

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 16TH MARCH

2001 AT 11:00AM:

OPENING STATEMENT WAS DELIVERED AS FOLLOWS BY MR HEALY:

MR. HEALY: When the Tribunal sittings were last adjourned, evidence had been given by a number of witnesses from the Revenue Commissioners in connection with the relationship between Mr. Charles Haughey and the Revenue and with particular reference to the collection by the Revenue Commissioners of taxation due on payments found by the McCracken Tribunal to have been made to Mr. Haughey. At the time it was indicated that the Tribunal would also be looking at the collection by the Revenue Commissioners of the taxation due on payments found by the McCracken Tribunal to have been made to Mr. Michael Lowry.

Since these sittings were adjourned, a significant amount of work has been done in private examining a number of other aspects of the relationship between Mr. Haughey and the Revenue Commissioners on the one hand, and the relationship between Mr. Lowry and the Revenue Commissioners on the other. The Tribunal apprehends that there may be certain difficulties in proceeding to elaborate on aspects of the respective relationships between Mr. Haughey and Mr. Lowry and the Revenue Commissioners and on the continuing dealings

the Revenue Commissioners are having with each of those taxpayers with a view to collecting taxation which may be due from them. The Tribunal's apprehension is that it may not be practical in the short term to deal in any real detail with these continuing relationships.

I may say something about these practical difficulties at a later point, but because the Tribunal does not propose at this time to deal with these continuing relationships in any detail, it may be appropriate that the Tribunal should endeavour, and that the Revenue Commissioners should be afforded an opportunity of endeavouring, to give some overview of the approach the Revenue has taken to dealing with taxation due or which may be due by Mr. Haughey and Mr. Lowry.

Following the evidence given at and the Report of the McCracken Tribunal, the Revenue Commissioners, in the light of the new information which then became available, set about ascertaining to what extent Mr. Haughey had complied with his obligations under the tax code with a view to identifying whether there had been any failure on his part to comply with those obligations.

Now, in Mr. Lowry's case, as I may mention in a moment, the approach of the Revenue was slightly different because, in fact, the Revenue's dealings with Mr. Lowry in connection with monies referred to in the McCracken

Report, in fact, preceded the establishment of that Tribunal. Eventually, of course, after the Tribunal had reported, the Revenue was relying not just on information which it had prior to the establishment of the Tribunal, but on new information which became available in the course of the public hearings of and as a result of the Report of the Tribunal.

In general, the approach of the Revenue involved establishing whether there was a liability to pay tax; whether, in other words, there was an exposure on the part of either Mr. Haughey or Mr. Lowry to a monetary liability to pay tax. The Revenue evaluation of these matters also involved a consideration as to whether there was any culpability on the part of Mr. Haughey or Mr. Lowry which might warrant the institution of or an assessment as to whether the Revenue Commissioners ought to recommend the institution of, criminal proceedings. In short, the Revenue had to decide whether tax was due and whether, in approaching the collection of that tax, they shouldn't, in addition, consider whether there was any criminal culpability for failure to comply with obligations under the tax code.

Now, the Revenue Commissioners have provided the Tribunal with information concerning the way the Revenue approached these twin aspects of tax compliance over the years and the Tribunal has been informed that

while historically the prosecution and the establishment of criminal liability was not a major feature of the activities of the Revenue Commissioners, a new approach to criminal liability has evolved over recent years and, indeed, at an ever accelerating pace since in or about 1996. It would appear that up until the early 1990s only a small number of prosecutions were processed for tax evasion and it seems that between 1985 and 1995, for instance, there were only two successful prosecutions for tax evasion. That is not to say that, during that time, there weren't a far greater number of prosecutions, presumably in the District Court, for failure to make returns.

Since 1996, however, the Revenue has become more active in what I call the criminal arena and has played a more intensive role in the process involved in the establishment of criminal liability. It has now developed a systematic approach to the prosecution of offences under the Income Tax Code and the other tax headings under which taxpayers may become liable to criminal penalties for failure to pay tax or make returns.

Prior to the development of this new approach, prosecutions were handled in the main by the Garda authorities and ultimately, of course, by the DPP.

With the development of a new policy since 1996 (since

indeed in or about the time that the issues which ultimately led to the McCracken Tribunal and, prior to that, the Buchanan Report came into the public domain), the Revenue carries out most of the investigatory work itself and prepares cases for processing through the criminal system. This systematic approach involves the processing of the investigation and the sending of the results of that investigation to the DPP. It is, of course, the DPP who makes the final decision as to prosecution. Notwithstanding that it is the DPP who makes the final decision, the Revenue, it appears, continues to be involved in the presentation of cases as the investigating authority, as it were. In other words, the Revenue has replaced the role formerly played by the Gardai as part of the criminal investigation process in the context of offences under the tax code.

In the cases of Mr. Michael Lowry and Mr. Charles Haughey, the Revenue Commissioners have given consideration to both civil and criminal responsibility on the part of the taxpayers. As I mentioned earlier, in Mr. Lowry's case, the Revenue investigation in fact preceded the institution of the two Inquiries with which the work of this Tribunal is related; i.e., the Inquiry carried out by His Honour Judge Buchanan and the later inquiry carried out by Mr. Justice Brian McCracken. Since prior to the Buchanan Inquiry in the

case of Mr. Lowry, and since the Report of the McCracken Tribunal in the case of Mr. Haughey, the Revenue has an ongoing relationship with both Mr. Haughey and Mr. Lowry. I do not propose, in the course of this Opening Statement, to deal with aspects of the Revenue's continuing relationship with Mr. Lowry as this will be the subject of a further Opening Statement some time next week prior to the giving of evidence in connection with that ongoing relationship.

Mr. Haughey's relationship with the Revenue Commissioners has already, in part, crystallised in the form of the settlement reached by the Revenue Commissioners in March 2000, whereby Mr. Haughey paid the sum of $\text{€}1,009,435.00$ in respect of assessments totalling $\text{€}1,165,000.00$. While the Tribunal has been made aware of the extent of and the various strands in the continuing relationship between the Revenue Commissioners and Mr. Haughey, it would be preferable to avoid, so far as this is practicable within a reasonable time, leading evidence in connection with dealings which are, as it were, "live" between Mr. Haughey and the Revenue Commissioners. That is not to say that the Tribunal will avoid dealing with those issues or will avoid going into those areas or that there is any risk that the Tribunal would report without dealing with them.

The same applies and will apply when the Tribunal comes to deal with Mr. Lowry's affairs next week. They may be dealt with in a somewhat summary form, at least as long as it is practicable for the Tribunal to leave these "live" dealings out of account in its public sittings until the various parties involved have made more progress.

In these sittings, therefore, in so far as Mr. Haughey is concerned, the Tribunal proposes to deal with the outstanding details of one aspect of the Revenue relationship with Mr. Haughey which appears to have more or less concluded, that is to say the collection of tax due on the payments found to have been made to Mr. Haughey in the Report of the McCracken Tribunal. This will involve further evidence from Mr. Brian McCabe, the official of the Revenue Commissioners or one of the officials of the Revenue Commissioners who was involved on a day-to-day basis with Mr. Haughey's advisers in connection with assessments which ultimately resulted in the settlement in March 2000. Evidence has already been given by Mr. McCabe and at the last sittings he referred to the course of his dealings with Mr. Haughey's advisers. Reference was made to correspondence between Mr. McCabe and Mr. Haughey and also to correspondence with Mr. Haughey's tax agents. There was also reference to

a number of meetings between Mr. McCabe and Mr. Haughey's agents and to the notes or memoranda of the contents of those meetings.

You recall, Sir, that in the evidence of Mr. Quigley, Chairman of the Revenue Commissioners, reference was made to the ultimate settlement and to the terms of settlement and to the overall basis upon which the Revenue Commissioners felt justified in reaching a settlement in the terms agreed in March 2000. In neither Mr. McCabe's evidence, however, nor in Mr. Quigley's evidence, were the details of the considerations which prompted the Revenue to agree a settlement referred to. Now, there is no suggestion that the Revenue Commissioners had in any way failed to provide the Tribunal with details of those considerations; in fact, the documentation which was available to the Tribunal and which was appended to the earlier Memorandum of Evidence of Mr. McCabe included references to those detailed considerations of the matters which informed the Revenue approach to the settlement. In the course of Mr. McCabe's evidence on the 13th February 2001, you will recall that I mentioned that certain documents and certain material made available by Mr. McCabe would not be referred to at that stage, but that ultimately it would be necessary to revisit those areas and to recall him to give evidence in relation to them. It is in relation

to those documents that he is to be recalled to give evidence at these sittings.

In order to understand the details of the dealings between the Revenue and Mr. Haughey's agents which ultimately led to the settlement of Mr. Haughey's liabilities, a number of key dates should be borne in mind.

The first of these is the date of the Revenue Commissioners' first formal communications to Mr. Haughey concerning his liability for Capital Acquisitions Tax. This was a letter of the 28th August 1997 from Mr. McCabe to Deloitte & Touche for the attention of Mr. Pat Kenny. This letter may have been mentioned at the last sittings. Very briefly, it says that, going onto the second paragraph:

"It has come to our attention that your client has received substantial sums by way of gifts. As donee, your client is primarily accountable for the payment of Gift Tax under section 35(1) of the Capital Acquisitions Tax Act 1976. According to our records, however, no gift tax returns have been filed, nor tax payments made in respect of any gifts received.

In light of the foregoing, I am to ask for an explanation as to why gift tax returns have not been delivered in accordance with section 36(2) of the

Capital Acquisition Tax Act, 1976. This request relates to all gifts received by your client."

And then a time for a reply was given.

I think as I mentioned, or as was mentioned certainly by Mr. McCabe when he last gave evidence, Mr. Kenny replied indicating that he was no longer acting as Mr. Haughey's tax agent and that Mr. Paul Moore was acting, with the result that a letter was sent to Mr. Paul Moore in similar terms on the 25th September 1997. And there the second paragraph is the material paragraph and it's more or less the same as the paragraph that I have just read out in the letter to Deloitte & Touche.

That seems to have been the opening communication which led to a series of dealings which ultimately culminated in a settlement of the Revenue Commissioners appeal to the Circuit Court. Sometime shortly following that letter, by letter of the 10th December 1997 from Mr. McCabe to Mr. Haughey, Mr. Haughey was given formal notice of assessments to Capital Acquisitions Tax.

Now, those notices were accompanied by a letter. The notices were dated 10th December 1997. In total they amounted to $\text{€}1,164,739.00$. In the letter which is on the overhead projector, it was pointed out that the accrual of further interest on the assessments would be

prevented if they were discharged within 30 days from the date of the notices. You can see that, at the end of the first paragraph on the overhead projector, the Revenue informed the taxpayer that the accrual of further interest would be prevented if the notices of the assessments were discharged within 30 days, that is to say, sometime in or about the middle of January, I suppose.

By letter of the 7th January 1998, Mr. Paul Moore, on behalf of Mr. Haughey, indicated that he wished to notify the Revenue Commissioners of his client's intention to appeal against the assessments.

Mr. Haughey's advisers asserted that the assessments were incorrect; in particular, it was intimated by Mr. Moore that it would be argued on behalf of Mr. Haughey that there were no chargeable dispositions within the meaning of the Capital Acquisition Tax Acts on the grounds that the identity of the disponers and the date of the dispositions could not be ascertained.

He went on to inform the Revenue, perhaps somewhat unusually, that he nevertheless was continuing to attempt to identify the disponers; in other words, that he was continuing to endeavour to identify the persons who made the gifts and the dates of the dispositions, that is, the dates on which the gifts were made.

And if you go to the second page of the letter, in the

last paragraph he said:

"As mentioned in my previous letter, I am giving urgent attention to this case and am attempting to identify the disponers and the dates of the dispositions. The appropriate returns will be made as soon as the identity of the disponent or disponents are clear."

There were continuing dealings between both Mr. McCabe on behalf of Capital Acquisitions Taxes Branch, and Mr. Moore in relation to the assessments, and it appears that during or at the same time, there were also continuing dealings between the separate Investigations Branch of the Revenue Commissioners and Mr. Haughey with respect to other aspects of Mr. Haughey's affairs. In the course of these various dealings under different tax heads, Mr. Haughey made a payment on account of tax due of $\text{€}100,000.00$. This was paid to the Revenue Commissioners in or about the 24th June 1998.

The formal process of making assessments and appeals continued during all of these various dealings and it will be recalled that, on the last occasion he gave evidence, Mr. McCabe also mentioned that Mr. Haughey was aware that there were potential criminal liabilities involved in failure to comply with the relevant tax obligations which were the subject of these dealings.

On the 29th July 1998, there was an appeal hearing

before the Appeal Commissioner, Mr. Kelly.

Mr. Kelly's determination was not given until December of 1998. In the meantime, the Revenue Commissioners continued to deal with Mr. Haughey's tax agents and I have already made reference, and I think Mr. McCabe has made reference in his evidence, to the nature of those dealings.

I now want to come to some of the aspects of those dealings which were not mentioned in detail in the course of Mr. McCabe's last testimony to the Tribunal.

In that period between the appeal hearing and the determination by the Appeal Commissioner, Mr. Kelly, there were a number of meetings and one of these meetings took place on the 5th August of 1998 between Mr. McCabe and a colleague, Ms. Anne Sheridan, from the Capital Taxes Division, Mr. Stephen Treacy from the Investigations Branch of the Revenue Commissioners, and on Mr. Haughey's side, as it were, Mr. Paul Moore and Mr. Terry Cooney. Now, in the course of that meeting, the question of prosecution was mentioned. Mr. McCabe has provided the Tribunal with a minute of this meeting. If you go to the second page of that memo and the paragraph which begins, "They indicated..."; this is a reference to what was indicated by Messrs.

