarketability and the tax value forward appropriate to these.

"Chairman asked us to study the five separate trust aspect and to meet him again at 10.30am on Friday next. I mentioned the surcharge and that it might be indefensible,

but could be used as a bargaining counter. John Reid had passed him a note on this. It was agreed that the deed 17/3/85 had been accepted for trust tax could not now be challenged, but to ascertain whether it involved a disposal might call for evidence from the principals as to what precisely went on on the 5th March 1985 and what understandings or other documents were entered into to copperfasten the five children's individual interests.

This could be put to Ben Dunne in negotiating."

Once the assessment had been raised, you have informed us that there was, on the one hand, amongst the beneficiaries, you and your brother and sisters, a concern; you want to put it at that level?

A. Yeah, I think that's a fair comment, yes, sir.

Q. And you were being told by Mr. Montgomery and Mr. Fox not to have any concern or not to be worried, or words to that effect?

A. Yeah, Mr. Montgomery in particular.

Q. That was about the question of whether a C.G.T. liability would arise in respect of what had happened in 1985; isn't that correct?

A. Yeah, that when it went to appeal, that we'd win it.

That's the way I would put it.

Q. But you and everybody knew that no matter what happened, at some stage, something would have to be done, if the assets were to be taken out of the trust; isn't that right? There would be a tax liability at some stage?

A. Oh, yeah, at some stage, yeah.

Q. All that was happening was a deferral was taking place at this time?

A. Pushing out the evil day, for want of a better word.

Q. Putting off the put it away. But there was the added complication, wasn't there, that there was this 1% annual Discretionary Trust Tax issue to be addressed, and perhaps a concern that that might rise and eat into, as it's been described, the capital of the company?

A. Yeah, that's a fair

Q. Those were the sort of issues that were there to be addressed; isn't that right?

A. Yeah.

Q. Or to think about?

A. I'm trying to think, and I am yeah, that's fair comment, yeah.

Q. Those were the sort of matters that people

A. When it came to the trust and tax, they were the kind of issues, yes, sir.

Q. And when you met with Mr. Pairceir on the 27th April of 1987, the discussion that is recorded was a discussion about C.G.T., isn't that right, Capital Gains Tax?

A. Well, I don't remember meeting Mr. Pairceir, but from the documentation there, I obviously met him on whatever date you said there. And, again, I have since I got all of this, I have put a lot of thought and effort to try and be helpful to the Tribunal, and I don't know, would it be of

any use if I was to say to you there is no doubt I met

Mr. Pairceir, and I have asked myself, why did I meet

Mr. Pairceir?

Q. Yes.

A. And I could give you one of the reasons why I think it

happened, but it would be I am trying to put logic to

why I got involved, sir. Would the Tribunal

Q. Yes, indeed.

A. I think my sister Terese was certainly, at this particular

stage when the thing had now been pushed down, and she had

her Terese Dunne Fund, and for a period of time she was

going through and I certainly I can remember this,

she was going through in her mind, look, she had put her

life into Dunnes Stores, and the minimum that she would

like is to know for her, that she had the right to leave

her share in Dunnes Stores to whoever she wanted.

If you understand, there was a Terese Dunne Fund, and

because she had no children born before March 1985, it was

a concern to her. And I think that could have been the

reason why I got involved, to see could I get a portion of

it out. That's I'm putting logic to what I have read in

front of me here, sir.

Q. So

A. Do understand the point?

Q. I understand the point you are making very well, Mr. Dunne.

And you think that that's the reason why you got involved?

A. I honestly do, yes, sir.

Q. Can you help us at all as to why Mr. Haughey got involved?

A. The first I knew number one, the first I knew of the meeting, sir, is when it was brought to my attention here.

Q. It can't be so, Mr. Dunne. It can't be the first you knew; you were at the meeting.

A. I can't remember.

Q. That's different.

A. Sorry, that's what I mean. The first I remember of the meeting, sir. And the first that I knew that Mr. Haughey was involved was when I read the documentation here, sir. And that's the truth.

Q. Well, Mr. Bowen, Mr. Fox, perhaps, advisers, had all been dealing with the Revenue on behalf of the trust; isn't that right?

A. They had been dealing with the Revenue on behalf of the trust, yes.

Q. I understand the point you make about your late sister Terese.

A. Yes, sir.

Q. If that was the issue, and you wished to become involved, if you felt that you needed to, could it not have been arranged through Mr. Fox or Mr. Bowen simply that you would meet whoever in the Revenue was dealing with it at a high level? Couldn't that have been done?

A. It could have been, yes, sir.

Q. You see, there doesn't seem to be an explanation arising out of your desire to become involved to involve

Mr. Haughey in making the arrangement with the Chairman of the Revenue Commissioners.

A. I can see clearly the difficulty in you trying to understand, sir, what I am saying. It is the truth, and if I could add one other thing that strikes me, and I'm not Mr. Fox clearly remembers that he didn't make the call to Mr. Haughey, and the call can only, in my opinion, putting logic into place, can have only come from two places, and the only observation that I would make is, I don't think I would have known Mr. Haughey well enough at that stage that I'd lift the phone and make a call for this meeting.

But I have no memory of this. What I'm trying to do here, sir, for the Tribunal is to be helpful on something that I have no memory on. And I hate having no memory, because it leaves me very it's not a comfortable way to be. And if I could remember, I'd have no difficulty saying it, sir.

Q. You see, at this time, this is in March of 1987, on the basis of evidence we have already heard about an approach being made to Mr. Fox by Mr. Traynor, this must have occurred prior to this. Certainly we know the six bearer cheques that we discussed that found their way into the Guinness Mahon account, into the Amiens account, had to occur before the 4th April of 1987; the Tripleplan cheque, which we spent a long time discussing earlier in this Tribunal, was dated I think the 20th May of 1987, and on your evidence and Mr. Fox's evidence, had to have been requested sometime prior to that to allow matters to be put

in place; isn't that right?

A. The bearer cheques, I think I said yes, there was a possibility that I could have given those to Mr. Haughey.

And I didn't know, believe me, what was coming down the line. But from the day that I heard of the Tripleplan

payment, whilst I said, "Look, I signed the cheque", and I accept it went into Mr. Haughey's account, I never recall

ever, ever a tie-up between Tripleplan whilst it's

proven now, I mean, I'm not trying to disagree with that;

but my evidence has been constantly, sir, that I never knew

that the Tripleplan payment was for Haughey. Whilst I

accepted it, I find it I just find it I just it

was a point that I'd been making constantly from the day.

I have never disputed any payment, but I have always had

difficulty with that Tripleplan payment, sir. I always

thought the first payment was the Furze payment. When the

payment came up with the bearer cheques, I conceded, yes,

and maybe on the balance, maybe, yeah, it could have been

higher; there is a possibility it could have been me. But

the one payment that I took a different stance on from the

day it came up, sir, was the Tripleplan payment. And I

still maintain it today. I never knew that the Tripleplan

was a Haughey payment.

Now, I don't think it changes anything, maybe, but I just

want to make the point, sir.

Q. But what we do have is the Tripleplan payment

A. We do, yes.

Q. around the same time, isn't that right

A. Yes, we do, sir.

Q. that it's recorded that the Chairman of the Revenue Commissioners is to have a meeting with you, and that that was arranged by Mr. Charles Haughey; isn't that right?

A. That's factual. There is no dispute about that, sir.

Q. No doubt about it?

A. None whatsoever.

Q. And from the note of the meeting, or what is recorded as having occurred at the meeting, I take it you don't disagree with the content of the note, do you?

A. Oh, no, no, sir.

Q. What was being discussed was Capital Gains Tax, and that from the note, you wished to discuss settling that; isn't that right?

A. That's from the note, yeah.

Q. And you don't dispute that note?

A. No, I would whilst I don't remember it, I would say it fell in line with the type of way that I thought in business. When I'd see something, I would try and I would try and shorten the length of something that could go on for a long, long time, and I would have, yeah. I would think it falls in line with the way with my character, sir, yes.

Q. Just I am going to very briefly, from my memory, just run across the evidence we have heard about Tripleplan.

A. Say that again, sir? Sorry.

Q. I am going to briefly

A. Remind me.

Q. remind you, and see if you agree or disagree.

Mr. Matt Price in Bangor was requested by Mr. Noel Fox;  
isn't that right?

A. If that's the evidence.

Q. On your authorisation, and that Mr. Matt Price obtained  
your authorisation for the purpose of producing or  
providing that cheque; isn't that right?

A. Yeah, and Mr. Matt Price would have no matter who was  
looking for a cheque, a sizable cheque, which wasn't going  
to a supplier, at the time Mr. Price would have always  
contacted me. So it would always it took a normal  
route, yes, sir.

Q. So, as far as the evidence and I understand what you  
were saying a moment ago. You agree that the evidence is  
that Mr. Matt Price drew the cheque, but that he would have  
had to have your authorisation to do so; it wasn't to a  
normal supplier?

A. It wasn't to which?

Q. It wasn't a cheque to a normal supplier.

A. Well, obviously the evidence there proves that.

Q. And that is the position, isn't it?

A. Correct, sir.

Q. And you would have authorised Mr. Price to do it?

A. Absolutely. No doubt about that, sir.

Q. So at the time you did that, notwithstanding what your

present understanding of the situation was, you must have known, when you authorised Mr. Price to do it, what the purpose of that particular cheque was?

A. Not necessarily.

Q. I see.

A. I mean, I don't know, but what I would say, there was only, I think, if you take that payment I may be wrong, but I think there was only two payments from Bangor; maybe I am wrong.

Q. Two payments, Tripleplan and the Furze cheque, yes?

A. And because of what those payments were for, I find it I find it strange that I have no recollection of the Tripleplan payment. It was such an extraordinary payment, because of where it was going, that if I had been aware, I don't think I would have forgot it, sir. That's the only point and I have made that point

Q. Well, could it be the situation, Mr. Dunne, that as the evidence given to McCracken Tribunal was that the first payment was the John Furze payment, that was the November of 1987 payment date I think was the 1st December, 1987, and that was for STi $\frac{1}{2}$ 182,630, approximately IRi $\frac{1}{2}$ 205,000. The evidence given to the McCracken Tribunal was that was the first payment; isn't that right?

A. Yes, sir.

Q. And that led the McCracken Tribunal, on the evidence of all the surrounding circumstances described by you and Mr. Fox of the approach by Mr. Traynor as placing the approach by

Mr. Traynor as in late 1987, where we now seem to have arrived at a situation where the approach by Mr. Traynor had to be in early 1987; isn't that right?

A. It appears that way, yes, sir.

Q. And could it be that the reason you have no recollection, or you say you have no recollection about the Tripleplan payment is because it clearly contradicts the evidence which you gave to the McCracken Tribunal?

A. No, sir. Absolutely not, sir.

Q. Would you now go to Tab Number 42, I think it is, please. You see that there is a note in Irish?

A. Yeah.

Q. It's translated in Irish. We'll go to the English translation at the back. And it's a memo dated 4th June, 1987. And this is Mr. O'Cathain recording, he had a call from the Chairman that's from Mr. Pairceir.

"He met BD. They settled on (agreed)  $\frac{1}{2}$ 16 million. He was offered three years to pay it. Maybe he would clear it within that (time). It isn't accepted yet by BD. He is going to think about it and come back to the Chairman.

I explained to him about the provisions of Great Britain.

"Look at the figures for this."

Then "Value forward at 14/3/85. Circa 67 million.

We must bring in revised Section 34 in next Finance Act to ensure that the value is not reduced further if disposition."

Now, tell us about that meeting you had with Mr. Pairceir.

A. Well, you see, I don't recall that meeting. If I hadn't this document, if I hadn't this document in front of me, I would have thought, as Chairman of the Revenue Commissioners, I had only met Mr. Pairceir once. If you'd have been asking me evidence here, what I would have said is what I think is I have only met him once. It's obviously I met him more; I am not disputing it. So I can't recall this meeting. And I find it

Q. You don't recall you say you don't recall any meeting with Mr. Pairceir?

A. No, I said I do recall I recall once it was brought to my attention, I recall meeting Mr. Pairceir, yes, sir.

Q. Sorry, let's be clear about this. Are you saying you do remember a meeting with Mr. Pairceir as a result of your memory being stimulated by seeing the documentation? Is that it?