Moore and Cooney. This is document number 33, Sir, in the documents provided by Mr. McCabe. Mr. McCabe's documents are not paginated but they are numbered. And the minute says:

"They indicated that traditionally there has always been an opportunity in tax cases to settle the case - settlement is part of the system. They said that they had been chosen precisely because they are the type of people who "would not fight every inch of the way" but rather would get the tax paid. Ultimately the case would have to be settled and they were working towards that. They wanted to continue to talk and deal. If, however, there was always the threat of criminal prosecution - which had been flagged on a number of occasions - then it may be that they were the wrong people to be dealing with the case. They were trying to avoid getting into a situation where the fear of incriminating the client became so strong that the legal people would say "back off". If, however, Revenue were simply putting down a marker then they would be anxious to continue talking to us. At this point in the meeting, it was indicated that Revenue were in the process of investigating the case and that effectively nothing had been ruled in or out. Revenue were happy to talk to the agents in progressing that investigation but were not prepared to talk in terms of settlement."

As we know, the Appeal Commissioner, Mr. Kelly, made his determination in December. He reduced the assessments to nil. The Revenue Commissioners decided to appeal. Pending the appeal they continued, as before, to deal with Mr. Haughey's advisers.

Obviously, there was a qualitative difference between the nature of the relationship in the pre and post Appeal Commissioners' determination periods. I think as Mr. Quigley has pointed out in evidence, in the period prior to the determination of Mr. Kelly, the Revenue Commissioners were dealing with a significant assessment and the potential liability on Mr. Haughey's part to pay substantial interest from the 12th December of 1997. From the time of the determination of Mr. Kelly in December of 1998, the Revenue Commissioners were faced with a nil assessment unless they could overturn the determination of Mr. Kelly.

Throughout all this period there was, of course, the potential for prosecution. Both the question of prosecution and the question of civil liability featured in the continuing relationship between the Revenue Commissioners and Mr. Haughey's agents. Although the question of prosecution is not expressly mentioned in the ultimate settlement that was reached, it was, nevertheless, a feature of the negotiations which led to that settlement. In particular, it

featured in dealings between the Revenue and Mr. Haughey's agents in two meetings, on the 13th March 2000, and on the 21st March 2000, respectively.

Mr. McCabe was in attendance at each of these meetings and kept a minute of what transpired.

The minutes in each case, in the main, dealt with the monetary terms of any settlement, with the question of the confidentiality, if any, which would attach to the ultimate terms of settlement and with the question of securing payment of any amount agreed to be paid as part of any settlement. The meetings, as I said, also dealt with the question of prosecution.

In his minute of the meeting of the 13th March, in dealing with the question of prosecution, paragraph Roman numeral 5, Mr. McCabe said:

"As far as prosecution was concerned, Revenue indicated. That because of evidential difficulties they were not in a position to initiate prosecution proceedings in respect of the payments currently assessed to Gift Tax and interest. It was made clear, however, that the Revenue position in this regard would not bind any other agency including the DPP."

Now, that meeting was one which was attended by Mr. McCabe, Ms. Maureen Moore from the Capital Taxes Division, Mr. Paddy Donnelly from the Chief Inspectors

Office, all on the Revenue side, and in attendance on Mr. Haughey's side were Mr. Paul Moore and Mr. Terry Cooney. That meeting was very close to the finalisation of the ultimate settlement.

The next meeting of the 21st March, in fact, just preceded the finalisation of the settlement. At the meeting of the 21st March, the overall implications of the settlement were discussed and extensive consideration appears to have been given to the question of criminal liability.

On the first page of the minute, in the last paragraph, the minute says:

"Revenue indicated that the agreement under s942(8), related to the civil liability for the tax and interest as assessed. S942(8) provided a statutory basis for varying the assessments, without recourse to the Circuit Court. In effect under the agreement, four of the assessments would be amended to limit the interest element to 100% of the tax, while the remaining three assessments would stand good. If all sides were agreed and it was otherwise considered appropriate, the CCJ could be asked to accept the assessments so revised on the 4th April. Settlement under s942(8) would not and could not be used for any other purpose such as an admission of guilt for the purposes of criminal

proceedings. Effectively under s942(8) the client was accepting that a tax liability existed which he would have to discharge, but such acceptance did not amount to an admission by him that he had "knowingly or wilfully" failed to deliver returns within the statutory time limits. The Revenue indicated that when the client's legal advisers were brought on board, they would undoubtedly give him comfort in that regard.

"On the question of prosecution generally for failure to deliver returns, Revenue again indicated that, "referring no doubt to the meeting of the 13th March" that, due to evidential difficulties in the case they were of the view that there was insufficient evidence for them to initiate a criminal prosecution. When asked about the position of other agencies in that regard, Revenue stressed that their position in regard to prosecution could not bind the DPP or any other agency. For example, as a result of some inquiry from "John Citizen", the Gardai might decide to undertake a criminal investigation of their client. Such inquiry could lead to a file being sent to the DPP, and if this occurred, Revenue could not preclude the possibility that they would be asked to assist any such investigation and would clearly do so.

"On the question of whether or not the position on prosecution," i.e., the position which had just been

outlined obviously "would be included in the terms of the agreement, Revenue made it clear that to do so would give the false impression that the prospect of prosecution was traded against a monetary settlement, which was not the position. Revenue's right of action in this case related to (criminal) prosecution proceedings for failure to file returns and the separate matter of (civil) monetary liability arising on the payments as assessed. The facts were, that prosecution had been discussed and had been ruled out because of the legal advice relating to evidential difficulties. Had the evidence been sufficiently strong to sustain a case, Revenue would already have initiated (criminal) prosecution proceedings in this case."

The advantages of the settlement which was ultimately agreed have already been mentioned by Mr. Quigley in his evidence and, in particular, the fact that the settlement provided for a substantial payment by Mr. Haughey, which included interest amounting to approximately 100% of the tax due. It did, of course, involve the Revenue in foregoing interest for a substantial period, but as Mr. Quigley has pointed out in evidence, there were important questions which tied the Revenue's hands in seeking to obtain any larger sums from Mr. Haughey; in particular, as by the time of the settlement, the assessments had been reduced to nil

by the Appeal Commissioner.

The effect of the settlement was to provide for a simple money payment by Mr. Haughey. By that I mean that it did not involve any admission on the part of Mr. Haughey that any other payments of the same kind as, or sharing any of the characteristics of, the payments referred to in the McCracken Tribunal, could also be taxed or would give rise to any taxation liability in his part. In other words, it was a payment on Mr. Haughey's part which did not involve an admission of liability, leaving him free, as it were, to dispute liability in relation to any other payments that might be found to be due. This is clear from the terms of the settlement, and in particular from the terms of paragraphs 4 and 5. The settlement was made, in fact, as far as I can see, on the 3rd April. I have been describing it as the March settlement. The negotiations which led to the settlement obviously took place in March. But the document incorporating the settlement was not, in fact, perfected until the 3rd April.

The settlement refers to the assessments that were raised and eventually, in the material part, describes what has actually been agreed and what sum is to be paid by Mr. Haughey; that is the sum mentioned in the end of paragraph 1, the material part of the

settlement, of £1,164,739.00. It says that:

"The Taxpayer accepts, pursuant to this Agreement, he is liable for the payment of this Revenue debt and undertakes to discharge this debt in full not later than the first day of October 2000."

He agrees to pay interest after that date in default of payment. Paragraph 4 says that:

"The Taxpayer accepts that this agreement is only in respect of the seven assessments to Gift Tax set out in the Schedule hereto and amended herein raised on him by the Revenue on the 10th day of December, 1997, arising out of the payments identified as having been received by him in the McCracken Tribunal, and has no application to, or implications for, liabilities, if any, that may arise in respect of those payments under any other tax head."

It goes on to say that:

"The Taxpayer accepts that this agreement has no application to liabilities, if any, that exist, or may arise, under any tax head in respect of other payments or income received by him, including payments that have been, or may be, identified by the Moriarty Tribunal or otherwise, or to tax arising on the sale of assets to facilitate the disposal of the Revenue debt."

Those are the paragraphs which, as I said, indicate that the agreement effectively amounts to an agreement to pay money and not an agreement which could be used to justify the characterisation by the Revenue Commissioners of any other payments as giving rise to a tax liability.

An important aspect of the agreement I think mentioned by Mr. Quigley, but not mentioned in detail, was the fact that it afforded the Revenue Commissioners the liberty of commenting in public on the terms of the settlement which would otherwise have been private.

In the ordinary way, settlements between the Revenue and taxpayers are private, although they may in certain circumstances involve publication of the amounts actually paid. In this case, the Revenue Commissioners secured Mr. Haughey's agreement not merely to the publication of a press release, but to any other requirement the Revenue might have for public disclosure. This is provided for in Paragraph 7 of the agreement, which says that:

"The Taxpayer further agrees that the matter of this agreement between the Taxpayer and the Revenue, will be made public by the Revenue by way of a Press Release, to be agreed by Taxpayer, and it is further hereby acknowledged by him that in the event of the said Revenue being required to comment publicly on any

aspect of these matters, they may to do freely so as to meet their public accountability function."

This is something that has already arisen in the course of the proceedings of this Tribunal and will continue to arise.

The settlement, however, as is clear from the portions I have put on the overhead projector and from an examination of it, makes no reference to the question of any criminal prosecution. At the same time, it seems, from the minutes of the two meetings to which I have just referred, that the taxpayer was left with what is sometimes described as comfort that there would be no prosecution, or at least comfort that any prosecution likely to be instituted could not succeed for lack of sufficient evidence. In referring to these matters in the course of an Opening Statement and in proposing to lead evidence in relation to them, it is not being suggested that the Revenue Commissioners were showing any particular favour towards Mr. Haughey. The Tribunal is obliged to examine the conduct of the Revenue Commissioners under Term of Reference (j) of the Terms of Reference which requires the Tribunal to inquire whether the Revenue Commissioners availed fully, properly and in a timely manner, in exercising the powers available to them in collecting or seeking to collect the taxation due by Mr. Michael Lowry and

Mr. Charles Haughey.

It seems that in the collection of taxation due by Mr. Haughey, implicit representations were made and it may be, and indeed Mr. Quigley has so suggested, had to be made, concerning a potential exposure to prosecution. It seems that the Revenue may have had a role in relation to any such potential prosecution by way of what I think might be called a "trade off" in return for a very substantial payment of tax a very substantial payment of tax which the Revenue might have lost if the nil assessment of the Appeal Commissioner could not be overturned on appeal to the Circuit Court.

In addition to the evidence of Mr. McCabe, the Tribunal will also be re-examining one or two outstanding aspects of the Revenue treatment of the disposition by Mr. and Mrs. Haughey of part of the lands of Abbeville in 1989 to their four children. It will be recalled that one of the issues the Tribunal sought to examine in the course of the last sittings was how the Revenue approached the stark differences between the valuation of Abbeville in 1980 in the context of what has come to be known as the Gallagher deal and its valuation in 1989 in the context of the family disposition.

Evidence will be given in relation to this by Mr. Harrington of the Revenue Commissioners, and by Mr. Rogers of the Valuation Office.

I think I should say that in focusing on the very marked discrepancy between the Gallagher contract valuation in 1980 and the valuation for Capital Acquisitions Tax purposes placed on the lands by the Revenue Commissioners in 1989, the Tribunal is not suggesting that the 1980 valuation should have been adopted by the Revenue. The matter which the Tribunal will wish to scrutinize is whether the magnitude of the discrepancy between the two valuations ought to have alerted the Revenue to the possibility of some irregularity in Mr. Haughey's financial arrangements and prompted them to review their entire relationship with Mr. Haughey and, if necessary, to re-examine the arrangements which led to the 1980 transaction and the forfeiture of the deposit for $\frac{1}{2}$ 300,000 under the guise, or what may have been the guise, of a purported sale of the lands of Abbeville at what, in 1989, would have been an enormously high valuation and in 1980 was a staggeringly high valuation.

BRIAN MCCABE, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, I think, Mr. McCabe, you have already given evidence in relation to the dealings by the Revenue Commissioner with the collection of taxes from Mr. Haughey after the Report of the McCracken

Tribunal, isn't that correct?

A. That's correct, yes.

Q. And I think that the purpose of you giving evidence now is to deal with some other aspects which were not opened when you gave evidence on the previous occasion.

A. That's correct, yes.

Q. And I think as indicated by Mr. Healy, both when he dealt with you in evidence on a previous occasion and in the Opening Statement today, matters commenced by the Revenue Commissioners writing to Messrs. Deloitte & Touche, the then known tax agents of Mr. Haughey?

A. That's right.

Q. And the Revenue Commissioners then received a response indicating that Messrs. Deloitte & Touche were no longer the tax agents and referred the Revenue to Mr. Moore.

A. That's correct, yes.

Q. The Revenue took the matter up with Mr. Moore then and Mr. Moore sought some time to assemble the necessary information to enable him to deal with the Revenue, isn't that correct?

A. That's right, yes.

Q. And I think in that regard, he indicated to the Revenue that the role of his firm was to deal with tax matters and that the collation of information was the responsibility of, on behalf of Mr. Haughey was another accountant, Mr. Des Peelo, isn't that correct?