A. Yes, sir.

Q. And that is the meeting

A. I recall I would have said one meeting. I mean, I just recall a meeting, and I presume the one I would recall is the first meeting. Do you understand what I'm saying? I recall one meeting, and putting logic to it, obviously it was the first meeting.

Now, I find it I just find it incredible that I can't recall, because I have a good memory for figures, and I am at a complete loss. If you negotiate something from 39 million down to 16 million, I'm I mean, I find it

incredible that I can't recall that, but the truth is I

can't, sir.

Q. You see, when you use the term "incredible", that's

precisely the question I was going to raise with you.

Incredible in the sense that it's unbelievable, Mr. Dunne,

isn't it?

A. Well, sir, I don't tell lies under oath, or I don't tell

lies, basically. But even I am using the word

"incredible", yes, I find it incredible, and I find it

it's a source of some a lot of irritation to me that I

can't recall this. I wish I could, but there is and I

find it just incredible, yes, sir.

Q. But what the note does record, and as you say, does seem to

record fairly serious issues being discussed, as you say?

A. I would say very serious issues.

Q. As you say yourself, getting something down from nearly

39 million to 16 million is a very serious matter?

A. Oh, I mean, it's very serious when you don't recall it,

yes. It's a very serious business deal, but it's even more

serious, sir, when you don't recall it.

CHAIRMAN: I suppose it was the biggest financial problem

at that stage of your life that you had faced, Mr. Dunne.

The family money that was tied up in the trust was being

threatened with a very large amount of it being taken by

Revenue, so presumably it must have been figuring very

prominently in your mind?

A. That's what I find so strange, sir, yes, it would have

been. And if you have which the documentation shows that you had negotiated something from 39 million to 16 million, which was still an awful lot of money, but to reduce something from 39 to 16, I am at a complete loss, sir, why it doesn't normally things will jog something in my memory. I just I can't remember it, and that is the honest to God truth, sir.

Q. MR. COUGHLAN: I wonder, Mr. Dunne, would you go to Tab 44, please. It's just a note

A. Like, I just want to make I mean, I can understand how incredible it is, because I read the papers too, and read evidence, and when I read that Mr. Fox doesn't remember it, I say that's incredible. So I know I'm in the same position, and I can tell you, there is no collusion; I don't even talk to Mr. Fox. But I find the whole thing incredible, sir. I just want to make that point to the Tribunal, and it's a source of real irritation to me that I can forget it.

Q. We'll just go to Tab Number 44 now.

A. 44.

Q. And this is just a note made by Mr. O'Cathain dated 9/7/87.

"Call from the Chairman.

"BD and N. Fox are coming in next week.

"He would like to get a draft of the settlement form that would be needed."

Again, that seems to be a note which corresponds to the discussion which is described in the previous note, isn't

it?

A. Well, it seems to be, yeah.

Q. And it seems to, I don't know, appears to indicate that there must have been some contact made after you and Mr. Fox went you went away, and an indication that you were coming in the following week, because it looks as if the Chairman was going to arm himself with the necessary settlement form, whatever form that would be; doesn't that seem to be the situation here?

A. It appears to be. I mean, I have put a lot of thought into this whole thing, and I find a lot of things strange. Here am I, and I do not appear, I am in fact after setting up some form of an agreement where there is a draft settlement. I can't even recall going to members of my family. I may have gone to Terese, but I can't recall it, and I mean, I just the whole thing, it's like as if there was a mental blackout in my brain. I just can't you know.

Q. All right. As you say yourself, it appears that you were in the process you had set something up or were the middle of it or there was something happening?

A. Very much so, yes, sir.

Q. Then if you go to Tab Number 45. This again is Mr. O'Cathain recording information being imparted to him within the Revenue, and this is on the 27th July, 1987.

"Per JS and CK" those are two, Mr. Clayton and Mr. O'Siochain. "The negotiations with BD have foundered".

Do you see that?

"Apparently BD wanted to deal with C.A.T. also now as if the beneficiaries had or were taking the shares. The C.A.T. will be in the order of 30 million, and 5 years would have been allowed to pay if the C.G.T. would be allowed as a credit against the C.A.T.

"Christopher Clayton has retained some papers. He will advise me in more detail later. He had several meetings with the Chairman, who met the other side on his own."

So, that seems to record that at least a third meeting with the Chairman.

A. It does, yeah.

Q. And it seems that the whatever discussion was taking place had now moved on from just the question of settling Capital Gains Tax at 16 million, or there or thereabouts, but that Capital Acquisitions Tax, that is the benefit coming to the to whoever was going to get it, one of the beneficiaries, that you wanted to take all that into account, and looked to be looking for some sort of overall settlement so dispose of the trust. That seems to be the type of matter that's being discussed there, or recorded there. Would you agree?

A. That's the way it appears to me, too, sir.

Q. And you have no reason to doubt the note?

A. None whatsoever, no.

Q. So you must have been in such a negotiation with Mr. Pairceir, mustn't you?

A. There is no doubt about that, sir.

Q. And can I take it and perhaps I won't ask you just straight away.

We are going to come to documentation I am not trying to catch you out Mr. Dunne; we are going to come to documentation that I'm going to show you, and I think it's one or two letters from Mr. Montgomery, I think addressed to Mr. Bowen. You may or may not have seen it.

A. I have read them.

Q. You understand where he is informing Mr. Bowen

A. I have read those, sir.

Q. that contacts or informal contacts, or whatever, and that you were anxious to do certain notwithstanding his view about things, and if you wanted to do it, he was not going to stand in your way. I'll open them in due course.

A. I am aware of those letters, sir.

Q. So, can I take it that you were keeping the Trustees informed of whatever dealings you were having?

A. Well, Fox was certainly informed, and Eddie Montgomery, I wouldn't say I gave him any great detail, but I would have been informing him, yes, sir.

Q. That's what I mean. You were informing him because he is informing Mr. Bowen, but again, not in any great detail about what's happening?

A. Yeah.

Q. So there seems to be external corroboration from Mr. Montgomery's letters to Mr. Bowen of some discussions

going on here with Revenue; isn't that correct? You can see the note in Revenue where you can see that Mr. Montgomery must have been told something by you to tell Mr. Bowen?

A. There is something that and it's only striking me as I'm in the box here, but I have to make a point, and I have some recollection now, when I'm looking at this here, and not because I am under oath, but just being brought through it step by step, and I'm not sure whether the 16 million deal was ever spoken about, but I don't know why something comes here that this might have been brought up at Board level, and now the numbers are enormous. And this is just a recollection, not very clear, but I mean, I would have thought that you couldn't go through these negotiations logic and common sense would tell me that you couldn't go through these negotiations without informing other members of your family. And you couldn't have brought it to a stage where you were asking for something to be produced, something to sign.

Q. I take your point.

A. And I'm using common sense and logic and the way I operated. And I would think that then, when it was presented, and at the time, I believe I have no record of the Board meetings in Dunnes Stores, but the Board didn't sit collectively that often; so it was all fragmented, and telephone calls, and I'm trying to go back into the this is '87, or whatever, and I think that I

have some something strikes me here, where you are talking about 30 million and this and that, and then it was just and what I couldn't understand, and what I couldn't get to grips with, is why this all went just dead, you know, that a deal and I heard Mr. Bowen's evidence, and it was that it was off-the-wall stuff, and I believe it had to go to the family, and I would think that at this stage, members of the family, but I am only thinking, and they could come in one after another and say they had no recollection of it.

But I don't think that it could have gone dead without others being involved. That's my honest belief.

Q. So and

A. What I mean by "others", Trustees and family.

Q. Because, really, this note this is the note of the 27th July 1987 does seem to be recording what appears to be a big discussion to bring the whole thing to an end, deal with C.G.T. at whatever levels, at whatever allowances, deal with the tax that the beneficiaries themselves will be liable for, the Capital Acquisitions Tax; isn't that right?

A. Yeah.

Q. And as you say, you were only one of them; isn't that right?

A. Correct, yes. And

Q. And you think that you wouldn't have been able to necessarily I can understand you when you say you wouldn't be able to conclude the deal

A. Well, couldn't

Q. until you had everybody on board but could you have been exploring and I just want to inquire this way could have been making exploratory inquiries now, I know we are down to specific figures here but without the others knowing about it.

A. Look, I was never a tax planner or anything like that.

But and whilst I don't remember the detail here, I am trying to apply logic, and from my there is something in there where there was a view of maybe taking one or two there was five pots, for want of a better word; there was Terese Dunne, Frank Dunne, and I have something in my mind which says it might be no harm if we had a mechanism to taking one or two pots out. And that's where that went. And then I think there is a quantum leap here, where not one or two; let's get them all out. And the numbers now go big, and it just goes stone dead.

That's now I am trying to think all of this couldn't have happened well, I don't know, it just is so extraordinary.

CHAIRMAN: We are just after one, Mr. Coughlan.

So we'll take up the further evidence, Mr. Dunne, if that suits you, at ten past two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. BEN DUNNE CONTINUED TO BE EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. Dunne, I just wonder, would you move on to Tab Number 46 in the Book of Documents, please.

This is Mr. O'Cathain's note sending the Chairman settlement form this is as you requested, and notes. If you go over I am not going to go over these with you; these are settlement forms to be signed by the Chairman and Oliver Freaney & Co as Trustees of the trust in the event of a settlement.

And Mr. O'Cathain has given evidence that he believes that these would have been furnished to the Chairman, that's to Mr. Pairceir, in August of 1987, so that, again, it seems to indicate that there may have been some further discussion about settlement, I suppose.

A. Yes, it could have been, yeah.

Q. And then, if you go to Tab Number 47, and that is a call to Christopher Clayton from the Chairman: "Bowens coming in". "Bowens", that was the name used, the coded names for the Dunnes Settlement Trust

A. I didn't know that.

Q. in the Revenue. In the Revenue, they kept a security on it. "Bowens coming in. How much C.G.T." This is on the 10th September 1987.

"They wish to proceed on the basis that the deed of the 14/3" that's the 1985 deed "was invalid and that the beneficiaries became absolutely entitled on the 15/3. The C.A.T. on this would be about 32 million, with remission to be given for trust tax paid since 1985. Any C.G.T. paid

would be allowed against this. Christopher Clayton had a figure of 97 million calculated on a basis of 50% discount of the 82 million. Market value of the preference and other shares which the trust held. He argues for a discount of the value in relation to the size of cash held acquired by beneficiary, presumably one-sixth each that would probably be one-fifth at this stage.

"This would have value forward which they would hardly accept.

"I pointed out CG 1572" it's a British document; it's a British Revenue document. "The figures finally in place before summer were 82 million, discounted by 15 million to 67 million, for want of voting power, giving 16 million C.G.T. and value forward of 67 million. He was in favour of saying 97 million C.G.T. and value forward to be negotiated later. He took copies of the computations giving 16 million and tax for 67 million forward. He will discuss it with the Chairman."

So this is the 10th September. Do you remember going to see Mr. Pairceir on the 10th or the 11th September of 1987

A. No, I don't, sir. And none of this means nothing to me in the sense where where other things that we spoke about, this the only thing that catches my eye there is something about one-sixth. Would that be to do with the beneficiaries?

Q. Yes, I think so.

A. You see

Q. It should be I know

A. It should be one-fifth.

Q. Your sister Ann was looked after in a different way, I think.

A. No, my sister Ann was a beneficiary if it went back to the original deed.

Q. To the '64 deed?

A. Correct. And that's the first time that I have seen this seems to be referring to the '64 deed. I don't recall it, but

Q. The discussion seems to be centering around this, look

A. What sorry, sir what I'm trying to say is if there was a discussion where my sister Ann came up, I think I'd remember it, because of the special circumstances of her.

Q. I think what the discussion that seems to be taking place here is this: that it appears that a proposal is being made that "Let's treat the 1985 settlement as being invalid"

A. Oh, right.

Q. "and let's just go back to the '64 settlement and deal with that on the basis that it had vested as of the 14th March 1985 in the six beneficiaries".

A. Right.

Q. And then that would give rise to a capital an inheritance tax, a Capital Acquisitions Tax, allowing 30, 32 million to the beneficiaries. They'd be given credit for any Discretionary Trust Tax that had been paid since

1985 on that figure; that Capital Gains Tax would be at 16 million, and that that would be given as an allowance in respect of the Capital Acquisitions Tax. That's as I understand the note to be recording the discussion that seemed to have been taking place. It seemed to be a proposal emanating from the Bowens, or from the trust.

A. Yeah.

Q. You were deeply involved in the negotiations. I am just wondering, do you have any recollection if you had any meeting with Mr. Pairceir either on the 9th, 10th or 11th September of 1987?

A. No, I don't. But I would think had that type of discussion gone that way, I would recall something about it. If it was I think I would, where I see the one-sixth, it catches my eye there; and if I was at it, I think I'd recall it. I mean, I don't know. I mean

Q. All right. Now, Mr. Pairceir, in fact, retired as Chairman of the Revenue Commissioners and as a Revenue Commissioner, he retired from public service on the 11th September 1987.

I'll just ask you to bear that in mind; that's when he retired.

Now, I wonder, would you go to the next tab; it's Tab Number 48, and I think the top note is the 29/2/88.

It's "Received notification of days for appeal." That is the appeal in respect of the assessment for C.G.T. "Advised JV Reid CTD and Declan Sherlock, Revenue Solicitors. He will advise."

Then there is a note, 1/3/88: "Call from Mr. Howard of Chairman's office. Chairman out till next week. Taoiseach directed today that Chairman meet him at 5.30 re BND and later agreed to wait till next week.

2/3/88: "Mr. Howard rang, requested brief explanatory note for L. Reason and for Chairman." Mr. Reason was another Commissioner of the Revenue Commissioners. "And I suggested that he contact C McD" Cathal MacDomhnaill; he was the third Revenue

A. Who I have met as well.

Q. "Briefing note sent. Copy to John Reid and P" I can't make that out.

"Maybe BD is looking for a change in recognition of Section 82 Finance Act. 82 would defer the change on the disposal by the Trustees by reducing the cost forward by the amount of the chargeable gain. This would only apply from current date.

"Seeking amnesty relief. Interest at 15% from 1/1/87 or even 100 million would be 17%, equals 1.75 million."

But what I want to ask you about there is you can see it's clearly recorded that the Taoiseach, on the 1st March 1988, directed the Chairman to meet him, the Chairman of the Revenue Commissioners to meet him at 5.30 and agreed to put that back for one week because the Chairman was away at the time.

Now, and it was to discuss the trust situation.

A. Yes, I am listening, yes, sir.

Q. Now, can you be of any assistance to the Tribunal as to how the Taoiseach was becoming involved in the affairs of the Dunnes as of the 1st March, 1988, a few days after the days had been fixed for the hearing of the appeal on the C.G.T. assessment?

A. I can't. The only thing I can say here from reading this is when I say "Maybe BD is looking for change in Section 82", that doesn't sound I mean, I wasn't an expert in any way, and this is only an observation I'd make. Maybe somebody is using my name, BD, Dunnes Stores. I have said before that kind of Dunnes Stores and Ben Dunne were one and the same thing, and I mean, that doesn't seem to be, as far as I am concerned, to do that I something that I was spearheading. It could be somebody spearheading something on behalf of Dunnes Stores and my name being used instead of Dunnes Stores' name being used. But I don't and this is an observation I am making, sir I don't think it's me here.

Q. Well, could I ask you, and I appreciate the point you are making, but can I ask you how does that, or how could that involve the Taoiseach issuing a direction to the Chairman of the Revenue Commissioners to come and meet him to discuss the affairs of Dunnes Stores?

A. I don't know, sir.

Q. Now, if you go to the next tab, Tab Number 49 sorry, I beg your pardon yes, sorry, if you go to Tab Number 51, please. Just briefly, Tab 49 contains a reasonably lengthy

typed document, and that was the briefing document prepared by Mr. O'Cathain for the Chairman of the Revenue Commissioners about this was a new Chairman now, of course; Mr. Curran. This was a briefing document prepared for Mr. Curran by Mr. O'Cathain, all to do with the state of play in relation to the affairs of Dunnes and the dealings with the Revenue on the question of the trust.

You just take that from me.

A. Okay, sir, right.

Q. Now, Tab 51, if you just look at this note. We'll look at the typed version. This is Mr. O'Cathain recording what Mr. Liam Reason, who was one of the Revenue Commissioners, is informing him of.

"Chairman saw An Taoiseach. BD confused and under tremendous pressure. An Taoiseach will have him briefed of Revenue position and he, BD, will probably be advised to contact Revenue he may do this by contacting the Chairman."

Then we needn't concern ourself with the rest of this note.

Now, I think you have informed the Tribunal that at some time previously, there was concern amongst the beneficiaries; isn't that correct?

A. That's what I said this morning, yes, sir.

Q. And were you under pressure from members of other members of your family about matters, to get things sorted out?

A. No.

Q. You weren't?

A. No. I think, reading the document, "BD confused and under tremendous pressure" I have no recollection of this document that I said wouldn't have been where I said I may not have been at the meeting. But if I was being exposed to all that, I would have been confused. It confuses me now.

Q. If you were being told about it?

A. If I was being told it. Because it would be away outside my depth. So looking at this document here, I would accept that I could have been exposed to this sort of stuff that was going on and would have confused me. But I wouldn't have been under tremendous pressure, no. I might have been under tremendous pressure in business, but not within the trust thing, I think. I'm trying to shed light into I am going back X number of years ago, and I'm trying to put the pieces together here, sir.

Q. The note goes on that "Taoiseach will have him briefed of the Revenue position." That may be to be do with the confusion.

A. I have no idea. I really I mean, I am reading what you are calling out here to me, and it says it, but I have no idea of it, sir.

Q. Were you briefed about the Revenue position, either by being given documents or by anyone sitting you down and explaining what the Revenue position was?

A. The only person who would have briefed me on what he

thought the Revenue position was would have been Eddie Montgomery. That would be my yeah, that would be my recollection, as I am sitting here as you are asking me, that would have been the only person that would have given me what he thought the Revenue's position was.

Q. I understand that. But that is a Trustee and a solicitor making an assessment from his perspective of what he would have believed the position to be and so advising; yes, I understand that. But I'm asking you a different question. Did you receive any briefing documents, or were you sat down and briefed about the Revenue position by anybody other than Mr. Montgomery? I am talking about

A. Other than our advisers, let's say?

Q. Yes, other than your advisers.

A. No, sir.

Q. And you have a clear recollection of that?

A. I have. I mean, I am trying to I have as clear as I can have. I mean, no, because it was a fairly a very private thing; not fairly private, very private thing. So any briefing would have come from within our own team.

Q. Can you offer any explanation?

A. For that document?

Q. No, can you offer any explanation as to how the Taoiseach would have become involved with the Revenue Commissioners in respect of the Dunnes Trust business?

A. I didn't even know he was involved until I saw this, sir, so I can't.

Q. Did Mr. Fox give you any briefing?

A. Of the?

Q. Revenue position.

A. He may have. My recollection is that all the briefing I got would have come from Eddie Montgomery. I'll put it maybe a different way to you: The briefing I would have listened to would have come from Eddie Montgomery. The opinion that I would have respected would have come from Eddie Montgomery. So I can't say that Frank Bowen or Noel Fox wouldn't have, from time to time, mentioned something to me. But I think it would have been basically they would have been confirming what Eddie is saying is correct. That's the way I would think it happened or believe it happened. But I would say it would be fair to say that Fox must have, at some stage, given me some sort of it couldn't not happen where he wouldn't have given me some sort of advice.

Q. Now, going back to Tab Number 50 I am not asking you to open the whole thing sorry, Tab 49. This was a briefing document which had been prepared for the Chairman of the Revenue Commissioners by one of his officials.

A. Yes, sir.

Q. Did you ever see that type of document, or were the contents or general contents of that document ever conveyed to you by anybody?

A. Is this the one with the dates of '88 the 29/2/88 and the 1/3/88, are we looking at

Q. Tab Number 49. It starts: "The case arises from a family trust set up in 1964 to hold shares..."

A. Sorry, I am looking at the wrong what's the question, sir?

Q. Did you ever receive this briefing document, or were the contents of it ever conveyed to you, to your recollection?

A. I don't think so. I am trying to

Q. Does that not seem unusual in light of the note which says that the "Taoiseach will have him briefed of Revenue position, and he, BD, will probably be advised to contact Revenue. He may do this by contacting the Chairman."

A. I don't follow you.

Q. Doesn't it seem likely that if this note is conveying that the Taoiseach has indicated that you will be briefed about the Revenue position, that that would happen?

A. I am lost, sir. I just want to be because it's so important, I want to follow it exactly.

Q. The note says

A. This is Number 49?

Q. No. I beg your pardon, Mr. Dunne; I don't want to confuse you. Go to Number 49 is a briefing document; do you understand me? Let's put that aside for a moment.

A. And you are asking me have I ever seen that?

Q. You said that you didn't, or you have no recollection?

A. I said I don't know. I really don't know. I may or may not. I don't know.

Q. That's fair enough. Because now I am just going to ask you

to go to Tab Number 51 again, and just you know the note, "Chairman saw the Taoiseach. BD confused and under tremendous pressure. Taoiseach will have him briefed of Revenue position and he, BD, will probably be advised to contact Revenue he may do this by contacting the Chairman."

Now, that seems to record the Taoiseach indicating that you will be briefed of the Revenue position; isn't that right?

A. It says it, yes, sir.

Q. And that you were probably advised again, the Taoiseach seems to be imparting this information that you were probably advised to contact the Revenue, and you may do that by making contact with the Chairman. That's what the note says, isn't it?

A. That's what it says, yes, sir.

Q. So in the light of that note, do you think that it is probable that you either received a briefing document or that you were briefed in relation to its contents?

A. I don't know. I mean, I have absolutely no idea, sir.

Q. All right. Well, maybe this can help you.

A. I mean, I am trying to be helpful here, and I want to I want to this is a document, a briefing document, the first one, "The case arise from a family trust". That's a briefing document. Is that made by the Revenue?

Q. It's a Revenue briefing document.

A. Okay.

Q. It is the Taoiseach directed the Chairman to meet him

concerning the affairs of the trust.

A. Okay.

Q. Mr. O'Cathain, who was an official working on the affairs, prepared a briefing document for his Chairman, and it probably also went to the other two Commissioners, Mr. Reason and Mr. MacDomhnaill. Do you understand me?

A. Right, go on, yeah.

Q. Now, the Chairman then met the Taoiseach, as he was required to do.

A. Right.

Q. The note we have coming back after that meeting appears to be that the Taoiseach will have you, BD, briefed on the Revenue position. Do you understand?

A. I do, yeah.

Q. And that you would probably be advised to contact the Revenue, and you could do that by making contact with the Chairman. That's what the note says.

A. Yes.

Q. And I am asking you, or suggesting to you that perhaps it is more than likely that if the note records that the Taoiseach has informed the Chairman of the Revenue Commissioners that you will be briefed on the Revenue position, that it is more than likely that you were.

A. I don't know. I mean, I am looking at this

Q. Well, let's move on, so, and

A. If look, I have not had any difficulty with if that's what what I have here today, sir, let's say, I just

don't follow it exactly as you are pointing it out. But what I have no difficulty with, if the documentation appears, I just don't understand it right now in front of me. But if it appears as you are saying, well, I have no difficulty saying that must have been it must have been there is a, what I would call it, there is nobody recording that unless it was true. Whoever made that note didn't make it up.

Now, I would question where "BD is confused", and I might question some of the content, but the overall story that the document seems to be saying and what you are saying to me, how can I question it? I can't recall it, but I can't question it.

Q. Because it may be of some assistance with your memory, or it may not be, but if you move on now to Document Number 53, and, again, this is being relayed per Mr. Liam Reason, one of the Revenue Commissioners, to Mr. O'Cathain, who makes the note. And this is some eleven days after the note made about the Taoiseach's meeting with the Chairman. 22/3/1988: "Per Liam Reason. Chairman met BD and Fox yesterday."

So and I think we know that you did have a meeting with Mr. Curran, isn't that right, who was Chairman of the Revenue Commissioners?

A. That's correct, yeah.

Q. So going back to the note relating to the meeting with the Taoiseach, it deals with the question of briefing, advice,

perhaps advice being given to you to make contact with the Revenue, and you could do it by making contact with the Chairman, and we now have here, it's recorded in this note that you did, with Mr. Fox, have a meeting with the Chairman of the Revenue Commissioners on the 21st March, 1988; isn't that right?