A. That emerged subsequently, yes.

Q. That's how matters proceeded then between the Revenue and Mr. Moore on behalf of Mr. Haughey?

A. That's right, yes.

Q. Now, I think the returns were not received, isn't that correct?

A. That's right, no returns were received.

Q. No returns were received. And as you gave evidence before and as we have seen here in the Opening Statement, assessments were then raised, amounting in total to 1.116.5 million

A. 1.165.

Q. 1.165 million.

A. Yes.

Q. And Mr. Moore then, on behalf of his client, notified the Revenue of his intention to appeal these assessments which, of course, is the entitlement of any taxpayer.

A. That's correct, yes.

Q. And indicated effectively, the legal or technical ground on which the appeal was to be based, which Mr. Healy has already dealt with, was that the identity and the date of the disponers in respect of the gift could not be identified, isn't that right?

A. That was the initial exposition of the case.

Obviously there were additional arguments emerged later.

Q. This was the first indication that this was the substantial ground.

A. Yes.

Q. Indicating to you this wasn't

A. It wasn't a taxable gift.

Q. And am I correct in understanding that what Mr. Moore was indicating to you was that the taxpayer and his advisers were informing the Revenue that it was not known who had made the gift or when the gift had been made?

A. Yes.

Q. Therefore, it would not be a taxable gift?

A. Well, I mean, what they were saying essentially was that they didn't know who the disponent was. They didn't know the specific dates of the gifts, but it appeared from the Report of the McCracken Tribunal that the source of the monies was Dunnes Stores companies; that they were aware Dunnes Stores companies had sought the money back from Mr. Haughey and that in doing that, effectively, no beneficial entitlement had moved to Mr. Haughey; in other words, no taxable gift had actually taken place and wouldn't take place until such time as each shareholder, each shareholder in the company, effectively, informed Mr. Haughey that they weren't pursuing him for recovery of the money. That was the essence of the position.

Q. Now, matters then proceeded and there were

discussions, as one would expect, between the Revenue and Mr. Moore in relation to matters, but it proceeded then to the hearing before the Appeals Commissioner, I think, in

A. 29th July.

Q. 29th July, 1998?

A. That's right.

Q. And the Appeals Commissioner gave his final determination, I think, in December of 1998, is that correct?

A. 15th December, 1998.

Q. But between those two dates, discussions continued between you and Mr. Moore?

A. Well, there was a request from Mr. Moore on the 29th June, I think, which represented his substantive response, if you like, to the various letters that we had issued and in which he sought a meeting with a view to settling the liabilities. That was preceding the hearing of the Appeal Commissioners.

Q. The letter came preceding the hearing.

A. Absolutely.

Q. He sought a meeting to a settlement to settle the liabilities or a settlement discussions which might lead to settlement was

A. Yes.

Q. And was that and I think, was it that letter from Mr. Moore setting out his client's position, included a

memorandum which he had received from Mr. Peelo?

A. That's correct, yes. I might add that I mean, there had been overtures from Mr. Moore from the very beginning to meet with Revenue to discuss this and they were overtures the Revenue had resisted and hadn't engaged in any discussion with him because we wanted to pursue the issue through the Appeal Commissioners.

Q. Yes. In any event, this letter which predated the hearing before the Appeals Commissioners from Mr. Moore set out, in as much detail as he said was available to him and for the assistance of the Revenue in considering the matter, also had appended to it a memorandum which Mr. Peelo had prepared attempting to assess the situation and gather together what information was available, isn't that correct?

A. Yes, although that letter made it clear really that the five McCracken payments which were the subject of the appeal, were going to be dealt with in the context of the appeal, you know. So in other words, the substantial part of the memorandum dealt with other matters.

Q. Other matters.

A. Yes.

Q. And just in broad terms, if I may deal with that particular memorandum. It was an attempt to reconstruct Mr. Haughey's financial affairs?

A. My recollection

Q. In broad terms?

A. Yes.

Q. Now, I think you have already given evidence that when this particular letter containing the memorandum arrived at the Revenue Commissioners, that you were unaware that responses were not being given to the Tribunal in relation to queries which had been raised by the Tribunal, isn't that correct?

A. Yes, I wasn't aware.

Q. Now, I think if I may take you then to the 5th August 1998?

A. Yes.

Q. I think a meeting took place between you, your colleague Ms. Anne Sheridan from the Capital Taxes Division, Mr. Stephen Treacy from the Investigation Branch, and Mr. Paul Moore on behalf of Mr. Haughey, together with his colleague Mr. Terry Cooney, isn't that correct?

A. That's correct, yes.

Q. And I think you prepared to, or cause to have a note or a memorandum of that particular meeting prepared?

A. I prepared a memorandum, yes.

Q. And you furnished this to the Tribunal with your previous memorandum of proposed evidence, but matters in it were not raised with you when you gave evidence on the last occasion, isn't that right?

A. That's correct, yes.

Q. And if I might just now, I think you were, of course, aware that the Tribunal asked you not to deal with particular matters when you gave evidence on the last occasion, isn't that correct?

A. Yes.

Q. There is no suggestion being made of any lack of cooperation on your part?

A. No.

Q. Now, I think, do you have a copy of that memorandum of the meeting with you, Mr. McCabe? And I think that (Document handed to witness) it indicates that it's a note of the meeting and the date of the meeting and where it was held and who was in attendance, isn't that correct?

A. That's right.

Q. And then it commences: "At the outset, Revenue made it clear the basis upon which the meeting was taking place. As stated in the letter to Paul Moore of the 22nd July, the meeting was not in the context of the settlement discussions and would not preclude appropriate sanctions being imposed if Revenue's investigation warrant them. In addition, it was made clear that the meeting was not in the context of a voluntary disclosure and was on the record discussion."

A. That's right.

Q. Could you just briefly indicate what you intend by that particular note and what you involved Mr. Moore and

Mr. Cooney?

A. Perhaps if I just give some background to this.

Q. Yes, indeed.

A. The letter from Paul Moore, as I say, was dated 29th June, it was actually received by me on the 1st July and happened to coincide with, that morning, there was a case meeting in relation to the Haughey case and the Lowry case involving the board or legal advisers and other senior personnel in Revenue and this letter was brought to the attention of the meeting.

It was clearly recognised that the letter was attempting to engage Revenue in settlement discussions and it was clearly recognised that Revenue had to be very, very careful not to become involved even inadvertently in settlement discussions in the context, for example, of the fact that this was before the appeal hearing. It could possibly have compromised the appeal hearing and more importantly in the context of any possible other actions that Revenue would wish to take and the legal advice was specifically sought on how best to respond to that letter, and what parameters should be placed on any meeting and the result of that, in effect, is the wording used in the letter to Paul Moore and the wording used here at the commencement of our meeting. So very very tight parameters were placed on the thing.

Q. You were very conscious you were being very careful

and very precise in outlining to Mr. Moore and Mr. Cooney the parameters of this meeting, that this was a meeting which the Revenue were clearly indicating was not to be viewed as a settlement discussion meeting in the first place; and secondly, that the Revenue were informing them at this stage that any steps the Revenue thought were appropriate, were not to be pursued, were not being excluded by virtue of this particular meeting or any discussions which took place?

A. Absolutely. I mean, the premise of the meeting from the Revenue's point of view was to advance those investigations, purely and simply.

Q. Yes. So the Revenue were not excluding further investigation, the collection of money or the question of whether consideration would be given to pursuing criminal inquiries which may lead to a prosecution?

A. Absolutely

Q. Those were the three areas that the Revenue were clearly indicating to these agents.

A. Yes.

Q. The minute then continues: "In the light of these remarks, Messrs. Moore and Cooney indicated that they would have to be careful about what they would say."

So they responded like that to you.

A. Yes, indeed.

Q. Clearly that indicated to you that they understood that had been said to them?

A. Absolutely, yes.

Q. Very good. Now, if we go over the page for the moment, we may have to come back at some future date to other portions of this particular note or memorandum of the meeting, to deal with other issues, but the specific issue that we are addressing today, if we go over to the second page of the note of the meeting.

Now, if we go to the third paragraph, the words beginning, "They indicated..." This is Mr. Moore and Mr. Cooney I take it.

A. Yes.

Q. "They indicated that traditionally there has always been an opportunity in tax cases to settle the case. Settlement is part of the system. They said that they had been chosen precisely because they are the type of people who 'Would not fight every inch of the way,' but always would get the tax paid. Ultimately, the case would have to be settled and they were working towards that. They wanted to continue to talk and deal. If, however, there was always the threat of criminal prosecution which had been flagged on a number of occasions, then it may be that they were the wrong people to be dealing with the case. They were trying to avoid getting into a situation where the fear of incriminating the client became so strong that the legal people would say 'Back off'. If, however,

Revenue were simply putting down a marker that they would be anxious to continue talking to us. At this point in the meeting it was indicated that Revenue were in the process of investigating the case and that effectively nothing had been ruled in or out. Revenue were happy to talk to the agency and progress the investigations but were not prepared to talk in terms of settlement."

Now, am I correct in understanding that particular note as indicated that these agents, who were experienced tax agents, were saying to the Revenue, "Look there is always an opportunity for the taxpayer to settle his tax affairs, that's part of the system. That's how the system works"?

A. Yes.

Q. And they were further saying, "You have indicated in the past that there is the possibility of a prosecution here or the consideration at least of a prosecution"; isn't that right?

A. Yes.

Q. And if the Revenue continue to hold that position, their hands could be tied because the client's lawyers would say to them, "Don't continue, back off, there is a danger you could incriminate the client." That's what they were saying?

A. That's what they were saying, yes.

Q. And they were looking for some response from you in

that regard. They were anxious to continue on behalf of their client to continue talking to attempt to reach settlement, isn't that right?

A. Yes, yes.

Q. And the response from Revenue, as indicated by that note was, we'll talk to anybody, but we are ruling nothing in or nothing out. We are clearly indicating to you that all matters are still open, continuing the investigation, the collection of money and consideration of the possibility of prosecution.

A. Yes, effectively it was bringing the meeting back to

Q. To the beginning?

A. Absolutely. To make it clear that they weren't being drawn into settlement discussions.

Q. So at that stage, as of the 5th August, 1998, as you say, a very serious consideration had been given to this matter by the Revenue Commissioners involving the board of the Revenue Commissioners, the various officials involved in Mr. Haughey's affairs, and the Revenue Commissioner's legal advisers, isn't that correct?

A. Yes, indeed.

Q. And the position of the Revenue Commissioners as of that date was and this was not just a view of one official or a number of officials, but was the stated official position of the Revenue Commissioners was, consideration of criminal prosecution is not excluded?

A. Absolutely, absolutely.

Q. Now, other matters were discussed but in that context, isn't that right?

A. Yes. A lot of the matters that were being discussed there, I suppose, were outstanding issues that Investigation Branch had with the agency and with Mr. Haughey, so the opportunity was taken to see if any of those things could be advanced.

Q. And no difficulty with that. It was clearly understood the context in which all discussion took place?

A. Yes. Indeed, yes.

Q. Now, we may have to come back at a later stage to deal with other matters which were discussed.

CHAIRMAN: I suppose, also, the further stipulation that you had made that the discussion was on the record implied that on occasions, you do have "Off the record" discussions as between lawyers and professionals in most spheres.

A. I mean, in any discussion with individuals, some things are stated that perhaps

CHAIRMAN: But you were clearly laying down this was on the record and had perhaps Mr. Moore and Mr. Cooney asked for a certain portion of the discussion to be "on the record," I take it you'd probably have been reluctant to go along with that.

A. We would have been reluctant in the context of the meeting, absolutely.

MR. COUGHLAN: Now, I

A. I mean, there was no effort to make off-the-record comments.

Q. I understand, but from the Revenue's point of view, this was a meeting on the record. The Revenue Commissioners' position was clearly stated.

A. Yes.

Q. Now, I think the Appeal Commissioner Mr. Kelly made his determination, as you say, I think on the 15th December, isn't that correct?

A. Yes.

Q. Of 1998.

A. Yes, at the actual hearing itself, he indicated that he was hopeful to have a decision perhaps late September/early October. That didn't actually materialise, and it was December before a decision actually became available.

Q. And I won't go into it in any great detail with you, but the result of that was that the assessments which the Revenue Commissioners had raised in respect of Mr. Haughey were reduced to nil?

A. Yes.

Q. So the Revenue Commissioners were now in a position where they had no assessment effectively in respect of

Mr. Haughey. There was no charge to tax?

A. Effectively had to start again basically.

Q. I think the Revenue Commissioners on that occasion then, recorded their dissatisfaction with the decision?

A. In the normal way, yes.

Q. In the normal way, and set about appealing the matter decided to appeal the matter to the Circuit Court?

A. Yes.

Q. And set about the process of doing that?

A. That's right, yes.

Q. Now, as Mr. Healy has said in the Opening Statement and would you agree, there was now a qualitative difference between the nature of the relationship between the Revenue Commissioners and the taxpayer after the determination of the Appeals Commissioner. You were not in the position of having a nil assessment?

A. Absolutely, yes.

Q. As opposed to a position prior to that determination where you had raised an assessment of $\text{€}1.165$ million?

A. And hopeful of success at that stage.

Q. And in preparing for the appeal, the Revenue Commissioners were faced with the situation of, unless they overturned the decision of the Appeals Commissioner, they were left in a position where they might collect no tax at all in respect of the matters which had been dealt with in the McCracken Tribunal?