A. That's correct.

Q. And if you continue down the note to the final paragraph.

"He said" that is a reference to Mr. Reason "that they had a lengthy meeting with the Chairman. They will be meeting again soon. I said I hoped they would settle the outstanding matters soon. I said I thought that the 1985 move was a mistake. He said that they would have to talk more about it. It was a very brief exchange."

That's describing his exchange with Mr. Reason. So I beg your pardon; in the middle: "Noel Fox rang. I said I had to call, and the letter in reply would issue."

Sorry, this is all to do I beg your pardon. This relates to a different matter we don't want you to deal with at the moment. I want you to go back and just concentrate on the fact that this was a meeting on the 21/3/88, isn't that correct, as recorded here, between yourself, Mr. Fox and Mr. Curran, the Chairman of the Revenue Commissioners?

A. Yes, "Met yesterday", and it's the 22nd, so yesterday, the 21st; that's correct, sir.

Q. And when I went to the final paragraph, there, I should

have commenced a few lines up: "Noel Fox rang. I said I had to call and the letter in reply would issue." This Mr. O'Cathain recording a conversation he had with Mr. Fox.

"He said the changes were for commercial reasons." Then Mr. Fox said, "He said that they had a detailed and lengthy meeting with the Chairman." That is recounting the meeting the previous day. "They will be meeting again soon."

And then Mr. O'Cathain is recording what he said to Mr. Fox: "I said I had hoped they would settle the outstanding matters soon. I said I thought that the 1985 move was a mistake. He said they would have to talk more about it. It was a very brief exchange."

So Mr. Fox is informing Mr. O'Cathain there that the meeting on the 21st had been a detailed and lengthy meeting.

A. Yeah, that's correct.

Q. And you don't have any reason to

A. Well, this is the meeting with Mr. Curran.

Q. Yes.

A. And I had only one meeting with Mr. Curran. It was brought to my attention, and then I recalled the meeting with Mr. Curran. And I think and because I read the files as well and I think Mr. Curran's record of the meeting is that I was you know, he didn't know where I was coming from. And this document doesn't seem to give that image, if you understand. Now, what I think

Q. I agree with you.

A. what I think could be the case you see, I wasn't a tax expert, so I was at some of these I was at maybe all of them, but I certainly was at some of them. I don't know which I was or which I wasn't at. But I am away outside my depth here. And so I could understand how, the Chairman, having met me, said "Look, I didn't know what he wanted, and I told him to go away and think about it and come back." And maybe I can understand Fox could say to somebody, "We had a detailed" but he should have said "I had a detailed", namely him. I just wouldn't have followed it. I am trying to piece together all of what you're saying here, sir.

Q. Yes, I take your point. So

A. Like, I don't

Q. You have no reason to dispute that it was a detailed and lengthy meeting. As to whether you understood all of the matters being discussed is the question you wish to raise a point about?

A. I'd make two points. Mr. Curran's evidence and this minute, or this record, seemed to be a kind of at cross-purposes. That's the only I'm trying to be helpful here to you, sir, and I'm thinking of what has taken place, and that's the only point I would make. But you know, if somebody writes these things down, I have no reason to think that the person who wrote it down isn't telling it as he saw it, or heard it, or this is a telephone conversation, I take it, is it, with Mr. Fox and

this gentleman here?

Q. Yes.

A. Well, I have no reason to I have no reason to disbelieve that. But what I am trying to point out is I was, or may have been at some of these meetings, and it was away outside my depth. I could understand the basics, I knew the basics, and I think Mr. Curran's recollection of me at the meeting shows that you know, I didn't know what I was talking about. But here is a telephone conversation where Fox is saying they had detail, but I wouldn't have understood it, sir.

Q. But the basics were discussion of the trust's tax affairs; isn't that right?

A. Yeah.

Q. C.G.T., C.A.T., inheritance tax?

A. Yes, sir.

Q. What could be done about them. That's what the discussion must have been?

A. Correct. I am not disagreeing with any of that, sir.

Q. Now, I think the appeal in relation to the C.G.T. matter took place on the 22nd and 23rd September 1988 at St. Stephen's Green, the offices of the Appeal Commissioners; isn't that correct?

A. I don't know, but if that's the dates that are there, that's it, yeah.

Q. And they took place before two Appeal Commissioners; isn't that right? Do you remember that?

A. I don't remember it, but it's a fact, yeah. I mean

Q. Were you there?

A. No.

Q. Were you told who the Appeal Commissioners were?

A. No.

Q. Before or afterwards?

A. No.

Q. Or at any time?

A. Never. That I can recall. I mean, the only thing I was told, I would have known the appeal was coming up, and I would have known when we won it or if we had lost it.

Q. Now, just the note about the Chairman of the Revenue Commissioners meeting the Taoiseach records it as happening in March of 1988; isn't that correct?

A. Which? It is, yeah.

Q. You can take it?

A. It is, I mean, it is, whatever.

Q. And your meeting with Mr. Curran was again in March of 1988, according to the note?

A. Correct, yes, sir.

Q. And the appeal itself came on for hearing, as we know, in September of 1988; isn't that correct?

A. Correct, sir.

Q. And in July of 1988, the 421,000 Equifex payment was made for the benefit of Mr. Haughey; isn't that correct?

A. That's correct, yes.

Q. Now, I am just going to briefly just refer to those two

letters, Mr. Montgomery's letters to Mr. Bowen; you know the two letters?

A. I do know them, yes, sir.

Q. And I think you needn't get them out.

A. I recall them. You can call them out to me.

Q. It's in Book Number 64, it's Divider or Document or Divider 11, Document 9, I think. I'll just check that.

A. Well, I have read them, anyhow. Document?

Q. Sorry, it's I'll get it for you now. Divider 9, Documents 12 and 13.

A. Yes, sir.

Q. And it's at Divider 12, it's a letter dated the 9th July 1987 from Mr. Montgomery to Mr. Bowen.

"Dear Frank, have you heard anything further regarding the listing of the tax appeal? It seems unlikely now that anything can be done before the autumn. I suppose you did not receive any confirmation as to what senior counsel they are employing, but maybe they have not yet sent out the brief.

"I understand that indirect approaches have been made to Bernard to see if he could compromise the claim, which may suggest that the Revenue are not happy with their chances of success. Of course, if Bernard wanted to settle and had very attractive terms offered to him, I would not stand in his way, although would not alter my own opinion regarding the legal position."

Can you help us there as to what indirect approaches

Mr. Montgomery is referring to?

A. I think again, I have read the letter, and I had these regular meetings with Mr. Montgomery, and I I think that that would have been Ollie Freaney saying to me, "Oh I think that the" and I would have thrown it out to Eddie Montgomery. That's what I think.

Q. Well, that doesn't seem to be what Mr. Montgomery is saying; he is talking about indirect approaches being made to you.

A. Yeah.

Q. Mr. Freaney was on your side; isn't that right?

A. But with a I never got an indirect approach. What I have tried to think why I would have said it to Eddie Montgomery. And the only thing that I can think is that Ollie Freaney would often say when I say "often", when I'd meet him "Ah, the Revenue, they don't want this to go on, it's going to" so that would be my recollection.

Q. That might be Mr. Freaney's view about things. But Mr. Montgomery was viewed by the other Trustees as being a very careful man. He was viewed by them

A. By me as well.

Q. as being the senior Trustee, and he is writing to a fellow Trustee, and he is describing something that could only have come from you, you agree, information like that, and he is talking about indirect approaches?

A. Correct, sir.

Q. And that that must have come from you to him?

A. I must have said something. I must have said it to him.

He wouldn't have put it in print otherwise.

Q. If you go to Divider Number 13. This is another letter,

it's dated the 18th September, '87. It's addressed to

Mr. Bowen.

"Dear Frank.

"I spent yesterday afternoon with Benny" I assume that's

you?

A. That's me.

Q. "And he also appeared to have had feedback from the Revenue

that they were not anxious to proceed with the their claim

for the Capital Gains Tax on the trust assets but I suppose

there is nothing we can do except sit and wait and let the

Revenue make the next move although I am not clear how they

can dispose of our appeal without a hearing. Possibly Liam

would know whether they can serve notice of discontinuance.

"I have also mentioned to Benny that they were considering

giving the directors share option rights on shares in

Dunnes Stores Limited, and I shortly explained to him how

such a scheme would work. Naturally I did not go further

into the matter with him in any depth, but he was quite

keen on the idea, and I think we should take the matter a

step further, but possibly we should not rock the boat

until we get the Revenue off our back."

Now, you see the first line: "I spent yesterday afternoon

with Benny, and he also appeared to have the feedback from

the Revenue that they were not anxious to proceed with the

claim for Capital Gains Tax."

A. Yes, sir.

Q. From whom would you have got such

A. I would say, again, Ollie Freaney.

Q. Who was your adviser?

A. Who was my adviser, yes, sir.

Q. And he was available to Mr. Montgomery?

A. Yeah, I would say that I mean, they were all available

to one another. How often they met, I don't know.

Q. Very good. You might keep that book there for a moment, because I am going to ask you about something in a moment in that book as well.

A. Are you on to the other book again, sir?

Q. No, no, you can put away the other book, and you can keep that one, 64, please.

Now, if you go to Divider 12, this is the statement of

Mr. Uniacke.

A. Divider 12, sir?

Q. Yes, please. And I'm going to ask you then, Tab 5, there is a document behind Tab 5?

A. Yes, sir.

Q. Now, I think Mr. Uniacke has given evidence to the Tribunal that he attended a board meeting as an observer, where I think a proposal was put forward by your brother, Frank, for the removal of you from the Board; isn't that correct?

A. Yes, sir.

Q. And that resolution was adopted by the Board, I think?

A. Yes, sir.

Q. And I think he said that the next day, you rang him; is that right?

A. Yes, sir.

Q. And that you said certain things to him, that he jotted them down; that he brought these matters to the attention of a number of people, including your sister Margaret?

A. Yes, sir.

Q. And his evidence was that she asked him to fax or bring them to the attention of your brother, Frank, another board member?

A. Yes, sir.

Q. And that he prepared this note from the notes he had jotted down in his conversation with you so that he'd have a reasonably clean and clear copy to send to your brother, Frank, and that that's how this particular document came into being.

A. Yes, sir.

Q. I think it's not for the first time that you have seen this document, is it? This document was a document which was considered in the evidence of Mr. Uniacke before the McCracken Tribunal; isn't that right?

A. That's correct, sir.

Q. Now, if we just go through the note.

"Regarding the document submitted to Monday's board meeting by Mr. Frank Dunne regarding"

A. Sorry, where is this, now, sir?

Q. Sorry, Divider 5. Do you have that?

A. Yes. This is the handwritten

Q. The handwritten note, Mr. Uniacke's handwritten note which he faxed to your brother, Frank.

"Regarding the document submitted to Monday's board meeting by Mr. Frank Dunne regarding the proposed suspension of Mr. Ben Dunne, Mr. Ben Dunne has now considered his position and has drafted his response consisting of 12 points.

"He will be seeking under Section 7 of the Companies Act 1990 for the appointment of an Inspector.

"Part of his evidence will refer to the payment of £1 million paid to a member of a previous Government to influence legislation affecting the trust.

"Details of the Hong Kong payments will be given.

"BD currently has an affidavit sworn by an internal accountant in Dunnes Stores showing the widespread dissipation of company funds.

"In relation to the numerous stories being reported by members of his family regarding the present state of BD's health and the fact that he jumped off a roof, Noel Smyth has obtained three separate medical reports on Ben showing the direct opposite to the comments being made by his family.

"Ben is not interested in coming back to work with his family.

"If they are taking me out, I will take them out."

"While he accepts that he was the prime mover in Wytrex and Hong Kong, he is still intending to disclose everything on these

"The capital/refurbishing costs of various properties"

"was pushed up", is it?

A. "Was flushed up"

Q. "And written off in the company's accounts, and this was done with the approval of the auditors.

"Various blank cheques were signed by him and given to FWB for payment to the staff.

"On Tuesday next (22nd June) NS" I presume that's a reference to Noel Smyth will attend at Dunnes Stores with the Investigation Branch of the Revenue Commissioners.

"On Wednesday, 23rd June, Noel Smyth will call a press conference outlining the foregoing. The meeting which Noel Smyth wanted to have with the Trustees was to have been of a conciliatory nature, but this would not happen now."

Now, do you accept that that is a reasonably accurate account of the conversation you had with Mr. Uniacke when you spoke to him on the phone?

A. He wouldn't have written it unless it was, yeah.

Q. It seems very careful as well, doesn't it?

A. Yeah, no doubt, yes, sir.

Q. Now, in the course of the McCracken Tribunal, and Mr. Uniacke has given his evidence here, and the questioning that was put to him on behalf of the Trustees and which he agreed with, that you first of all, he took

everything that you said seriously, but that you were perhaps in a state of rage, and that nothing should in fact nothing much should be attributed to any of these matters. You remember that type of evidence?

A. I do, yes, yeah.

Q. Before you spoke to Mr. Uniacke, had you taken advice?

A. From this, I'd certainly spoken to Noel Smyth. Because things like Section

Q. Section 7

A. again wouldn't have been, so, I don't know whether it would be advice or what do I do, but call it what you want, yeah, call it advice.

Q. You had spoken to a lawyer?

A. I had spoken to a lawyer, yes, sir.

Q. And as Mr. Uniacke records here, he records this as being your "You had considered your position and had drafted your response consisting of 12 points." Is that right?

A. That's what he says, yes.

Q. Now, he says that you had drafted your response. Can I take it that you would have had some type of document

A. No, I don't believe so.

Q. You don't believe so?

A. No, sir.

Q. You'd have been, not even a note jotting down Section 7 of the Companies Act 1990 for the appointment of an Inspector, or anything like that, any little note?

A. Oh, I had to have something written down, but

Q. That's what I mean.

A. I would have had to have something like certain things.

And I would have had to have you see, I'll correct

myself. I must have had something that I could call out 12

points; I had to have something. Even if I had been told,

I couldn't have remembered them. So

Q. You must have had something jotted down or something?

A. Something definitely had to be in existence, yes, sir.

Q. And this was a serious and considered response; isn't that right?

A. Well, what I'd have to say is it was a serious response

from a very broken man. There would have been I mean, I

think this was after the time obviously, from this, I

had done my legs in. I had it's a well-documented thing

that I had trouble in America, and I would have been very

unbalanced, sir, to say the least.

Q. I see. Well, let's just go through it point by point, so,

and let's see where the unbalancing may have affected

matters.

A. Suicidal well, I'll be perfectly blunt, sir. It's well

documented that you know, I nearly killed myself twice.

And I'll go through point by point, and no way am I trying

to dilute my but I would like the Tribunal to understand

how broken and sick a man I was. And I'll say no more than

that, and I'll go through point by point, sir.

Q. All right. You first of all say that you will be applying

under Section 7 of the Companies Act 1990 for the

appointment of an Inspector?

A. I think I would have said, because I think I remember, it was 207. I think the Act should have been I can recall

I mean

Q. And you think that you would have discussed that with a lawyer so that you would be sure of the particular

A. I remember Noel Smyth telling me about that being an oppressed minority. It was 207.

Q. And you then informed Mr. Uniacke that the evidence that you would rely on was as follows: Isn't that correct?

A. Yes, sir.

Q. "Part of his evidence will refer to the payment of  $\text{€}1$  million paid to member of a previous Government to influence legislation affecting the trust."

A. Correct, yes, sir.

Q. You did say that to Mr. Uniacke, didn't you?

A. I have no reason I have no reason to believe for one moment that I didn't say it, sir.

Q. And you had paid  $\text{€}1$  million, or plus, to a member of a previous Government, and that was true and accurate, or correct? You had done that?

A. I had done, yes.

Q. And you did say that that was to influence legislation affecting the trust?

A. I did say it, yes. Well, Mr. Uniacke wouldn't have put it down unless I said it, sir.

Q. Very good. Let's continue. "Details of the long to think

payments will be given." Again, we know, from evidence you have given in relation to Wytrex, that there were payments made from Hong Kong; isn't that correct?

A. Yes, sir.

Q. Again, that was something that was real?

A. Yes, sir.

Q. "BD currently has an affidavit sworn by an internal auditor in Dunnes Stores showing the widespread dissipation of company funds." Did you have such?

A. No, sir.

Q. But you have always maintained, and you have given evidence before this Tribunal, that such activities were occurring; isn't that right?

A. Yes, sir.

Q. So, again, there is reality in that, isn't there, on the question of the use of company funds?

A. On that point, yes, sir, but not the affidavit, yeah.

Q. Then in relation to the rumours/stories being reported by members of your family regarding the present state of your health, I don't know what members of your family were saying, Mr. Dunne

A. They were saying the truth.

Q. But they were saying things about you?

A. They were saying that I was mad and suicidal.

Q. And you said that Noel Smyth had obtained medical reports. Had he?

A. If he had, the only medical reports he would have had would

have been from the Charter Clinic, because I think I had been I'm not sure whether I had been yeah, I had in the charter clinic at this stage. So coming back to the points of is there elements of truth in it, maybe he could have laid his hands on medical reports. Whether we had them or not, I don't know. Not that they would have proven much except

Q. "Ben's not interested in coming back to work with the family."

A. That's correct, yes.

Q. And can I take it that if Mr. Montgomery or if Mr. Uniacke put this in quotation marks, you certainly said, "If they are taking me out, I will take them out".

Isn't that right?

A. Yes, sir.

Q. Then we go on: "While he accepts that he was the prime mover in Wytrex and Hong Kong, he is still intending to disclose everything on these." Again, you were the prime mover in relation to Wytrex and Hong Kong?

A. The prime mover, in those days, most things in Dunnes.

Q. In those days. And whilst you accepted that, you were still that was correct?

A. Yes, I am not disputing that, sir.

Q. "The capital refurbishing costs of various properties were flushed up and written off in the company's accounts, and this was done with the approval of the auditors." Was that correct?

A. Yeah, I am not I can't

Q. "We know that various blank cheques were signed by you and given to" I think that must be "Mr. Bowen." We discussed all of that.

A. We have.

Q. And in fact there was a settlement with the Revenue in 1989 in respect of bearer cheques, I think.

A. I don't know.

Q. So, all of these dealing with factual matters are all correct; isn't that right?

A. There is an element of truth in them, definitely, sir.

Q. That's eight points.

"On Tuesday next, 22nd, June Noel Smyth will attend at Dunnes Stores with the Investigation Branch of the Revenue Commissioners." Had you discussed that with Noel Smyth before you spoke to Mr. Uniacke, whatever happened afterwards?

A. The answer is I must have. It's not a thing I could make up. So and the only person who I would have discussed it with would have been Noel Smyth. So again, I can't turn around and say that I couldn't have made that up, if you understand what I mean.

Q. Yes. And "On Wednesday 23rd June Noel Smyth will call a press conference outlining the foregoing." Again, would you have discussed that with Noel Smyth?

A. I would have to say yes, it must have I mean, I can't recall it all here, but I couldn't I wouldn't have made

that up. These would be things put on to create leverage.

Q. But in fact, and I understand what you say about your state of health; I understand that there was perhaps annoyance as a result of your suspension from the Board.

A. That's an understatement, sir.

Q. But these were serious matters that you brought to the attention of Mr. Uniacke; isn't that right?

A. Yes, sir.

Q. And cannot just be disregarded on the basis that you were upset?

A. I was more than upset, but they can't be I'd agree with you there, sir, they can't be disregarded. I was far more than upset, but I can understand what you are saying and agree with what you're saying.

Q. Because the essential elements of these matters that you brought to the attention of Mr. Uniacke, were matters which you intended to rely on in the litigation which you brought against the Trustees; isn't that correct?

A. Say that again, sir?

Q. The essential matters, which was the use of money, were matters that you wished or you brought into the litigation that you commenced against the Trustees; isn't that right?

A. Yeah.

Q. And we see from the report of the McCracken Tribunal, at page 83 I'll just get you a copy of it this is a letter from your solicitors to the Trustees' solicitors

dated the 4th November, 1994, and they are referring to the Trustees solicitors' letter of the 28th October in regard to the furnishing of particulars sought in their letter of the 12th October.

And they say: "We have already made our position quite clear in our letter of the 14th October. That letter sets out in detail why you are not entitled to the particulars sought. You have failed to address in a substantive way our objection to replying particulars which we believe are well founded.

"In the light of the motion, we have reviewed the position.

We are quite satisfied that our position is correct and a proper one and a notice for particulars is vexatious. Our views in this regard have been confirmed by an examination of the PriceWaterhouse Discovery.

"Notwithstanding our position as set out above, we do acknowledge the importance which our client's allegation, that the Trustees facilitated the making of payments to third parties, has for our attack on the validity of the trust and the 1985 appointment. While we still believe that we are correct in saying that it is the fact of the payments, rather than the details of each payment that is relevant, we are prepared, without prejudice to our position, to give you details of those payments on which we rely. We enclose those details in the schedule attached to this letter.

"We wish to make it quite clear that the above concession

should not be misinterpreted. We intend resisting your motion next Monday, and we will demonstrate to the Court by reliance on the affidavits sworn by us in connection with our client's motion as to why we believe the application to be vexatious."

And then the schedule which attached to that letter has:

"Recipient, 1, CJ Haughey, i;½1 million plus. Developments involved in or with knowledge of payments.

"Noel Fox, Frank Bowen. Frank Dunne, Margaret Heffernan.

Then, "3. Fine Gael i;½200,000. Developments involved in or with knowledge of payment: Noel Fox."

I think that was then followed up at page 87, where the Trustees' solicitors persisted in pursuing this particular item for further particulars. And you can see that on the heading "C.J. Haughey, i;½1 million plus. Particulars are sought for the amount or amounts alleged to have been paid to C.J. Haughey.

"B. When the amount or amounts were paid.

C. How the amount or amounts were paid.

D. If the amount was other than by cash, particulars, etc.

E. The Party or parties who directed the payments.

F. If the Party who directed the payment differs from the party/parties who executed any banking documentation to effect payment details of the latter parties.

G. In the event of any payment being made in a manner which was not directly to C J Haughey, particulars of the person or persons, corporation or other legal

entity or nominee to whom payments were made.

H. Basis upon which it was alleged that Margaret Heffernan knew or was involved in the making of such payment.

I. The basis upon which it is alleged Frank Dunne knew or was involved in the making of such payment."

Then in relation to Fine Gael, questions about the figures.

And your solicitors responded, I think, then. And that's at page 89, and under the heading "C J Haughey", and it sets out and I don't want to go into detail again; this has been gone over and over again. The various payments, the routings of the payments.

A. Sorry, are you asking me something, sir?

Q. I'm just asking, you give a more detailed breakdown, your solicitor gives a more detailed breakdown of all the payments to Mr. Haughey

A. That's right.

Q. as you are recording there.

A. Yes.

Q. So when you raised the issue with Mr. Uniacke about paying a member of a previous Government  $\frac{1}{2}$  million to influence legislation, or for the purpose of; whether it did or not is another day's work, but for the purpose of that, that's what you said, and that's what you meant at the time; isn't that right, Mr. Dunne?

A. Just say that once more to me, sir.

Q. You told Mr. Uniacke that you paid a member of a previous

Government 1/2 million

A. Yes.

Q. for the purpose of influencing legislation.

A. Yes

Q. you had paid 1/2 million-plus to a member of a previous Government?

A. That's correct.

Q. And you did say to Mr. Uniacke that it was for the purpose of influences previous legislation, and I must suggest to you that that was what it was for.

A. I said to Mr. Uniacke that it was for influencing

Q. For the purpose of influencing; for the purpose of?

A. I must have said that, that's right, sir.

Q. And when you said that, you meant it, and that's what the money had been paid for in your mind; isn't that right, Mr. Dunne?

A. I would think the reason I think the reason that all these things there is civil war going on in Dunnes

Stores

Q. I know all that.

A. And what I I would have said that these things were put together to try and desperate people do desperate things, and that was to get Fox into trouble.