A. Yes. I mean, if the Circuit Court rehearing had failed, we would be left, as I understand, with an opportunity to go to a higher court on a point of law.

Q. But these were all significant considerations which the Revenue Commissioners had to take into account of course, rightly so. The chances of success

A. Sorry, this is in the context of what?

Q. Of the position that the Revenue Commissioners were in after the determination of the Appeal Commissioners, their position was qualitatively changed, they were now effectively on the back foot from the point of view of having to take the matter to the Circuit Court and hoped to overturn a decision of the Appeal Commissioner?

A. To some extent they were on the back foot, but it sort of focused our mind on our position then of having to put a very strong case.

Q. And that's what you set about doing?

A. Absolutely, yes.

Q. And of course, also one had to take into account, as I say, the risks involved in going to the Circuit Court, nothing in a court is guaranteed to be successful, isn't that correct?

A. That's correct, yes.

Q. And the Revenue Commissioners had to weigh up the risks involved there and consider the question of settlement, if it was appropriate?

A. Well, I mean, we started with a view, obviously, of going to Circuit Court and winning at Circuit Court and that was our determination and the case was put together on that basis and there was an approach by Mr. Haughey's agents in late 1999, some twelve months later, that moved us into these discussions that we spoke about earlier. But I mean, throughout 1999, Revenue's position was that we were putting together a strong case, as strong a case as we could, with a view to winning at the rehearing.

Q. Of course. But as I say, it would be the foolish man wouldn't consider an approach, if it was made to him prior to a hearing?

A. Yes indeed.

Q. Then I think that after this approach was made by Mr. Haughey's agents, I think there were two meetings between the Revenue and Mr. Haughey's agents, one was on the 13th March, 2000 and the other was on the 21st March, 2000; is that correct?

A. There were five meetings all together. I mean, the 13th and 21st March were the last two meetings. There were five meetings in total, beginning I think on I think early January.

Q. Well, the ones I wish to focus on are these two meetings on the 13th March, 2000 and then the one on the 21st March, 2000.

A. Yes.

COMMISSIONER: Before going into those memoranda that have already been referred to by Mr. Healy, it may be a convenient time now, as we approach half twelve, to adjourn for lunch. If it's convenient then, Mr. McCabe, we will conclude your evidence at ten to two?

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.50PM:

Q. MR. COUGHLAN: Now, Mr. McCabe, I think as you had indicated there before lunch, there had been approximately five meetings, isn't that correct, before the final agreement was drawn up giving effect to the terms of the settlement?

A. Yes.

Q. If I could bring you then to the first of those three meetings we're perhaps dealing with seeking, and I should preface it by saying that the meetings were initially at the instigation of Mr. Haughey's agents?

A. That's correct, yes.

Q. And the first pre-meetings involved matters which we will probably have to come back to at a later stage, but they involved clarification of various matters which may have been relevant to information which Mr. Peelo had been involved in gathering?

A. Yes, stated position, etc.

Q. Yes. And then there was a meeting on the 13th March

2000 and then one on the 21st March 2000, isn't that

correct?

A. That's correct.

Q. If I could go to the one on the 13th March, first of all, and you again made a minute of that meeting, isn't you?

A. That's correct, yes.

Q. And present at the meeting were Mr. Moore and Mr. Cooney for Mr. Haughey, Ms. Maureen Moore, you, and Mr. Donnely for the Revenue?

A. That's right, yes.

Q. "And the meeting was a follow-on to the meetings of the 6th January and the 2nd and 21st of February 2000 was convened at the request of Revenue following on the decision of the board to pursue the settlement discussions initiated by CJH"?

A. Yes.

Q. So in the first instance, an approach was made to the Revenue after the determination of the Appeals Commissioner by Mr. Haughey's agents to ask the Revenue if they'd consider settlement of the appeal to the Circuit Court, isn't that correct?

A. That's right, yes.

Q. There were a number of meetings between officials of the Revenue, and Mr. Haughey's agents and then the officials, meaning you and the other members who may have attended meetings with Mr. Moore, convened this

meeting following on a decision of the board of the Revenue Commissioners to pursue the settlement decision?

A. Yes. Subject of course to a satisfactory arrangement.

Q. Of course, of course, but you had the full authority of the board in the Revenue Commissioners now to engage in these discussions to attempt to bring them to a satisfactory conclusion from the Revenue's point of view, isn't that right?

A. Yes.

Q. And I take it that in that regard you had the full authority of the board in dealing with Mr. Haughey's agents to indicate to them the position of the Revenue Commissioners in relation to various matters?

A. Yes, indeed, yes.

Q. And the significant thing from the point of view of the Revenue Commissioners, was to achieve what ultimately was achieved in terms of the amount of the assessments plus interest to about 100% thereof or

A. Yes, but also to ring-fence that specifically to those gifts.

Q. To those gifts as identified in the McCracken Tribunal Report?

A. That was very important, yes, yes.

Q. Well, I'll come back to that in a moment because it also ring-fenced it for Mr. Haughey?

A. But I mean, the ring-fencing in the agreement was at

the instigation of Revenue because we wanted to avoid a situation where a Settlement Agreement that wasn't pinned down could then be used to perhaps seek comfort on other things, you know. So I mean, this ring-fencing and the tying down was on the part of the Revenue Commissioners, not Mr. Haughey.

Q. We can come back to that in a moment and explore that.

If I can just go through matters that happened in the course of the meetings.

A. Yes.

Q. Now, you clearly had instructions and authority from the Board as to what the Revenue wanted to achieve which was as close as was achieved, isn't that correct, in terms of the money?

A. Yes.

Q. And you pursued that with Mr. Haughey's agents clearly indicating the position of the Revenue and what the Revenue required?

A. Yes.

Q. For the purpose of settlement?

A. Yes.

Q. And that was always made clear to Mr. Haughey's agents?

A. Yes.

Q. And until you achieved the figure or the numbers that were achieved here, the Revenue were not going to settle?

A. Absolutely not, no.

Q. And of course I just the Revenue achieved that?

A. Yes.

Q. And there is no doubt about it?

A. Yes.

Q. And you were paid over $\text{€}1\frac{1}{2}$ million?

A. Yes.

Q. Now, because the position had been previously enunciated to Mr. Haughey's agents that nothing was ruled in or nothing was ruled out, that continued to be the position of the Revenue all the way along up until sometime around the 13th March when this meeting took place between you and your colleagues and Mr. Moore and his colleague, isn't that correct?

A. Yes. I mean, in the sense that the position generally in relation to the inquiries and investigations that were going on was still open. The only thing that had changed at that stage was that the position in relation to the five gifts. That had changed.

Q. Yes. There is no doubt about that. You now had a nil assessment in relation to that?

A. We now had a nil assessment but we also had considered very closely other prospects that might or might not be there and arrived at a conclusion at that stage.

Q. Yes, what was that?

A. In terms of possible other proceedings.

Q. Sorry, could you just clarify that for me, Mr. McCabe.

There was undoubtedly a huge change in the position in

that you now had a nil assessment?

A. Yes.

Q. There is no doubt about that.

A. Yes.

Q. And you had to try and retrieve that situation.

A. Yes, indeed.

Q. And you did effectively retrieve that situation in monetary terms?

A. Yes.

Q. There is no doubt about that. Now, other investigations were also continuing?

A. Yes.

Q. And continued?

A. Yes.

Q. The Revenue had always left it open as to whether consideration at least would be given to assembling a case for the consideration of the Director of Public Prosecutions as to whether a prosecution would be mounted, and of course I want to make it very clear, so the public understand it, the Revenue have no powers to prosecute anybody, only the Director of Public Prosecutions has that power.

A. That's right, yes.

Q. And in the Revenue considering the question of a prosecution, they are in the position, effectively, that the guards might be in, in investigating something, bringing it together, submitting it to the

DPP and perhaps expressing a view, but at the end of the day, it's the Director of Public Prosecutions and nobody else can decide on whether a prosecution would be brought, isn't that right? Do you know, and it may just be a matter that would be a legal issue that should be taken up with the Revenue legal advisers, does that apply to District Court prosecutions for non-returns?

A. In general probably not, I think they were done by summary proceedings. But there is a qualitative difference between between the, say, what happens on the Chief Inspector's side and what happens in relation to the Capital Acquisitions Tax. The processes are different and significantly different, you know.

But just to clarify what I was saying, you know, before these meetings, that you are actually talking about here. The Revenue had arrived at a conclusion, based, in fact, of, say, the research we had done in trying to put together the civil case for the rehearing that the evidential difficulties that were there were such as to preclude any further proceedings.

Q. Further civil or criminal?

A. Criminal.

Q. I see.

A. And that was our legal advice.

Q. Now, it was also in approaching these settlement

discussions, it was a matter which was weighing on the mind of the taxpayer as expressed through his agents because they, obviously, in the interest of their client, wanted to avoid the question of criminal proceedings also, isn't that correct?

A. I would think so, yes, yes.

Q. And at the meeting on the 13th March, on page 3 of the memorandum or minute of the meeting, at Roman numeral 5, the heading is "Prosecution" and it reads: "As far as prosecution was concerned, Revenue indicated that because of evidential difficulties, they were not in a position to initiate prosecution proceedings in respect of the payments currently assessed to Gift Tax and interest. It was made clear, however, that the Revenue's position in this regard would not bind any other agency including the DPP."

A. Yes.

Q. I just want to clarify. You had full authority from the board when you entered these meetings to bring certain matters to the attention of Mr. Haughey's advisers?

A. Yes. I mean, the context of that statement, if you go back to the letter that

Q. I'll just clarify this as a matter of fact first. And then this is not just a note to yourself; this was indicated to Mr. Haughey's advisers?

A. It was indeed, and it's after the situation had been

considered at the board and with our legal advisers,
some, I think, probably maybe six weeks before that,
you know.

Q. Now, that view was formed by the Revenue Commissioners
about six weeks before this meeting, you believe?

A. Yes.

Q. Or thereabouts?

A. Yes.

Q. That view was for the first time communicated to
Mr. Haughey through his advisers at this meeting on the
13th March?

A. That's correct, yes.

Q. In the context of a meeting being convened by the
Revenue to discuss the question of settlement, isn't
that right?

A. That's right. But again, if I could just clarify the
context in which the statement was made. In the
letter that came from Paul Moore on the 8th February
2000, there is a statement, a reference in relation to
the offer of $\text{€}1$ million that says: "This offer is made
on the understanding of the assessments and all matters
arising from them"; right?

Q. Yes. If you just bear with me while I get the letter
for a moment, Mr. McCabe, thank you. It's the letter
dated what?

A. 8th February. It's four lines down in the second
paragraph.

Q. This is document number 56? It's addressed to Ms. Moore, is it?

A. That's right, yes.

Q. I have that, yes.

A. Just four lines down in the second paragraph, you will see the words: "And all matters arising from them."

Q. It says: "I am instructed by my client to make a formal offer to the Revenue Commissioners of $\text{€}1$ million in addition to the sum of $\text{€}100,000$ already paid on account to dispose of the appeals and the Residential Property Tax of it." Of course, the Residential Property Tax was dealt with separately.

"This offer is made on the understanding that the assessments and all matters arising from them and the RPT investigations are finally disposed of and in particular that full RPT penalties are discharged and the matter of the RTP settlement does not fall to be published...the payment will be made before the end of the year 2000."

We can exclude the RPT for the purpose of this discussion.

A. Yes.

Q. And point you make is that the offer was made on the the understanding that the assessments and all matters arising from them are finally disposed of, is that correct?

A. Yes.

Q. So that's a matter that the Board gave consideration to?

A. Well, we were we weren't clear exactly what the agents were getting at there, right? And in the context of that meeting on the 13th March, my recollection is that that issue was raised as to what was intended by that statement. It was in that context that the issue of prosecution was raised and we simply stated the factual position in relation to it.

Q. Now, at the meeting of the 13th March, the agents, Mr. Haughey's agents, at the end of the meeting, I think, indicated that they had no instructions to finalise a settlement on the basis of Revenue's position on the above. They would revert to the client on the issues raised and try to get back to you by Tuesday or Wednesday, isn't that correct? So they had to take instructions?

A. Yes.

Q. And then there was a meeting on the 21st March, and again Mr. Moore and Mr. Cooney attended for Mr. Haughey and yourself Mr. Donnelly, and Ms. Moore attended for the Revenue, isn't that correct?

A. That's correct, yes.

Q. "And the meeting was a follow-on to the previous meetings and particularly one on the 13th March and was convened at the request of the Revenue following the

letter issued to the agents on behalf of the Board relating to the acceptance in principle of the settlement offer from Mr. Haughey." Isn't that correct?

A. Yes. There had been intervening correspondence from Paul Moore in which the offer was increased by a small amount.

Q. The nine-odd-thousand pounds to bring it up to the 100%?

A. And there was agreement of publication and

Q. Yes. Now, the money side of things was all right by then, both the Revenue and the taxpayer were of like mind that should be one-million-nine-thousand-odd pounds?

A. The figure

Q. would be paid. And I think at the outset of this meeting on the 21st March there were still some outstanding issues, because the agents indicated that they informed the client of the contents of the Revenue letter and having been instructed by him to have the current meeting with the Revenue to deal with any outstanding issues and the client had asked the agents, one, to query the implications for him, if any, of an agreement under a particular section of the Act including the possibility of incrimination for criminal purposes; to establish definitively the position in relation to publication on the defaulters list." That

became quite a technical issue and dealt with in another way?