Q. Mr. Fox knew about the payment.

A. Of course he knew about it.

Q. Yes, I know that. He has said that.

A. And the thing about Wytrex was to get members of the family

into trouble. When I say "into trouble", I was trying to

use leverage, and

Q. Wytrex, you were trying to use leverage, because you were trying to draw the family in?

A. The Haughey one, I was using

Q. Let's take Wytrex first. Whilst you were the prime mover, and you had in fact directed a payment which ended up in the Ansbacher accounts, you believe, for the benefit of Mr. Haughey?

A. Yeah, I do believe it, yes, sir.

Q. You weren't the only one that got something out of the Wytrex; is what you are saying?

A. That's correct, sir.

Q. So all of that was to draw the family in, in terms of leverage?

A. Yes, sir.

Q. Mr. Fox knew about the payment to Mr. Haughey; isn't that right?

A. Yes.

Q. You had every reason to believe that Mr. Uniacke, as a Trustee, would bring all these matters to the attention of his fellow Trustees, the points you were making?

A. That's correct, yes, sir.

Q. And you were trying to draw Mr. Fox, by making reference to the Haughey payment, into the situation; isn't that right?

A. That's correct, sir.

Q. And when you stated that the purpose of it was it was for

the purpose of influencing legislation affecting the trust; that was also to involve Mr. Fox, wasn't it, because that is something which, if you didn't believe to be the purpose, could readily have been just discounted by Mr. Fox as being absolute nonsense?

A. No, I don't think so. I think I don't know how to I think that when we were making there is an element of truth or I might be using the wrong word there is truth in all of these points, but they were being made it's like saying I had an affidavit from an internal accountant. It was to put pressure on different sides of the people in Dunnes Stores, and the only sides were the Trustees and the family, to try and deal with the situation. And I suppose it was, for want of a better word, commercial terrorism.

Q. Well, let's take it all slowly again, so, Mr. Dunne.

A. Okay, sir.

Q. And I'll deal with the question, the one issue that you raised about the affidavit.

"Ben Dunne currently has an affidavit sworn by an internal accountant in Dunnes Stores showing the widespread dissipation of company funds."

There was widespread dissipation of company funds as far as you were concerned; isn't that right

A. Yes, I would have been making that threat.

Q. Just listen to the question.

A. Okay, sir.

Q. There was widespread dissipation of company funds, as far as you were concerned?

A. Yeah, there was dissipation of funds, yes, and it was fairly big, yeah, okay.

Q. It was fairly big. And you weren't the only one involved; isn't that right?

A. That's correct.

Q. Other members of the family, as far as you were concerned I am not saying whether it's true as far as you were concerned

A. You are asking me what my position was.

Q. As far as you were concerned, that was the position.

A. Yes, sir.

Q. So the only issue that the only matter you would join issue with is whether you had an affidavit from an internal accountant in relation to that matter; isn't that right?

The facts are correct?

A. Whether they were widespread or not, yeah. But I can't we are trying to split hairs here, and I'm not trying to.

Q. We are not trying to split hairs. We are trying to get to the truth.

A. And I'm giving the truth, sir. Whether I was right in saying there was widespread, I don't know, but it was going on. So let's I want to be I want to give it as I see it now, when I look back.

Q. Wytrex and the Hong Kong end of things was something that you were the prime mover in, and you were obtaining a

benefit, but other members of the family, as far as you were concerned, were also obtaining a benefit, and that was correct and true, as far as you were concerned; isn't that right?

A. Yeah, yes, yes.

Q. And in relation to the question of dissipation of company funds, whether it was widespread or not, and the Hong Kong situation, you knew that other members of the family were aware of their involvement in relation to such matters, as far as you were concerned; isn't that right?

A. I wanted to jog their memory, yes, sir.

Q. And you were not putting yourself in a position where members of your family could say to Mr. Uniacke or to somebody else, "Sure, take no notice of him, that's nonsense, there is no reality in what he is saying". There was reality, isn't that right, in relation to the funds in the company and

A. They were they did take no notice, but I understand what you're saying, yes.

Q. The question of the refurbishing of the various properties, I am not going to go into that in detail. That was the situation?

A. Correct, jog people's memories, yeah.

Q. The question of the blank cheques, the bearer cheques

A. Jog Frank Bowen's memory, yes.

Q. And that was true and accurate; isn't that correct? It was happening, and it resulted in a settlement, but it was

going on, and I think we have had evidence already about that.

A. Yeah.

Q. And the payment of  $\text{€}1$  million to a member of a previous Government, that was known to you and to Mr. Fox; isn't that right?

A. That's correct.

Q. And that was to get Mr. Fox

A. To jog his memory.

Q. To get Mr. Fox or leverage in respect of Mr. Fox, one of the Trustees; isn't that right?

A. That's right.

Q. And the fact that you said that it was for the purpose to influence legislation affecting the trust had to be, in your mind, true and correct as well; isn't that right, Mr. Dunne?

A. I don't think so. I'm thinking of how these things came about, and Smyth and myself, and maybe you know, I don't think so.

Q. Why do you not think so, Mr. Dunne?

A. Because I gave it to Mr. Haughey on a term where I was asked to give it, which was a loan of or not a loan; a payment of  $\text{€}1$  million, or whatever, 1.1, or whatever the figure was.

Q. When were you asked for that?

A. When Mr. Fox approached me.

Q. When were you asked for  $\text{€}1.1$  million?

A. I said I agreed a figure of about  $\frac{1}{2}$  million.

Q. When were you asked for 1 million or 1.1 million, Mr. Dunne?

A. No, I was never asked. Mr. Fox said there was a consortium being put together of X number of people, and I said I think he'd be better off taking it from one person. So I was never asked for 1 million, sir. I correct myself.

Q. Now, Mr. Dunne, and I want to deal with that now for the moment, and I'll be coming back to this issue again.

A. Okay, sir.

Q. You appeared on a television programme last Monday night, a programme about Mr. Haughey; isn't that right?

A. I did, yeah and it'll be on next week.

Q. And you are in next week as well; is that right?

A. I am, yes, sir.

Q. I take it do you know how long you gave in an interview I think Mint Productions were the people carrying out that production; is that right?

A. Yeah.

Q. Can you say how long you were interviewed and footage was taken of you for the purpose of that programme?

A. I'd say maybe an hour, plus.

Q. About an hour long?

A. I would think so, yes, sir.

Q. And you have no objection to the Tribunal obtaining all of that footage from Mint Production and/or RTE, wherever it may be?

A. Absolutely not, sir.

Q. I just want to deal with something which you said, and I have the transcript of what you said on Monday night.

A. Yes, sir.

Q. I'll hand you a copy of it; this was provided by RTE.

"They were putting a consortium together of ten people, and I said, 'If you are putting a consortium together, I think you should make it as few as possible, because I am I had a great belief, and still have, that Christ picked twelve apostles, and one of them crucified him. It was agreed that I would make available a million'."

You said that?

A. Yes, I did, yeah.

Q. Now, Mr. Dunne, I want to deal with a few matters arising out of that.

First of all, who is the "they" you were talking about who was putting together a consortium?

A. The people when Fox came to me and said that Des Traynor was looking for contributors, there was a consortium being put together. I mean, I saw that clip as well on Monday night, and

Q. Fairly struck by it, were you, what was said?

A. No, no, I wasn't struck one way or the other.

Q. Who is the "they"?

A. I have no idea who the "they" was, but Fox told me there was a consortium being put together.

Q. Where did the consortium consisting of ten people come

from? Where did you get that information?

A. Sir, I was on a television programme and wouldn't have been putting as much thought into giving an answer as I do here today.

Q. Who were the ten people, and who told you about it?

A. I have no idea. I have no idea.

Q. Right.

A. I think it came up somewhere along the Tribunal that there was a number of people, so you know, I used the ten, but I think it's well, I can't say what's reasonable or

Q. I'll continue. "It was agreed." With whom was there an agreement made?

A. With myself, really, when I think about it.

Q. Very good. "That I would make available a million."

When was that agreed, that you'd make available a million?

A. I would say maybe a month or two after Mr. Fox spoke to me.

Q. A million?

A. I don't

Q. Mr. Dunne, there has been evidence given to this Tribunal listen to the question, Mr. Dunne

A. I am listening to the question.

Q. There was evidence given to this Tribunal by Mr. Fox that he understood that the type of money was  $\frac{1}{2}$ 900,000.

A. Yes, sir.

Q. There was evidence given to this Tribunal by you that you were aware of that, but that you looked for a bit of value, or words to that effect, and that you managed to reduce it

down to seven hundred-odd thousand, i.e. 750,000. That's the evidence.

A. Yes, sir.

Q. You have now stated on national television that you had agreed to make a million available. That is different to the evidence you have given to this Tribunal.

A. And what's the point, sir?

Q. I'm asking you, Mr. Dunne, which is the correct and truthful position?

A. The truthful position was what the final figure was the truthful position.

Q. No, Mr. Dunne, the final figure was over 2 million.

A. That's what I'm saying. That's the what was given; is that what you are asking me, sir? What was agreed to be given?

Q. I'm asking you what was agreed, if we say you agreed with yourself

A. Sir, it often

Q. Did you agree to give 2 million?

A. No, sir. What I was going to say, and you know, okay, I am recorded on television, but people would say to me, "Thanks a million" for something. And I'd say, "Why don't you say thanks 1.9 million", in jest. So this wasn't done in any way to I mean, I wasn't even thinking of the Tribunal when I was giving this. I was giving a kind of an overall story. That's the truth, sir.

Q. So tell us, so, Mr. Dunne, what is the truth?

A. The truth is what I have told this Tribunal.

Q. So can we take it that you agreed to pay  $\frac{1}{2}$ 900,000 or  $\frac{1}{2}$ 700,000, that there was an agreement that you would pay that?

A. When you say an agreement, yeah I mean, I agreed that there was a figure that I would make available to Mr. Haughey. I agreed that with Fox, yes.

Q. Did you seek a commitment that you would be the only person

A. No, sir.

Q. How did you know, so, bearing in mind your desire to deal with a Judas-like character, that monies wouldn't be collected from other people?

A. How did I know?

Q. Yes.

A. I didn't.

Q. You told this Tribunal that you did pay the lot.

A. I thought I did, sir.

Q. You see, you say, "It was agreed that I would make available a million." You have given evidence to this Tribunal that when Mr. Fox approached you, you sought value and tried to reduce that figure. And doesn't that lead one to ask the question, when you spoke about value, that you the purpose of you paying this money was to obtain something?

A. It doesn't, but you know, you are saying it. I am saying that's not correct, sir.

Q. Right.

Now, going back to Mr. Uniacke's note, I think you have agreed that before you spoke to Mr. Uniacke, you would have discussed what you were going to say to him with Mr. Smyth.

You spoke to a lawyer?

A. That would have been the only person I would have discussed it with, that's correct, sir.

Q. Now, Mr. Dunne, I want you to consider some evidence which you gave to the McCracken Tribunal. I can give you a copy of the portion. Sorry, this will just take a little time, but I wish to read this to you, Mr. Dunne, if you don't mind.

You were being questioned you had I think completed your evidence. Mr. Curran had given evidence to the Tribunal then, isn't that correct, about a meeting that he had had at the request of Mr. Haughey with you; isn't that right?

A. Yes, sir.

Q. And I think you were then asked to come back by the Tribunal to deal with that matter; isn't that right?

A. Yes, I have it here.

Q. This is the record of it here.

Question 280: "Mr. Dunne, I don't know if you were present when Mr. Curran of the Revenue Commissioners gave evidence in which he described a meeting which he had with you and Mr. Fox in 1988.

"Answer: I was, sir.

"Question: You recall that in essence, he gave a

description of having received a telephone call from the Taoiseach, Mr. Haughey, asking if he, the Chairman, would meet with you, and that subsequently such a meeting was arranged with you, and you met the Chairman and had the discussion. You must have made some contact with Mr. Haughey before that meeting with a view to asking him to set up the meeting with the Chairman of the Revenue Commissioners?

"Answer: Until fairly recently, again, I hadn't recalled the meeting with Mr. Curran until it emerged before the Tribunal here. And then when I saw it, I certainly recall meeting Mr. Curran. When I was running Dunnes Stores, I wanted to meet the people who I'd done a lot of business with, the heads of those companies or organisations, on an intermittent basis. And it certainly struck me that the people we were doing most business with, the biggest supplier, the biggest customer that we done, which is with the Revenue, sir, and I had never met the Chairman of the Revenue Commissioners. And it was in that context I don't actually recall saying it to Mr. Haughey, but if Mr. Curran said he got a phone call from Mr. Haughey, I believe that I would have said to the Tribunal here it was a general chat about, as he said himself, he didn't know what I was trying to get at, and that would apply to any of the large suppliers we had. I had a chat maybe once a year, or once every six months, a cup of tea and a chat about business in general terms.