A. It was, yes.

Q. And: "To seek clarification as to the contents of the detailed written agreement referred to in the Revenue letter." That was reducing the whole settlement to writing?

A. Yes.

Q. And I think the agents indicated that the publication matter was a major issue for the client and that as long as he got assurances in relation to this and the 942, Subsection 8, implications preferably in writing, the Settlement Agreement could be concluded, isn't that right?

A. Yes.

Q. Just very briefly in relation to that, what the taxpayer and his agents were concerned about there was publication on a list of defaulters. There was a technical argument about that, but it didn't matter to the Revenue at the end of the day, because agreement was reached that the terms of the settlement could be published?

A. Absolutely, in terms that would be much wider than

Q. Instead of your name just appearing as a defaulter?

A. Yes, indeed.

Q. Now, I think the minute continues. "Revenue indicated that the agreement under Section 942(8) related to the

civil liability for the tax and interest as assessed.

Section 942.8 provided a statutory basis for varying the assessments without recourse to the Circuit Court.

In effect under the agreement, four of the assessments would be amended to limit the interest element to 100% of the tax while the remaining three assessments would be stand good. If all sides were agreed and it was otherwise considered appropriate, the CCJ would be asked to accept the assessment would be asked to accept the assessment so revised on the 4th April.

Settlement under 942.8 could, would and could not be used for any other purpose such as an admission of guilt for the purpose of criminal proceedings.

Effectively under Section 942.8, the client was accepting that a tax liability existed which you would have to discharge but such acceptance did not amount to an admission by him that he had knowingly or wilfully failed to deliver returns within the statutory time limits. Revenue indicated that when the client's legal advisers were brought on board, they would undoubtedly give him comfort in that regard.

"On the question of prosecution generally for failure to deliver returns, Revenue again indicated that due to evidential difficulties in the case, they were of the view that there was insufficient evidence for them to initiate a criminal prosecution. When asked about the position of other agencies in that regard, Revenue

stressed that the position in regard to prosecution could no bind the DPP or any other agency, for example, as a result of some inquiry from "John Citizen" the Gardai might decide to ^... Such inquiry could lead to a file being sent to the DPP and if this occurred Revenue could not preclude the possibility that they would be asked to assist any such investigation and would clearly do so.

"On the question of whether or not the position on prosecution would be included in the terms of the agreement, Revenue made it clear that to do so would give a false impression that the prospect of prosecution was traded against a monetary settlement which was not the position. Revenue's right of action on this case limited to criminal prosecutions proceedings for failure to file returns and the separate matter of the civil monetary liability arising on the payment as assessed. The facts were that prosecution had been discussed and had been ruled out because the legal advice relating to evidential difficulties. Had the evidence been sufficiently strong to sustain the case, Revenue would already have initiated criminal prosecutions proceedings in this case."

Now, again, is that a minute representing what was told to Mr. Haughey's advisers?

A. Yes indeed, yes.

Q. And this was an outstanding matter for the consideration of the taxpayer before finalisation of the settlement, isn't that correct? It was an issue that the advisers were instructed to raise with Revenue?

A. Well, the specific issue they were asked to raise I think was the question of the implications of agreeing a civil settlement under Section 942.8 as to whether that could in any way incriminate him for criminal purposes, but in the context of that general discussion, the issue of criminal prosecution, again, just to stress, in relation to the gifts, the failure to deliver Gift Tax returns, that's all we were talking about here, you know; that the discussion moved on into that area as well.

Q. Now, we are talking about I just want to identify it criminal prosecutions for failing to make Gift Tax returns, isn't that right?

A. Yes.

Q. Were they District Court matters or were they DPP matters, do you know?

A. I am not absolutely sure.

Q. It's something we can check out. Very good.

A. I think it depends on whether it's summary prosecution or prosecution on indictment.

Q. This was a matter which was exercising the mind of the

taxpayer hugely. It had been indicated to Revenue previously, that if the question of prosecution remained an option, that the tax advisers, at least, would have been told by the legal advisers that all bets were off and discussion should not take place, isn't that right? That was the stated position of the taxpayer to you?

A. That's what Mr. Cooney and Mr. Moore said, yes.

Q. This was I appreciate Revenue were looking at it from one side but this was a matter which was significantly exercising the mind of the taxpayer and his advisers, the question of criminal prosecution?

A. Obviously, yes.

Q. And in the context of I know that they are separate issues, the monetary settlement, which was civil, and the question of criminal proceedings for failure to make returns from the point of view of the taxpayer entering into the settlement, it was a matter that the taxpayer needed clarified to him by the Revenue before he entered the settlement, isn't that right?

A. It was raised in the context of the meetings. Whether the position on that would have influenced the settlement one way or the other, I can't say.

Q. But being realistic about this now, there is absolutely no question I appreciate that the situation was put to the advisers here that it's for the director of public prosecutions to bring prosecutions and another

State agency might get involved in the situation in some way and there could be no guarantee, but from the point of view of the Revenue, there is absolutely no question of prosecuting Mr. Haughey, from the point of view of the Revenue in relation to these particular gifts?

A. In relation to the potential offences arising from the gifts, yeah.

Q. There is absolutely no question of the Revenue

A. That's our legal advice, yes.

Q. No, but that is the position, isn't it?

A. Yes.

Q. There is no question of it. And that position, in less forcible terms, was indicated to the person negotiating on behalf of Mr. Haughey, isn't that correct?

A. Yes.

Q. Before the settlement was concluded?

A. Before absolutely, yeah, the settlement was signed off on the 3rd April.

Q. Now, the settlement was reduced to writing then, isn't that correct?

A. That is correct, yes.

Q. And it was finally concluded or the agreement was entered into, I think it's on the 3rd April of 2000?

A. That's right, yes.

Q. And there are various recitals, first of all, in the

agreement, and then getting to what was agreed, the money was agreed.

A. Yes.

Q. The taxpayer, at paragraph 2, "Accepts that pursuant to this agreement, he is liable for the payment of this Revenue debt and undertakes to discharge this debt in full not later than the 1st October 2000.

"3. The taxpayer agrees to pay interest on the tax element of the aforesaid Revenue debt at the rate of 1% per month from the 1st day of September 2000 until the debt has been paid in full.

"4. The taxpayer accepts this this agreement is only in respect of the seven assessments of Gift Tax set out in the schedule hereto and amended herein raised on him by the Revenue on the 10th December 1997 arising out of the payments identified as being received by him in the McCracken Tribunal and has no application to or implications for liabilities, if any, that may arise in respect of those payments under any other tax head.

"5. The Taxpayer accepts that this agreement has no application to liabilities, if any, that exist or may arise under any tax head in respect of other payments or income received by him including payments that had been or may be satisfied by the Moriarty Tribunal or otherwise or to a tax arising on the sale of assets to

facilitate the disposal of the Revenue debt.

"6. The Taxpayer accepts that the gifts to which the assessments and amended assessments relate are aggregable gifts and will be treated as such as appropriate in determining Capital Acquisition Tax liabilities that may arise in respect of any other tax or benefit taken by him.

"7. That the Taxpayer further agrees that the matter of disagreement between the Taxpayer and the Revenue be made public by the Revenue by way of a Press Release to be agreed by the Taxpayer and it is further hereby acknowledged by him that in the event of the said Revenue being required to comment publicly on any aspect of these matters, they may do so freely so as to meet their public accountability function.

"8. The terms hereof are to be read as being independent of each other and in the event of any one term being for any reason unenforceable, the others are not so to be regarded by virtue of that fact alone as being unenforceable also."

So that was what was agreed?

A. Yes.

Q. And the money was agreed and paid.

A. Yes indeed.

Q. The Revenue achieved a position which the Revenue

believed to be over and above the mere publication of a name in a list of tax defaulters?

A. Yes.

Q. Full disclosure could be made about this agreement?

A. Yes.

Q. And it went further that any questions that were directed to the Revenue in the context of their duty of public accountability could also be disclosed, isn't that correct?

A. Yes, indeed.

Q. It was ring-fenced though, wasn't it?

A. It was indeed, absolutely, ring-fenced, at the instigation of Revenue, the Revenue.

Q. Of Revenue.

A. Because we didn't want to close off any other prospects that we have in relation to other payments.

Q. Yes, of course. But there is no admission made by Mr. Haughey of a liability in respect of tax payments, isn't that correct?

A. No. Well, I think there is. I mean, if you look at it.

Q. Maybe that is what was intended and maybe I am incorrect about it?

A. "The taxpayer accepts that he is liable for the payment of his Revenue debt."

Q. This Revenue debt, which is created by reason of this agreement?

A. Yes indeed.

Q. Where does it say that he is liable to pay the tax?

You see, I understand and I am not quibbling with you, what this agreement did was it created an enforceable enforceable agreement for the Revenue.

By reason of this agreement Mr. Haughey had agreed to pay the Revenue over i;½1 million and acknowledged it as being a debt, isn't that correct?

A. Yes.

Q. And of course, the Revenue could enforce this particular agreement, because it is signed and sealed and delivered. It's an agreement made under seal, isn't that correct?

A. Yes.

Q. Now, maybe nothing turns on it. It's just a question I'd ask you, but, in fact, this particular payment was being made by Mr. Haughey in effect without an admission sorry, perhaps I should bring you back because something has just been brought to my attention by the Revenue legal advisers and I'll bring you back to the first page of the agreement, if we can put it up. Do you see under the heading "Definitions"?

A. Yes indeed.

Q. You go through various definitions and we come down to Revenue debt.

A. Yes.

Q. "The cumulative sum hereinafter agreed is due to the

taxpayer by the Revenue on foot of the assessments including amended assessments in respect of the payments received by him and identified in the McCracken Tribunal."

A. Yes.

Q. Is that your understanding does that, in your understanding, amount to an admission by Mr. Haughey that he failed to pay Gift Tax?

A. Yes. I mean, the whole purpose of Section 942.8 on which this agreement was drawn up, the effect of it is that the assessments effectively stand as if no appeal had been taken.

Q. No, I understand, and I understand about the collection of the money and perhaps it's rather easier, if I can, the line of questioning I am pursuing, but the line of questioning I am pursuing or the inquiry I am pursuing relates to the criminal consideration.

A. Okay, yes.

Q. If it is the understanding of the Revenue that this acknowledgment was being made by Mr. Haughey that he owed Gift Tax in respect of the payments made as identified in the Dunnes Tribunal report, sorry, the McCracken Tribunal Report, why would the Revenue then not give consideration to criminal prosecution for failing to make returns in respect of receiving acknowledged gifts. That's really the question I want to ask you.

A. What this agreement is doing, it's an agreement on a civil matter and the fact that Mr. Haughey accepted that there was a civil liability there, as the minute I think recorded, was not proof or an admission in any way that Mr. Haughey was saying he was he knowingly and wilfully failed to make the returns. There is a big difference.

Q. I understand that distinction. But the Revenue, for the purpose of achieving the agreement, continued in the position of informing Mr. Haughey that they did not believe there was sufficient evidence to consider the initiation. Let's be clear here. I am not talking about that people should be pursued or sent to jail or anything of that sort. It's the consideration of the Revenue and the use of what was available to the Revenue in the pursuance of the taxpayer for the purpose of obtaining tax.

If that is your consideration if that's your view of it, that's fine. I just want to know, if that is an acknowledgment by Mr. Haughey

A. Sufficient to proceed on criminal grounds?

Q. Is it your understanding that that is an acknowledgment by Mr. Haughey that he received gifts which were taxable gifts identified in the McCracken Tribunal Report which made him liable for tax? Because that's what I am inquiring into. It's unclear to us.

A. I would say yes, it does.

Q. So it is your belief that Mr. Haughey, through his agents, of course, has admitted receiving identifiable taxable gifts taxable payments?

A. Yes.

Q. Very good.

Q. Now, I might just, if I could, Mr. McCabe, turn to one or two other sort of general matters at the moment.

A. Yes.

Q. I'll ask you not to be too concerned about the line of questioning I was pursuing there. We are taking some matters up with the Revenue legal advisers on that matter also, but in all the meetings that you attended on behalf of the Revenue with Mr. Moore and Mr. Cooney, they were acting as the tax agents for Mr. Haughey, isn't that correct?

A. Yes.

Q. And they clearly identified themselves as being that and drew a distinction between their role and the role of Mr. Des Peelo, who was

A. The forensic accountant.

Q. The forensic accountant, but an agent for the purpose of gathering the information, putting it into shape, reconstructing the financial affairs of Mr. Haughey and where possible, affording explanations in relation to matters, isn't that correct?

A. Yes.

Q. Mr. Peelo never attended a meeting with the Revenue

Commissioners, isn't that correct?

A. No, he did, yes.

Q. Did he?

A. There was one meeting which was on Mr. Stephen Treacy's side of the house; which, in fact, took place shortly after the first meeting that we had with Mr. Cooney and Mr. Moore and there was a follow-up meeting on the Investigation Branch side, Mr. Peelo attended, Mr. Moore, Mr. Cooney, Mr. Tracey, Mr. Donnelly and I attended simply on

Q. To be there?

A. To be there, yes.

Q. When was that, do you think?

A. I think it was late January 2000.

A. Just to clarify, the background to that is probably explained in the initial telephone contacts that I had with Paul Moore back in December and early in January of 2000, where you will see from the contacts that they wanted to bring Mr. Peelo along to the meeting but he wasn't available and rather than let the meeting run out, we decided to go ahead with the meeting and that if Investigation Branch felt that it was a useful that a further meeting dealing with the specific issues that Investigation Branch were following up would be held and it was held.

Q. Now, did you attend the hearing before the Appeal Commissioner?

A. I did indeed, yes.

Q. And Mr. Moore was acting as Mr. Haughey's agent for the Appeal Commissioner, was he?

A. Well, he was a witness.

Q. That's what I wanted to ask you.

A. Yes.

Q. But he was Mr. Haughey's tax agent, isn't that right?

A. Yes.

Q. And he gave evidence before the Appeals Commissioner?

A. He did, yes.

Q. On questions of fact or as an expert professional witness?

A. It's hard to recall now. I think it may have been as an expert witness, although I mean, I am not sure. I'd have to look at the records again.

Q. I just want to be clear about this. He wasn't called by the Revenue Commissioners as an expert witness?

A. No.

Q. He was called by Mr. Haughey's side?

A. Yes.

Q. He, being Mr. Haughey's adviser?

A. Yes, yes. He was one of a number of witnesses that they produced.

Q. But he was called as an expert witness?

A. My recollection is that I mean, I'd need to clarify it, you know.

Q. Yes, of course. Was there any other expert witness,

to the best of your knowledge, called?

A. Yes.

Q. Was that a solicitor?

A. No. Well, no do you want me to name the person?

Q. Yes.

A. Mr. Brian Bowen.

Q. Mr. Brian Bowen, what was he?

A. I think he is a solicitor, yeah.

Q. I am just looking at a document here which is from your bundle of documents. He is a solicitor?

A. Yeah, he was called as an expert witness on the CAT Act and separately then there was a solicitor that was called in relation to correspondence that had taken place between Dunnes Stores and Mr. Haughey.

Q. I just want to clarify that now. There was a solicitor called to deal with correspondence. That was on factual matters?

A. Yes.

Q. But Mr. Moore was called as an expert witness?

A. I am fairly sure it was an expert witness.

Q. And Mr. Bowen, a solicitor, was also called as an expert witness?

A. Yes.

Q. Was he Mr. Haughey's solicitor?

A. I have no idea. I think he may simply have been engaged I think he wasn't. Mr. Bowen?

Q. I think he was engaged by Mr. Moore?

A. I think he was engaged by Mr. Moore as an expert witness for the case.

Q. And Mr. Moore who engaged him was also an expert witness?

A. I think so, yeah, yes.

Q. I'll just take it that far today. There are other matters

A. I'd really need to clarify that in terms of the position.

Q. Of course. The agreement that was reached and reduced to writing on the 3rd April 2000, that includes interest, isn't that correct? Does it include penalties?

A. No, no.

Q. Just interest?

A. Interest, yes. And the provision that interest would have run from, I think, September again if payment wasn't made.

Q. Thanks, Mr. McCabe.

CHAIRMAN: Anything you want to take up at this stage, Mr. Connolly?

MR. CONNOLLY: Nothing arises, Sir.

CHAIRMAN: Thanks very much for your evidence and the considerable further amount of work you had to do in preparation, Mr. McCabe.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Harrington, please.

SOLICITOR FOR MASON HAYES & CURRAN: Chairman, I wonder, could I say at this stage, I appear on behalf of Deloitte & Touche and I was just wondering if I could reserve our position in relation to the testimony to be given by Mr. Harrington and Mr. Rogers today as Colm Allen and John Kettle are out of the country.

CHAIRMAN: I don't think there will be any problem about that as I think in any event, Mr. Connolly, I think you may be seeking to reserve your possible position as regards conceivable further queries with Mr. McCabe and it is likely that these witnesses will be recalled, but I note your position.

Thanks again for your attendance, Mr. Harrington.

RJ HARRINGTON, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. Thanks, Mr. Harrington, you are already sworn and you provided the Tribunal with a further statement of evidence concerning your dealings with the handling of Capital Gains Tax liability on the gift of land by Mr. and Mrs. Charles Haughey and Maureen Haughey to their children in 1989. Your involvement has arisen out of evidence already given by other witnesses in

which it was mentioned that while Capital Acquisitions Tax dealt with the Capital Acquisitions Tax element in around 1989, there was a Capital Gains Tax element as well which was ultimately disposed of at a later point by you, is that right?

A. That's right, yes.

Q. In your statement you make a few introductory remarks.

You say that: "In the period March 1974 to July 1974 I was involved with representations and comments on the white paper on capital taxation and in the taxation of tax bill from 1975 I was involved in the later stages of that passage of Capital Gains Tax legislation through the legislative process subsequently until April of 1979, I was involved in setting up the processes to implement the provisions of the Capital Gains Tax Act 1975 in giving advice to tax districts on different issues and in dealing with more complicated issues. From April '79 to October '82 I was the Inspector of Taxes for Dublin in general and Public Departments. My responsibilities included inter alia, providing technical support and supervising the tax appeals process for approximately 700,000 taxpayers. From February 1990 until December 1994, the technical services unit in the Head Office of the Chief Inspector of Taxes which covered Capital Gains Tax reported to me.

"The letter of the 30th January 1992 from Haughey Boland/Deloitte & Touche which was addressed to Mr. Christopher Clayton, Chief Inspector of Taxes was given by me to Mr. Clayton to advance."

Now, is that a letter referring to tax returns in general including Capital Gains Tax?

A. That is correct, yeah.

Q. And is that a letter which was prompted, as we know I think, from the evidence of Mr. Clayton, by his desire to have all a whole load of PAYE tax returns put in by Mr. Haughey, is that correct?

A. It arose, I think, out of the meeting that took place, I am open to correction, but I think it was the 7th January 1992, at which the various issues that needed to be resolved were discussed with Mr. Kenny and a letter of the 30th January was the first installment of furthering the satisfying of the Revenue requirements.

Q. One of the matters requiring attention was the Capital Gains Tax computation supplied with the letter showing a no gain/no loss outcome arising from a gift of 227 acres of land at Abbeville, Kinsealy, County Dublin, in 1989.

You go on to say that: "In the early stages of Capital Gains Tax admission, virtually all instances where a property valuation were involved, were referred to the Valuation Office for an opinion on the valuation

submitted. The main reason for this was that there was no reservoir of experience of property values in the Chief Inspectors Office or in the tax offices generally. As experience developed, it became clear that involving the Valuation Office in most instances was not productive use of resources. Further, it had led to a considerable backlog of unsettled cases with resulting delays in securing payments of the ultimate liability.

In many cases, there were no material variations in the computations as submitted by taxpayers' agents. In the mid-1980s, the number of cases referred to the Valuation Office for its opinion declined substantially."

Then you go on to deal with the specific issue in this case. Capital Gains Tax arising on the 1989 transaction.

And again, just to summarise, what you had in 1989 was a disposition by Mr. and Mrs. Haughey to their children which gave rise to a Capital Acquisitions Tax or Gift Tax liability on the part of the children and a potential Capital Gains Tax on the part of the parents, isn't that right?

A. That's correct.

Q. Because the parents were disposing of land and depending on the valuation that was put on the land,

there could, at least theoretically, be a Capital Gains

Tax liability?

A. That's correct, yes.

Q. You considered the agents computation referred to at paragraph 4 by reference to the information available to you in concluding in other words, in reaching certain conclusions?

A. Yeah.

Q. The first conclusion or the information you considered was that the market value of the land as at the 15th March 1989 had been considered by the Valuation Office and set by them at 1.2 million, the agents, i.e., the taxpayer suggests valuation as at the 5th April 1974 of $\frac{1}{2}$ 1,200 per acre was another factor you considered. Another factor was the Wealth Tax return which included a figure of $\frac{1}{2}$ 1,500 per acre on 1975. You also considered the inflation adjustment multiplier which was appropriate to the disposal and this was 4.848.

Was that from 1974?

A. From the tax year 1974/75, yes.

Q. Right. The computation supplied was within accepted practice as regards to disposal. You say: "Taking all these into account and in particular, the fact that the base value would have to be below $\frac{1}{2}$ 1,100 per acre before a chargeable gain would emerge, I saw no reason to challenge the agent's computation and did I not refer the question of the base valuation to the

Valuation Office. I advised the agents of acceptance of their computation in a letter of the 25th February 1982. The disposal was shown in the 1989/90 tax return received with the agent's letter of the 30th November 1992."

You then go on to refer to what we call the Gallagher contract. And you say: "The Gallagher contract has been opened at previous hearings of evidence. My recollection is that I was briefed broadly regarding the receipt of $\frac{1}{2}$ 300,000 arising from the 1980 agreement. I do not recall considering that this had any bearing on any matter being considered by me at that time. Looking at the matter now, and based on the information available, I have formed the opinion that this aborted agreement would not have been regarded by me as relevant for the following reasons:

"Firstly, your knowledge and experience at the time of the law and practice determining market value.

"Secondly, the date of the agreement relative to material dates.

"Thirdly, it arose in private negotiations and the sale had not been completed.

"Fourthly, the Gallagher empire had gone and clearly was no longer a potential purchaser."

Could I just ask you one or two questions just to clarify one or two things for me.

The inflation adjustment multiplier, would you just explain to me how that operates?

A. That when the Capital Gains Tax Act was introduced originally, the gain could fall to be computed, in fact, the basic method of computing the gain was by reference to the original cost or acquisition value and time apportionment was used to come up with the amount of gain that was chargeable. In 1978, I think that's the year, in 1978, the law was changed so that all the gains were computed by reference to the market value at 1974 and a multiplier was used to arrive at the true gain over and above inflation essentially. The multiplier was arrived at by reference to movements in the consumer price index.

Q. So, are you saying that you simply multiplied the 1974 value by the multiplier, is that it?

A. Exactly, yes.

Q. In this case if you do that, you get about 1.5 million, I suppose?

A. Well, or the alternative way of looking at it would be that there was an agreed valuation of the land in 1989 of 1.2 million. What would the base value have to be before any gain would be arrived at? So I suppose, if you divide the ultimate market value by the

multiplier

Q. It would give you 1,100.

A. Yeah, roughly, per acre.

Q. I am just going on the agent's own market value of 1.2,000. You get 1.5 million. You are saying there is not a huge difference between that and 1.2 million in the context of valuations or are you saying that?

A. No, I am not. What I am simply saying is that I didn't see any gain from Revenue from challenging the valuation that had been submitted and the fact that the computation was accepted would not have indicated that I was in agreement with the $\frac{1}{2}$ 1200 valuation, it was simply a matter that I didn't see that we could turn a chargeable gain out of the figures and facts that were there.

Q. I understand. Now, then, if I can just go to Paragraph 7, where you mention the Gallagher contract and you say that you don't recall considering that it had any bearing on any matter being considered by you at the time in 1979 and you have looked at it again and rationalising it now, you don't think it had any relevance at all, is that correct?

A. That's correct.

Q. Of no significance whatsoever?

A. Not from the Capital Gains Tax point of view which I was dealing with at the time. I must add, of course, that it's very difficult to distinguish what my state

of knowledge is now and what my state of knowledge was then and so, that's why I put the thing down there, that having looked at the thing now, because I did not I do not recall having given the thing detailed consideration back in 1972. But

Q. 1992?

A. Or 1992, sorry, at that particular time, I would have had over 20 years experience of market value and market value issues and my knowledge of Capital Gains Tax and market values at that stage would be a lot sharper than it is now. A lot of water has flowed through a lot of bridges since then and I and I would have looked at that and probably dismissed it without even thinking of the thing because of the actual features that it possessed which I have mentioned there.

Q. I see. You say that you were briefed broadly regarding it. Who do you remember briefing you regarding it?

A. My recollection is it would have been the Chief Inspector, Mr. Clayton.

Q. And when do you recall he believed you about it?

A. Oh, that would have been at the time that we were meeting Pat Kenny back in 1992.

Q. And can you remember how he briefed you? Did he

A. Simply, he had outlined to me his previous dealings with Mr. Haughey and the issues that had been addressed and that had been dealt with and that would have been

one of the issues. I did not see the contract at that particular time, for example. I think about the first time I saw that contract would have been sometime towards the end of the year 2000. I did not see the contract.

Q. Do you know why he briefed you about it?

A. He briefed me about the case generally. No particular reason, other than bringing me up to speed on the different aspects of the case if I was to move the case forward.

Q. Mr. Clayton was also a person with a lot of experience in Capital Gains Tax, wasn't he?

A. Yes, he was.

Q. I am just wondering why he would have bothered to brief you about that contract if you, as an equally experienced, or certainly in the same ballpark in terms of experience as he was, couldn't see that it had any relevance at all. Why would he have thought it had some relevance?

A. The information about the Capital Gains Tax was not on the file that I had at that particular time. For example, the actual file that I had at that particular time simply covered Income Tax matters and perhaps he was pointing out to me other matters that were in other papers that were not in front of me at that particular time.

Q. You didn't have the contract, you didn't have the file.

So it was a very broad-brush-strokes type picture you were being given?

A. What you have to imagine at that particular time, this was something that had happened previously. The papers for a taxpayer just can't accumulate year-on-year. I had fairly current papers and they did not, as far as I can recollect, go back as far as 1980 and did not include any Capital Gains Taxpayers which I am assuming at that particular stage, had been in storage and that simply this was a matter that I should be aware was in advance in the case.