"Question: Well, what I want to focus on at first is if you can recall whatever conversation you must have had with Mr. Haughey at which you presumably raised with him the question of arranging a meeting with Mr. Curran.

"Answer: I don't actually remember saying to Mr. Haughey, because I don't remember saying to Mr. Haughey 'I want to meet Mr. Curran, the Chairman of the Revenue Commissioners'. The one thing I do remember is my meeting with Mr. Curran, and the only reason I remember that is because it came up before the Tribunal here, or even documentation I saw beforehand. I would have seen Mr. Curran in the same light as a large supplier, or somebody I'd done business with, and if somebody said to me, I even have situations today where somebody will say, "Oh, yeah, I remember we had a cup of tea some day in your office", and they'd be going back to the '80s or '90s, and I may or may not recall it. I certainly recall the one with Mr. Curran, because it wasn't a regular where we met on a regular basis.

"Question: There is no controversy about it, Mr. Dunne. I simply want to know if you can recall whatever contact you made with Mr. Haughey in advance, and if you don't recall it

"Answer: I don't actually saying to Mr. Haughey, I'd like to have a meeting with Mr. Curran the Chairman of the Revenue Commissioners.

"Question: But do you recall any meeting or discussion

with Mr. Haughey, even if you don't remember the individual occasion at which you would have raised with him the question of the Revenue Commissioners...

"Answer: Could I have the question again?

"Question: Do you recall any discussion you had with Mr. Haughey at any stage at which you discussed with him any Revenue-related matters?

"Answer: No. I mean, I the only thing I would be saying which, in business terms, the business was going well, there were large taxpayers, that type of thing. But not any discussion of what you're what you're saying to me there, definitely not, sir.

"Question: But presumably you must have made some contact with Mr. Haughey, even if you don't now recall it, if Mr. Curran is right in what he is saying?

"Answer: No question doubt about that, yes.

"Question: It may be that you have implicitly answered this question already, but when I was examining you previously, I asked you as to contacts you had had with the Revenue Commissioners, and in particular, at Question 108, I said: 'Did Mr. Haughey at any stage intervene on your behalf or on behalf of the Dunnes Stores', and he quoted what he had asked you, and you answered "No". And in fairness, I should all of your answer. "What would have happened still happens", and he quotes the rest of it.

"You didn't tell me at the time about this particular meeting with Mr. Curran. Is there any particular reason

for that?

"Answer: I hadn't remembered it, and that's the only reason, and I wouldn't it would be like trying to get me to remember meetings I had with other suppliers; it would have to be pointed out to me, and then I would remember it.

It wasn't something important. There was nothing there was no follow-up to it; it was just it wouldn't be something I could remember unless...

"Question: The account which Mr. Curran gives of the meeting is slightly different, I think, Mr. Dunne, to what you are saying at the moment, to calling in on somebody with whom you had a business a business partner, I suppose, so to speak.

"Answer: That's the word, yes.

"Question: Mr. Curran's recollection was that you were coming to him to explain to him the tax problems you were having in relation to the trust, and that you were having a very general chat with him about those tax problems, even though no specific proposal was being put forward or discussed. Now, that seems somewhat different to calling in to the Revenue on the basis that you make a great deal of payments to the Revenue Commissioners and you wanted to simply make an acquaintance of a man in charge. Mr. Curran seems to put it in a different way.

"Answer: What I believe the reason I would have wanted to see Mr. Curran was I wanted to see the have the face for the head man in the Chairman of the Revenue

Commissioners, and also that the Chairman of the Revenue Commissioners see a face to Dunnes Stores. That would be my intention. I have no recollection of what it was an informal chat. I presume, if Mr. Curran says that was the conversation, I would not in any way say otherwise. Just as much as if I met the Chairman of Avonmore, I suppose, creameries and milk supplies, and definitely that would have come up for discussion in the same way as the Chairman for the Revenue Commissioners tax discussion would have come up, but in a very informal sort of way.

"Question: But it is obviously the case that as of 1988, which is the time of the meeting, you still had a concern in relation to the tax affairs of the trust?

"Answer: No. I would say that the only large supplier that the company had where I hadn't met the Chairman was the Revenue Commissioners. That's the way I think today, and I can't recall exactly how it came about, except on what Mr. Curran said, significantly, that if money was to be extracted out of the trust for the benefit of the family, it was likely to give rise to some form of capital taxation of one form or another, and that you were coming to him expressing in very general terms this concern.

"Now, if he's right in that, it would seem that the tax affairs of the trust were still a live issue as of 1988.

"Answer: The tax affairs of the company were always a live issue.

"Question: And in particular the problem of how the trust

might be either broken up or the assets released in a tax efficient way?

"Answer: I certainly recall at that particular time things were always not always but looked at on a regular basis as a family, we looked at those things.

"Question: When I was examining you previously, Mr. Dunne, I was asking you about a possible connection between the payments which you made and the fact that the various difficulties the trust had in 1988, whether there was any connection, and you pointed out directly that the dealings with the Revenue Commissioners, the question of the valuation of the shares and so forth, had all been disposed of prior to the first payment at the end of 1987, and on that basis, it didn't seem that there was any logic or motive to the payment insofar as the trust affairs were concerned or tax affairs were concerned. But the fact that you had this meeting in 1988, after the first payment was made and before later payments were made, where the tax affairs of the trust, albeit different tax issues, were still alive, that would provide a rationale for the making of payments if you were seeking in some way to obtain some form of benefit from the Revenue Commissioners, perhaps through the indirect influence of Mr. Haughey. Do you follow the logic of what I'm saying?

"Answer: Yes, I do.

"Question: To what extent is that perception valid? Can it be said that you are making these payments because you

knew you still had tax problems?

"Answer: No. The only thing that I done is I wanted to meet the Chairman of the Revenue Commissioners as a large supplier, for want of a better word, I done a lot of business with. And I wanted to show he was one of the few or one of the few large people we done business with where I certainly hadn't met the head of that organisation, for want of a better word, and I wanted to give a face to Dunnes Stores, and I wanted to see the face of the person who the company was paying millions and millions of pounds tax to. Nothing more or nothing less than that.

"Question: Were there other occasions in which you would have contacted Mr. Haughey with a view to asking him to arrange a meeting of some sort for you?

"Answer: I don't even remember this one, so the answer is no. I don't remember contacting Mr. Haughey on this one. If Mr. Curran said, as he has said, that he got the call through Mr. Haughey, I must have. But the answer is no. And I'm not, again, trying to avoid or say I am getting a lapse of memory. I don't recall.

"Question: And in fairness to you, Mr. Dunne, I must say that Mr. Curran said that there was nothing untoward about your approach, and that no benefits or favours were conferred as a result of the conversation. It's only right to say that.

Your relationship with Mr. Haughey continued in the late '80s and in the early '90s. My impression from your earlier

evidence was that the frequency of your meetings tailed off sometime around 1991, 1992, and that you ended up having relatively little contact with Mr. Haughey. I am not sure if I'm right in that, and I'll just ....

"Answer. .... evidence I gave, when I gave this famous 50 times, and we it was put to me that would have been once a month, I suppose. The way would I put it now is from maybe seeing him five times a year, I might have seen him twice a year, to seeing him not at all, you know, and I it wasn't a huge big build-up or tail down.

"Question: All right. Can you date for me, as best you can, when you got to the stage of only seeing him, let us say, twice a year.

"Answer: I couldn't. I mean

"Question: Well, was it after he ceased to be Taoiseach or before he ceased to be Taoiseach?

"Answer: I'd say well after. He ceased to be Taoiseach when?

"Question: '92, I think.

"Answer: I certainly would have seen him 1992, I think '93, '92 I would have continued to see him.

"Question: So the tailing off of your friendship or your contact with Mr. Haughey primarily occurred in the period after he ceased to be Taoiseach?

"Answer: Again, sir, I'd like to say one thing. I find it hard, if I'm meeting somebody five times a year and then only meeting them twice a year, I find it very hard to

comprehend in my mind where the tailing off comes, it's

such a narrow small number of visits.

"Question: Well, when was the last time you met

Mr. Haughey?

"Answer: The last time I met Mr. Haughey was I think in

October or November of the year just gone out. I had lunch

with him one day.

"Question: October/November 1996?

"Answer: October/November 1996. I met him once after

that. But just in he was in company and I was in

company."

And the rest of that goes on with meeting Mr. Haughey and

matters of that nature. Now, if you go to Question 307,

page 62.

"When I was asking you previously, Mr. Dunne, I had put to

you that you moved from a stage in 1987 where you had very

little contact with Mr. Haughey to a point in 1991 where

you were able to call in to him by calling on his car phone

and dropping in to him very casually. And I am asking you

to try to explain how that had come about. We're now at a

stage where some years later, you see him very

infrequently. What accounts for the tailing off of the

infrequency of that contact?

"Answer: For two years when I damaged my ankles, I was in

a wheelchair. I stopped playing golf. You'll find this

maybe hard to understand, but I stopped playing golf, so I

didn't frequent that side of the city. I mean I not

that I would have done it regularly, but I was out that side and I was passing by, not ..... I am sure I would have made the odd call, Christmas time. Either he'd have rung me or I would have rung him, to wish him a happy Christmas.

"Question: Whether it be coincidence or otherwise,

Mr. Dunne, the picture that you paint is that your contact with Mr. Haughey seems to increase around the time of the first payment in 1987, seems to continue at a reasonably frequent level over the next four or five years, during which, from time to time, Mr. Haughey was Taoiseach, and when it tails off and becomes cooler or more distant or more infrequent, perhaps, is the best way to put it, subsequent to his being Taoiseach and subsequent to the last payment.

Now, a cynic might infer from that that the only reason for the contact on either side, perhaps, was the fact that the payments being made, and the fact that he was Taoiseach in power at the time, that's certainly a coincidence in the timing that might lead one to that conclusion. Do you want to comment on that?

"Answer: It's not the case, sir. I mean I when you go into the '92 or thereabouts, I had my own personal difficulties, priorities became completely different in my life. I was now gone out of the business. When I was gone out of Dunnes Stores, I certainly went away for six months with my wife. I mean, it wasn't it wasn't a particular it's coincidence. There was no conscious decision on my

side to break off communications or to increase communication it was just circumstances. I had enough of my own problems. I was, as I said already, trying to rebuild my life and rebuild my career, not that Mr. Haughey was ever up he wasn't the person if I gave the Tribunal the impression that I was seeing Mr. Haughey every month, it was never as regular or anything like that.

"So really the most honest way for me to put... changed as regards me anyway, that I couldn't see him. If I gave the Tribunal that impression, I am sorry.

"Question: Can I bring up something else. Mr. Smyth has given evidence that on the second last occasion of his visits out to Kinsealy around February of this year, he, on your behalf, made an offer to Mr. Haughey to pay a million in terms of a possible potential tax liability he might face in certain circumstances if he were to admit the facts of the payments. I take it that Mr. Smyth had discussed that with you, obviously, before he went out with that offer."

I went on I think. And again I think you were cross-examined, I think by Mr. McKenna, who was your own counsel, I think, and it primarily related to the meetings or the frequency of meetings you had with Mr. Haughey; isn't that right?

A. Yes, sir.

Q. Now. You informed the McCracken Tribunal that your reason for meeting Mr. Curran was nothing more than a meeting of a

general-type nature that you might have had with the head of any other large supplier or customer of Dunnes Stores; is that right?

A. Yes, sir.

Q. Something perhaps in the nature of a cup of tea, to have a general type of chat; isn't that right?

A. Yeah, a get to know, yeah.

Q. And we know from the documents that that meeting was arranged, and we know from Mr. Curran's evidence that meeting was arranged by Mr. Haughey; isn't that right?

A. Yes, sir.

Q. And you informed the McCracken Tribunal that you had never met the head of that organisation, namely the Revenue Commissioners, before, and that's why you wanted to meet him?