Q. Do you remember when Mr. Clayton gave evidence, when he indicated that it was he was the person who instigated a request to Mr. Haughey to make returns of his PAYE income, and pointed out that he had failed to make returns even though he appeared to be a PAYE taxpayer and do you remember when he was pressed about this, he acknowledged that this was a most unusual thing, asking a PAYE taxpayer to make tax returns. You may recall there was some dispute about whether this was unique or not, but certainly very unusual?

A. Yeah.

Q. And do you recall that he said that he was prompted to ask, perhaps on this unique occasion in the experience of the Revenue or one of the few occasions to ask a PAYE tax payer to make a return, because of a number of factors that were operating on his mind, one was

scandals at the time; two was a past history dealing with Mr. Haughey's tax advisers in relation to Capital Gains Tax in 1984, '85, '86 and '87. Three was, in fact, Mr. Haughey was the then-Taoiseach, a very important person in the country. You recall he gave that evidence here?

A. Yes.

Q. At the time that he spoke to you in 1989, were you aware of what had prompted him to make this unusual request?

A. I don't recall being told in the precise words that he gave his evidence. But the general tenor of what you have just said I would have been aware of, yes.

Q. Because I would think as a lay person, that Mr. Haughey was in some way being singled out, perhaps for very justifiable reasons, that if you were singling somebody out to get their PAYE tax returns into place, and if you had concerns about things in the past, including in particular, the Gallagher business, don't you think that the file would have been made available or are you sure you can recall all these things being mentioned?

A. I don't think there was any concern in 1990 or 1991 about the Gallagher business which was actually closed at that particular stage and the tax on that had been paid.

Q. So you are saying you don't remember any communication between Mr. Clayton and you to the effect that one of

the things operating on his mind was some residual concern he had about 1984 and the Gallagher deal?

A. No. There was no indication that there was any unsettled business as regards the Gallagher

Q. I just want to be clear about this. I am not saying there was unsettled business. I am saying there was a residual concern. I am simply summarising what I understand Mr. Clayton to have said in evidence were the reasons which prompted him to take this unusual step.

Now, I am simply asking you, were you aware at the time Mr. Clayton spoke to you, of the three things I have mentioned that were acting on his mind, the scandals, the fact that Mr. Haughey was the most senior public servant in the land, if you like, and the residual, some residual concern about the 1984 1980/1984 dealings, let's put it that way?

A. I can't speak for Mr. Clayton but I feel you are misinterpreting

Q. Let's deal with my question first. You can tell me I am misinterpreting first. Did he say it to you? Did he say anything to you about any of those things, even one of them?

A. We were all concerned at that particular time about the scandals.

Q. No, did he say to you: "I am concerned about scandals. I am the Chief Inspector of Taxes and I want to make

sure that in this one case, if in no other case, I want

to make sure that the tax returns are made"?

A. That would be correct, yeah.

Q. He said that to you?

A. Yeah.

Q. And you, therefore, would have shared with him, I

presume, an appreciation that this was a somewhat

unusual step to take?

A. I think I said that previously in December, yes.

Q. You did.

Q. Now, the question of scandals wasn't mentioned by him,

was it?

A. Well, there were a number of financial irregularities

which I think would be in the realm of scandal had come

into the public domain prior to that, yes.

Q. But did he say to you, look, I am concerned about this,

and I am concerned about these scandals

A. We were in Revenue at that stage, concerned

Q. I appreciate that, but surely you must agree with me,

Mr. Harrington, that, if he had said it to you, if this

was what prompted your dealings with this file, it's

something you would have remembered?

A. Well, I mean, I can't remember exact words, but I mean,

I have said already that the general tenure of what you

have said there, yes, I would not dispute it, yes.

Q. I know you are saying you were aware of scandals, did

he tell you he was aware?

A. No, you quoted to me Mr. Clayton's evidence in December and you read out particular words, etc. etc. etc., and while I don't recall Mr. Clayton ever saying to me the general words that you read out there, definitely the tenure of what you read out there, you know, would have been conveyed to me, yes.

Q. All right, okay. Well then, we'll just ask you one last thing in relation to those issues, if you like.

The Gallagher thing, was that mentioned?

A. The Gallagher thing was mentioned, as far as I was concerned, by way of an item of information, it was not conveyed to me that there was any unfinished business about it or any residual issues relating to it. The issue had come it. The issue was disposed of. The tax was paid and that was the end of it. So when Mr. Clayton, I think he mentioned there in his evidence talking about tax compliance problems prior to that, I think you'd be misinterpreting him if you say that there was unfinished business regarding the Gallagher contract; that it was simply that Mr. Haughey was rather remiss maybe, in keeping up-to-date with his returns before and he had to deal with that.

Q. Nothing more serious than that?

A. Nothing more serious than that.

Q. And that was all he said to you about the 1980 dealing?

A. That's all.

Q. So you wouldn't have been examining the 1980 deal at

all then?

A. No.

Q. So all this business about your knowledge of law and practice and the date in the agreement and the negotiations being private and the Gallagher empire failing, none of that would have come up for consideration at the time?

A. It would have obviously crossed my mind in connection with valuations.

Q. But how would it have crossed your mind if the thing was only mentioned to you in a by-the-way fashion by Mr. Clayton and it wasn't a question of concern? How would it have come up?

A. It in the context of valuing land, I mean, you have made a major issue about this at previous hearings here, about why this contract couldn't be used to put a value on this land in 1989, and partly I am trying to address your concerns there.

Q. But were you addressing them at the time in 1992, is what I am asking you?

A. I don't recall specifically saying I have to look at the Gallagher contract to see has it any relevance?

Looking at the thing now, my view would be that it had no relevance

Q. I quite understand that's your current view. What I am driving at, at the time you weren't looking at it in any detail?

A. If it had any relevance I was very experienced in the particular area and at the time if I considered it had any relevance, I would have followed it up.

Q. How could you have done that when you didn't have the contract?

A. Well, I was aware that it was a disposal of X number of acres for X amount of money; that a deposit of $\frac{1}{2}$ 300,000 was paid. The contract didn't proceed and the deposit was forfeited.

Q. Did you know what land was involved?

A. My recollection is some 30-odd acres.

Q. Did you know where the 30-odd acres were?

A. Part of the lands at Abbeville.

Q. You didn't know which part?

A. No, I didn't, no, because if I thought it was relevant, I would have obviously.

Q. The file on the 1980 Gallagher contract has been made available to the Tribunal and so on. Has it ever been considered in the Revenue Commissioners until it was made available to the Tribunal after the tax was collected on it?

A. Not by me anyway. I don't know about any others.

Q. So would I be right in thinking that it's probably the case that all of Mr. Haughey's papers were never pulled together in the Revenue Commissioners?

A. That's probably fair comment insofar as the historic papers, but I know when I was looking at the Capital

Gains Tax issue, I looked at the papers that would have been relevant to the issue that I was considering, I would have looked at the papers in the Capital Taxes Branch.

Q. You say that you have a lot of experience of valuation yourself well, you would have had anyway over your years in Capital Gains Tax?

A. Yeah.

Q. And you had a 1989 valuation of 1.2 million for some 207 acres of Abbeville?

A. 227 perhaps.

Q. Was it 227? Sorry. Using your knowledge of property values, the valuation that would have applied, if you like, in 1980 at $\frac{1}{2}$ 35,000 an acre, was enormously high, wasn't it, for 1989, not to mention for 1980, wasn't it?

A. It was probably an unusual price, yes. By the way, I would need to clarify something. I am no expert on the actual value of land, but I would know quite a lot about the principles of valuation but I would not be an expert on the valuation of land.

Q. But you must have seen yourself over the years, many lands valued for the purposes of Capital Gains Tax?

A. Yes.

Q. And if you have lands valued in 1980 at approximately $\frac{1}{2}$ 35,000 an acre, you'd expect to see normally you'd expect to see some increase in that value ten years

later, wouldn't you? Normally?

A. That would be normal, yeah.

Q. I am not suggesting for a minute that $\frac{1}{2}$ 35,000 an acre was the value of 227 acres of Abbeville. But if the whole value of Abbeville or most of it was 1.2 million for 227 acres in 1989, wouldn't that suggest to you, with your knowledge of land valuations, that there was something very peculiar about a valuation of $\frac{1}{2}$ 35,000 an acre for part of the lands of Abbeville in 1980, ten years before nine years before?

A. 1980 wasn't a valuation, it was an amount that was agreed to be paid on the purchase or sale, whichever you like, of 35 acres. So it wasn't a valuation as such.

Q. What do you mean by it wasn't a valuation?

A. It was a price that was agreed between a vendor and a purchaser. It was not something that either Revenue or the Valuation Office would be it wasn't a figure that a valuer

Q. But a vendor and a purchaser was putting a value on it?

A. Yeah.

Q. Isn't that what value you look at, the value that vendors and purchasers put on land? We have the valuation file here. It's full of references to vendors and purchasers, what they sell for, what they pay for.

A. Yeah.

Q. I am not suggesting that this valuation was one that would apply. At least, I can't see that it would apply. All the information the Tribunal has would suggest that it was a most incredible, a fabulous valuation in 1980?

A. Perhaps, on the high side.

Q. On the high side? Do you mean marginally on the high side?

A. I said I am not expert on the valuation of land, but it would be on the high side

Q. Is that your answer as an experienced civil servant?

As an experienced expert in Capital Gains Tax, you are telling me that this is your answer, that the valuation of Abbeville in 1980 at $\frac{1}{2}$ 35,000 an acre was a little on the high side? Is that your evidence?

A. I would think that if I was given the opportunity that I could produce instances of land changing hands for a higher price than that at that particular time.

Q. Were you aware in 1992 of the circumstances in which the 1980 contract had come to the attention of the Revenue Commissioners?

A. I don't recall that. I don't think so.

Q. You are aware of those circumstances now, obviously, from the evidence?

A. Yes.

Q. Wouldn't you agree with me that if you take those circumstances into account, that the valuation of the

land is something that you'd look at a little askance ?

A. When he was dealing with that in 1992, and even looking at it today what we had in 1980 was an agreement with certain conditions. The agreement didn't come to pass and there was a forfeited deposit

Q. Could I stop you there. I am sorry for interrupting you, Mr. Harrington. The agreement did come to pass.

It was an agreement for the right to buy Abbeville for $\$300,000$. That was paid. Mr. Gallagher and the Gallagher Group paid $\$300,000$, not for the land, in fact, just for the opportunity to buy the land, just for the opportunity, they paid $\$300,000$ and that agreement was completed, they paid that money. They got the opportunity but they didn't take it because their condition went into liquidation, but the agreement was completed and the Revenue taxed that agreement as a completed agreement. So it was completed.

A. Yes.

Q. Which puts it which values the land at which would suggest to you that somebody was putting an even higher value on it?

A. Well, what Mr. Gallagher wanted to pay for the land, you know, is not a concern of Revenue. Revenue wouldn't you know, doesn't have any role in expressing a view to somebody that they maybe paid too much for the land, if, in fact, it was too much.

Q. Excuse me, Mr. Harrington, isn't that, in fact, the issue that arose in 1980-odd? Revenue were a creditor, it was as a creditor that the issue came to Revenue's notice in the first instance, isn't that right?

A. So I believe, yeah.

Q. So Revenue had a legitimate concern that too much money might have been paid for the land, isn't that right? As a creditor, haven't they a legitimate concern that this was not a proper land transaction, but something else altogether?

A. I have heard that from the evidence here, yes.

Q. Well, isn't that perhaps the precise focus of Revenue on this transaction when Mr. Pairceir first came across it and when he first discussed it with Mr. Crowley?

A. I have heard the evidence, yes, but

Q. Well, either those are the facts from the Revenue file or not? They seem to me to be the facts. You weren't aware of those facts, in fact, until this Tribunal?

A. No. I don't think they had any bearing on the issues that I was dealing with. Just to elaborate on that, the issues that I was dealing with were the question of the market value of the land, to deal with the Capital Gains Tax computation that I was dealing with. Now, Capital Gains Tax, or the market value for Capital Gains Tax is a matter of law and of precedent and I can

develop those points for you if you wish me to.

Q. But do I take it then that when Mr. Clayton brought you in, you were brought in and you were told, your narrow focus is Capital Gains Tax?

A. No. It wasn't expressed like that.

Q. I am not suggesting it was expressed like that, but your job was Capital Gains Tax. You had no role in forming any overview of this at all?

A. No. That was not an issue at the time.

Q. As far as you were concerned, it was solely Capital Gains Tax?

A. As far as I was concerned, it was to get in the returns of income that were outstanding and deal with any issues that arose from those returns.

Q. Without reference to some of the things that at least I have the impression Mr. Clayton said were operating in his mind. You were just doing a technical job. Get the returns in. Make sure everything is in order. Deal with the Capital Gains Tax. And tidy all this up.

A. Yes.

Q. There was no big overview?

A. There was no information or no suggestion that such a view or I think you might have referred to it previously as an investigation, was actually necessary by reference to the information that was available to Revenue at that particular time.

Q. So the impression that I might have or that the Tribunal might have that at some point somebody was taking an overview of this situation because of scandals or whatever, is wrong? Was pulling all the investigation information on this taxpayer together, that view would be wrong? Nobody was pulling all the information on this taxpayer together, you haven't anyway?

A. I wasn't asked to pull all the information together. But you know, you are talking about reviewing historic events is probably what you are talking about there. Now, every time Revenue opens a file, you cannot go back to the time that either this particular taxpayer start in business or began trading and review everything that has happened and see, you know, is there anything that I have now has any bearing on what happened before or did what happened before have, by any chance, some obscure bearing on what I am dealing with now? A tax system can't operate like that. You know, so that there was history in this case that had been disposed of and as far as I was concerned, Revenue were dealing with the next tranche of the case to get it up-to-date.

Q. Well, can you understand then why I would be slightly surprised that Revenue would go to the trouble of asking only this taxpayer, only this taxpayer, to make returns of PAYE income? You see, I still can't

understand, why this taxpayer was singled out?

A. He probably would have been the only, or the first such tax person that would have been asked to get returns in, but it would have happened in a lot of other cases since then.

Q. I am sure you can find the documents for us, but if so, I am sure you can find the documents for all the other taxpayers in 1992 and 1993 and 1994 who were asked to do this?

A. I think there would be issues of confidentiality for those particular taxpayers.

Q. Just the numbers will do.

A. I am sure I can get them, yes.

Q. And do you think that we are going to be looking at big numbers?

A. I can't really say.

Q. Do you think we'd be looking at every TD in the Dail or every member of the cabinet?

A. I don't particularly want to comment on any occupational group.

Q. But we know that one particular individual was singled out. We know that Mr. Haughey was singled out?

A. Yes.

Q. The impression I have is that he was the only person singled out and there had to be some reason for that and that's what the Tribunal is trying to find out.

What reason was there? And if there was a reason, why

wasn't it followed up? Can you understand that line of questioning?

A. But, at the end of the day, Mr. Healy, your problem is why, you know, every time something unusual happens about a taxpayer that we open an inquiry or every time we get a return, you know, you can't start an inquiry on a taxpayer without there being some basis for that. To do that would, in my view, be an abuse of function.

Q. Of course.

A. So there was no evidence at any stage, that I was involved with the file, I don't know whether anybody else had any evidence, but if they had they didn't tell me, but there was no evidence that I was aware of which would have justified an inquiry into Mr. Haughey based on any of the material that came to me prior to the publication of the reports that were referred to here earlier, Buchanan, McCracken, etc.

Q. I understand all of that and that seems to me to be perfectly reasonable. But can you now answer for me: Why was Mr. Haughey, a PAYE taxpayer, was, above every other of the hundreds of thousands of PAYE taxpayers, asked to make a PAYE tax return? An inconsequential bureaucratic requirement.

A. I am afraid I can't add anything to Mr. Clayton's evidence or what I said myself previously, Mr. Healy.

Q. Thank you very much, Mr. Harrington.

CHAIRMAN: Anything, Mr. Connolly?

MR. CONNOLLY: Nothing, Sir.

CHAIRMAN: Thank you very much, Mr. Harrington.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Rogers.

SEAMUS ROGERS, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Rogers, I think you are attached to
the Valuation Office, isn't that correct?

A. That's right.

Q. And I think you were asked to prepare a memorandum of
intended evidence for the assistance of the Tribunal in
relation to certain matters which were brought to your
attention by the Tribunal, isn't that correct?

A. Yes.

Q. And I think specifically, it relates to the question of
valuations carried out in relation to land at
Abbeville, Kinsealy in 1989, isn't that right?

A. That's correct.

Q. And I think you have informed the Tribunal that
information regarding the transaction between Mr. and
Mrs. Charles Haughey and the Gallagher Group in 1980,
was not available to the Valuation Office when 207
acres was valued in 1989, isn't that correct?

A. That is correct, yes.

Q. You have established that Mr. Seamus Doody, who carried out the valuation, was unaware of the earlier contract?

A. I did, yes.

Q. Or any dealings, in fact, in relation to it?

A. Yes indeed.

Q. Neither was there any record of the transaction in the Valuation Office database?

A. No, no.

Q. Now, I think you have informed the Tribunal that it would be standard practice when a valuer is aware of a recent transaction pertaining to part or all of the property that he is valuing that he would ascertain the details of that transaction, is that correct?

A. He would, yes.

Q. Accordingly, if Mr. Doody had been aware of the 1980 contract, irrespective of who drafted it, he would have sought details of contract and clarified its status at the valuation date, this is March of 1989?

A. That's right.

Q. The objective would be to establish what the unencumbered open value of the property was at the date of the contract the open market value of the property was at the date of the contract and the effect, if any, it had on the interest in the property being transferred on the 15th March 1989?

A. That's right.

Q. You say that having said that, there would be question marks about the relevance of the 1980 contract on the valued property in 1989 and these are:

1. It appears that the contract was never completed and therefore does not constitute reliable market evidence.

A. Correct.

Q. 2. The 1980 contract referred to 35 acres, whereas the 1989 transfer related to about 207 acres, is that correct?

A. That's correct.

Q. 3. Nine years had elapsed since 1989. The most reliable evidence on value would be open market advance actions of comparable property in the vicinity of subject's lands in or about March of 1989.

A. That's right.

Q. When you talk about recent transactions being of interest to the value office, what's recent? What time span are we talking about there?

A. Oh, within weeks or months of it.

Q. Within weeks or months of it?

A. Yes.

Q. And is that normally because land values over the years change significantly?

A. Well, they change somewhat, but you need to find comparable sales to use as comparisons. They might not be there just when you want them.

Q. Yes. And what was the general experience of the value of land and properties perhaps I'll approach it this way: I think a map was used for the purpose by the Valuation Office in 1989, for the purpose of arriving at its value of the land, isn't that correct?

A. To identify the lands and its boundaries and acreage.

Q. And Mr. Doody carried out an exercise, made a note and signed it off, isn't that correct?

A. That's correct.

Q. And I think you have a copy of Mr. Doody's I am going to give you the whole map. I'll give you the whole map for the moment. (Map handed to witness.)

That's the whole map of Abbeyville, isn't it?

A. Yes, it is, yes.

Q. And do you have Mr. Doody's note in front of you, of how he arrived at his workings on this and the valuation he arrived at?

A. Well, I have a summary of what he said. Is that what you have?

A. Yes.

Q. It's the valuations, do you have that?

A. I have that, yes.

Q. Now, could you just read out, if you can, what Mr. Doody states in his note?

A. What he said is: "See sales of land nearby. The sales prices anticipate the granting of planning permission for some houses on the land which may not be

granted. It is speculative purchasing." Then he says: "Allowing for development on ten acres in the medium to short term at say $\frac{1}{2}$ 30,000 an acre, that would be $\frac{1}{2}$ 300,000, the balance of 197 acres at agricultural prices of $\frac{1}{2}$ 4,500 per acre comes to, I think, $\frac{1}{2}$ 886,500. Total $\frac{1}{2}$ 1,186,500, sale 1.2 million.

Q. Now, he valued 207 acres in total?

A. He valued 207 acres. I am aware there is different acreages being spoken about.

Q. It's 207 acres?

A. But he certainly valued 207 acres. The total estate was 235 acres and he deducted 28 for the house and the curtainage so he considered that he was valuing 207 acres and that's what he valued.

Q. Now, from his notes and from the map which you have, the land which Mr. Doody identified as having potential value for development purposes and he valued at a higher obviously of around $\frac{1}{2}$ 30,000 an acre, is, if I might describe it, at the lower right-hand corner of the map, isn't that right?

A. Well, it probably is, but I have been unable to identify precisely where this 10 acres is and I don't think Mr. Doody did that either.

Q. Well, I am going to ask you now, Mr. Rogers, the reason his notes indicate where he is identifying a 10 acre area as having potential for development is that it is referable to adjacent services, isn't that

correct?

A. That's correct, yes.

Q. And on the map, the area which is adjacent to services is that area of the map which is now up on the monitor, showing sewerage, water mains and other services, isn't that right?

A. That's right, yes.

Q. And that is the area of the land which is adjacent to the church at Kinsealy on the map.

A. Yes, yeah.

Q. Now, the exercise engaged in by Mr. Doody in respect sorry, we'll take the map from you the exercise engaged in by Mr. Doody in identifying the 10 acres which has development potential, if I could describe it that way in the medium to short term is how he describes it, he places a value of $\text{€}30,000$ an acre on it, isn't that correct?

A. That's correct.

Q. And arrives at a value for that 10 acres of $\text{€}300,000$ or thereabouts?

A. That's correct.

Q. The balance then, he puts a value of $\text{€}4,500$ an acre being agricultural value.

A. Correct.

Q. And he arrives at a value of, is it 886,500 in respect of that?

A. That's correct, yes.

Q. I am going to show you the big map again because I am going to bring another area of the land to your attention. I am now going to give the map back to you and I am going to identify this portion in the top right-hand corner outlined in red. Do you see that area there? I'll bring I'll have it brought over to you now in one moment. Do you see that area there?

A. Yes. (Map handed to witness.)

Q. Do you see that area there?

A. Yeah.

Q. Now, that area is the area away from the services as identified by Mr. Doody when he was doing his exercise on valuation, isn't that correct?

A. That's right.

Q. And the value he is putting on that area, which is included, of course, in a bigger area for the purpose of his valuation, is it 1/4,500 an acre or agricultural value?

A. Agricultural, yeah. The whole estate was zoned agricultural.

Q. Yes. But the other area identified as having a short or medium term development potential, that's how he arrived at the valuation?

A. He said it had potential if planning permission was granted.

Q. But that's how he arrived at the valuation?

A. Oh yes.

Q. That's all I am asking, how he arrived at the valuation.

Now, that latter area, which I have just asked you to deal with and confirm that it was an area where Mr. Doody had applied a value of $\text{€}4,500$ being agricultural value, was the area which was identified on the map forming part of the agreement between the Gallagher Group and Mr. and Mrs. Haughey back in 1980, and I think you have a copy and I just ask you

A. I wasn't aware of that until

Q. I am just asking you - that's what this map has been handed to you - but it is the same area that you have just dealt with as Mr. Doody applied a value of agricultural price, $\text{€}4,500$ in 1989, isn't that correct, on the map?

A. Yes.

Q. Thanks very much, Mr. Rogers.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Rogers, just one or two questions on behalf of the Revenue Commission. The exercise you have been asked to engage in, in effect, a reconstruction of events looking back at a time when Mr. Doody was originally looking at this file, is that correct?

A. It's a hypothetical question as to what the valuer

would have done if he had known I suppose it's a reconstruction.

Q. Well, you are applying some expert look back on events.

I think you fairly said that there would be limited value in looking at a transaction which was not completed and which was of some nine years vintage?

A. That's right, yes.

Q. Normally what the Valuation Office would be concerned with, as you have said already, is to have an up-to-date valuation of similar lands

A. Comparable.

Q. And in your dealings with auctioneers and as a valuation officer and your experience of going before the property arbitrator, have you ever come across currency being given to an uncompleted contract for some nine years earlier either in your negotiations or in terms of before the property arbitrator?

A. I have never been before the property arbitrator or conducted a case, a negotiation on a valuation, but it would be my experience that I would think, from talking to my valuers, if you went before the arbitrator with old comparisons, you know, several years out of date, you wouldn't succeed very well.

Q. Well, that's the first factor. The fact that it was nine years vintage would mean that you would pay little regard to a transaction when appearing before the property arbitrator?

A. That's correct, yeah.

Q. And the second factor is it was an uncompleted contract. That would suggest that it wasn't part of the going rate in the open market between a willing purchaser and a willing vendor, wouldn't it?

A. It would, yes.

Q. So in those two grounds, would be something that would not be taken into account in all probability by, say, the property arbitrator or in discussions would take place at your end with auctioneers?

A. I wouldn't think it would be very helpful to your case.

Q. Do I take it from what you are saying that you never heard of anything of that nature being taken into account either in negotiations or in presentations?

A. I certainly can't say that it never happened, but I have never heard of it.

Q. There would also be some constraint on discussing private transactions of this kind with other parties, wouldn't there?

A. I am sorry?

Q. If you became aware of a private and confidential transaction of this kind, you might not be able to use it as a benchmark in discussions with other auctioneers or before the property arbitrator because it had never gone into the open market value as a published auction price?

A. It had never been tested by the market, yeah, yes.

Q. Thank you very much, Mr. Rogers.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. Mr. Rogers, just arising if I may. Do you know, and it may not be something that you can say anything about now, do you know if the Revenue ever referred the Gallagher contract to the Valuation Office for its consideration?

A. I am certain it didn't.

Q. You are certain it didn't?

A. Yes.

Q. And based on the valuation or the exercise as carried out by Mr. Doody in 1989 and the area of land, he put a value of $\frac{1}{2}$ 4,500 an acre on it, does it seem to you an extraordinary price back in 1980 that $\frac{1}{2}$ 35,000 an acre should have been suggested for that area?

A. It had no services, it was zoned agricultural. It would be very, very high, in my view.

Q. Extraordinary?

A. Extraordinarily high. Maybe 6 to 10,000 would be more like it.

Q. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the available witnesses today, Sir. Because of the bank holiday intervening, Sir, and as the Tribunal staff are always available

late at night and over weekends, but bearing in mind

that this is St. Patrick's bank holiday weekend

CHAIRMAN: I think there are meeting in any event with

regard to

MR. COUGHLAN: We will be conducting meetings

CHAIRMAN: On Tuesday, so I would be inclined to prefer

to starting at half ten on Wednesday.

THE TRIBUNAL THEN ADJOURNED UNTIL WEDNESDAY, 21ST MARCH

2001 AT 10.30AM.