A. That's correct, sir.

Q. At the very least, Mr. Dunne, that evidence is incorrect; isn't that right? You had met the head of that organisation on a number of occasions before.

A. I had, yes, now I realise that now, yes, sir.

Q. And you had met the head of that organisation, other than Mr. Curran, through Mr. Charles Haughey; isn't that right?

A. That's the evidence, yes, sir.

Q. You have; isn't that right?

A. I'm not questioning that. I'm not questioning that, sir.

In fact I had met him

Q. You met Mr. Pairceir on a number of occasions, as we have

seen.

A. Correct, and I would have thought I just met him once, but the evidence is there that I had met him on a number of occasions.

Q. And fairly substantial and significant matters were being discussed, debated and negotiated; isn't that right?

A. With Mr. Pairceir?

Q. With Mr. Pairceir.

A. Very substantial.

Q. And you were involved in the thick of that?

A. From the documentation, I wouldn't question that, yes, sir.

Q. And what I have to ask you this, Mr. Dunne, is, why didn't you inform Judge McCracken of that and lead him to believe something else?

A. Which I said today, sir, I didn't remember, which I find unbelievable.

Q. Well I have to put that to you now, that that is a possible conclusion that one could draw, that it's unbelievable.

A. Sir, I just want to say that I wouldn't even let it open to a possibility. Because I tell the truth to the best of my knowledge here as I'm sitting in the box, and I hadn't I had no recollection of meeting Mr. Pairceir, and if I had, I would have had no qualms or no difficulty telling either Tribunal if I'd have thought about it, if I had remembered it. None whatsoever, sir.

Q. You engaged the services of Mr. Pairceir, didn't you?

A. I'll tell you an extraordinary thing, sir: that when I

read the letter from the Tribunal, the one that I could clearly remember immediately when it was pointed out to me, was that I had taken Mr. Pairceir on as a consultant. I had to think long and hard if you understand, it was only seconds, when I saw it I realised who, but one stuck out in the page immediately; the other took a bit of time.

Q. What stuck out in the page immediately?

A. That I recalled the appointment of Mr. Pairceir.

Q. Just after he had retired as Chairman of the Revenue Commissioners; isn't that right?

A. Yes, sir.

Q. And he did work on the forthcoming appeal on the question of C.G.T. for you and for Mr. Fox?

A. For Dunnes Stores, yes, sir.

Q. Sorry, for I want to be careful about this, and I want you have always said, at all stages in your evidence, anything you ever did was not you personally; you did everything for Dunnes Stores, including all expenditures?

A. Correct, sir.

Q. And, I take it, all appointments retaining services of people; are you including that as well?

A. I would say I can think of very few situations where that wasn't the case.

Q. So you knew that Mr. Pairceir had been sorry, you knew or you were involved in the retention of Mr. Pairceir, you and Mr. Fox; isn't that right?

A. Yes, sir.

Q. You paid Mr. Pairceir you knew Mr. Pairceir did work for the appeal; isn't that right?

A. For the appeal for Dunnes Stores?

Q. For the appeal for Dunnes Stores.

A. Yes, sir.

Q. Mr. Pairceir was paid a fee of I think  $\frac{1}{2}$ 10,000 plus VAT at that time for that particular work?

A. Yes, sir.

Q. A fairly significant professional fee, would you agree, at the time?

A. It was what he was looking for.

Q. Sorry, I understand that. But you were used to dealing with accountants, lawyers, and matters of that this was a fairly significant fee for the work that was being done; isn't that right?

A. Yeah, I'd have to say, yes.

Q. Yes, it was. And he subsequently did some further work, isn't that right, into the 1990s?

A. The documentation shows that, yes, sir.

Q. A second fee of around I think the same sum was paid to him; isn't that right?

A. Yes, sir.

Q. And Mr. Pairceir has informed the Tribunal that both payments came from you directly. Can you remember out of which account or whose account they came?

A. What I can remember is that I think it's more than I think; what I remember is meeting Mr. Pairceir where I

met him, I can't remember and agreeing, whether it was one or two fees, I think I only met him once, and I believe that Mr. Fox was at the meeting, but I can't be a hundred percent sure, and when I agreed the fee, I said, "Send me the bill." He obviously got paid, and I have no idea what cheque it came out of.

Q. All right. But you knew he had been retained; you knew at that time, when he was retained, you must have been aware that he was the man you had been dealing with at that time as Chairman of the Revenue Commissioners; isn't that right?

A. I must have been, yes.

Q. But you say that considering your subsequent relationship with him as somebody retained to provide advisory services to Dunnes Stores, that that all of that went completely out of your mind when you were giving evidence to Mr. Justice McCracken?

A. I would say that my subsequent dealings with Mr. Pairceir, bar the one meeting, brief meeting, I would have said, where I agreed his fees, I don't think I ever met Mr. Pairceir while he was advising Dunnes Stores.

Q. But you knew he was. You agreed his fees for such advice.

A. Yes, I did, yes, sir.

Q. You must have known at that time that he was, Mr. Pairceir, the former Chairman of the Revenue Commissioners?

A. Must have.

Q. And you must have known at that time that you had been dealing with him in relation to significant dealings?

A. Must have, yes, sir.

Q. And you say that all of that went out of your mind when it came to give evidence before Mr. Justice McCracken?

A. Absolutely, sir.

Q. So we were left with a situation before Mr. Justice McCracken, on the evidence which was given, that the first payment which was made for Mr. Haughey's benefit was the John Furze payment in November/December of 1987; isn't that correct?

A. That's correct, sir.

Q. Mr. Justice McCracken was not informed of the Tripleplan payment; isn't that correct?

A. That is correct.

Q. Mr. Justice McCracken was not informed of the bearer cheques in late January, early February of 1987; isn't that correct?

A. That's correct.

Q. Mr. Justice McCracken was not informed of the number of meetings or a number of meetings you had with Mr. Seamus Pairceir; isn't that correct?

A. That is correct.

Q. Mr. Justice McCracken was not informed that the first or initial meeting you had with Mr. Pairceir had been arranged by Mr. Charles Haughey; isn't that correct?

A. That is correct.

Q. Mr. Justice McCracken was informed by you that your meeting with Mr. Curran was in the nature of a cup of tea and a

general chat type of meeting, isn't that right, as far as you were concerned?

A. That's correct, yes.

Q. And that it wasn't forming part of, or a train in very detailed involved discussions which were taking place between your side, including you, and the Revenue, in relation to trust tax matters; isn't that right?

A. Are you talking about the meeting with Mr. Curran?

Q. Mr. Curran.

A. Yes, I'll say yes, because people on my side were having detailed discussions. I was present at them. I mightn't have understood them, but they were in my presence.

Q. You were involved in very detailed discussions and negotiations on the question of 16 million; you have said that to us. You must have been?

A. I have no question or doubt about it, sir.

Q. And you informed Mr. Uniacke that you paid a million-odd to a member of a former Government to influence tax matters

A. I obviously said that on the phone, yes, sir.

Q. And that was the type of issue Mr. Justice McCracken, and perhaps now this Tribunal, has to deal with, was trying to understand and come to some conclusion in relation to; and I must suggest to you, Mr. Dunne, that the reason that that information, all of the information which we have dealt with about your meetings with Mr. Pairceir, when the first payments were made and matters of that nature, were not brought to the attention of Mr. Justice McCracken was so as

to ensure the true nature, or the true purpose for the paying of this money was clouded and obscured.

A. No, sir, definitely not. I told the truth, and what I am saying here today is I completely forgot about it.

Q. And the true purpose for asking Mr. Charles Haughey to arrange two meetings not one meeting, as Mr. Justice McCracken understood to be the situation was also obscured from him; isn't that right?

A. Sir, the true the truth is I forgot about it. I forgot about the meetings with Mr. Pairceir, and I forgot, until it was brought to my attention, the meetings the meeting with Mr. Curran. And that's the truth, sir, as my I had no recollection of them.

Q. In relation to virtually every matter which has been dealt with in this Tribunal, and we'll take it the bearer cheques; we'll start off there.

A. Yes, sir.

Q. You have no recollection of those, isn't that right, or you had no recollection?

A. No, I said I had a recollection of the bearer cheques, I knew what went on, and I think I said that there could have been a possibility that I did give those or got them to Mr. Haughey, I said yes, it could be a possibility.

Q. Could I deal with it this way: Until they were brought to your attention by this Tribunal, you had no recollection?

A. Oh, I had no recollection, no, sir.

Q. You accepted what was presented to you by this Tribunal;

isn't that correct?

A. Yes, sir.

Q. Likewise, in relation to Tripleplan, you accept the evidence and matters which were brought to your attention by this Tribunal, and before that, you say that you had no recollection or knowledge; isn't that right?

A. Yes, but I see the I see the Tripleplan one is one that, because there were two payments from Northern Ireland made, I find it I just I can't understand why I can't remember it.

Q. All right. You informed the McCracken Tribunal about the John Furze payment; isn't that right?

A. Yes, sir.

Q. You informed the McCracken Tribunal about the Equifex payment in July of 1988 for  $\text{£}421,000$ ?

A. Yes, sir.

Q. You informed the McCracken Tribunal of the Equifex payment for  $\text{£}150,000$  sterling in April of 1989? You can take it you did.

A. Yes, sir.

Q. You informed the McCracken Tribunal of the Tutberry  $\text{£}200,000$  payment in February of 1990. You can take it you did.

A. Yes, okay, sir.

Q. You did not inform the McCracken Tribunal of the Wytrex payment for  $\text{£}200,000$  sterling in November of 1990, and you had no recollection of it, according to your own evidence,

until this Tribunal brought matters to your attention;

isn't that right?

A. Yes, sir.

Can I make a point?

Q. Yes, indeed.

A. That strikes me here. I think that and I told you this when I get a complete memory loss, it's certainly I find it very difficult, and I try to understand it. And just to make a point to you, sir, that if I had recalled the Tripleplan payment when I was fighting with my family, and when I wrote that letter, if I had recalled it, I would have put it in. There is no reason, in my mind, as I am sitting here, I am trying to give a bit of logic

Q. I take your point.

A. So that is I have fierce difficulty with the Tripleplan payment that I can't recall it.

Q. In relation to what has been described in this Tribunal as the Carlisle payments those were the number of payments which were drawn and went through the Carlisle bank account; I am not suggesting you put them in that way, but again, you had that was in November of 1992. You only have a recollection in relation to certain aspects of that by virtue of information which was brought to your attention by this Tribunal; isn't that correct?

A. That is correct, sir.

Q. And in relation to the, I think, 20-odd thousand pounds, at the luncheon in Abbeville, which you handed over, I think

again that matter was brought to your attention by this Tribunal, and that triggered a memory in you as well; isn't that right?

A. Yes.

Q. You do remember a meeting which was arranged through the good offices of Mr. Hugh Coveney with Minister Alan Dukes; isn't that right?

A. I think I had two meetings with Mr. Dukes.

Q. You do remember specifically

A. I certainly remember one, and I think there might have been a second.

Q. And you remember some details about that, that it was very interesting what Mr. Dukes had said, "Stop expanding for two years and pay the tax", or words to that effect?

A. Yes, I have a recollection of that, yes, sir.

Q. You have until matters were brought to your attention by this Tribunal, you had no recollection of meeting Mr. Pairceir on any occasion; isn't that right?

A. Until it was brought to my attention

Q. By this Tribunal

A. Correct, sir.

Q. And until it was brought to your attention by this Tribunal, you had no memory of the intense and extensive nature of the discussions and dealings you had, and Mr. Fox and perhaps advisers had with Mr. Pairceir in relation to trust matters; isn't that right?

A. That's correct.

CHAIRMAN: Mr. Coughlan, for evidence that obviously is important, I think it's possibly a bit unfair and oppressive to have Mr. Dunne being in the box for more than it's somewhat two hours and ten minutes, and I think, if you have a certain amount to go still, and your colleagues may have some questions to answer, it's preferable and fairer that we defer it, I think, probably with the involvement of another witness, it's desirable we make a start at half past ten.

Your evidence will conclude tomorrow, Mr. Dunne. If you'd be kind enough to be back at half past ten tomorrow, I'd appreciate it.

A. Thank you, sir.

THE TRIBUNAL ADJOURNED UNTIL THE 30TH JUNE, 2005.