

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 21ST

MARCH 2001 AT 10.30AM:

MR. HEALY: As I think I mentioned last week, a lot of

the material the Tribunal is dealing with is live

material or concerns live issues or live controversies,

between, in this case, Mr. Lowry; and, in the last

case, Mr. Haughey and the Revenue Commissioners.

While the Tribunal is going to look into all of these

matters, and notwithstanding that there may be time

pressures, they are going to be ventilated at a public

sitting. Obviously the more time the parties have to

deal with these matters without, perhaps, intervention

by the Tribunal, the better. So it was to ensure that

the sittings could be efficiently conducted, without

precluding the Revenue and Mr. Lowry from dealing with

their affairs, that these last minute difficulties

arose.

In today's sittings, and perhaps going into tomorrow,

the Tribunal will be dealing with Mr. Lowry's

relationship with the Revenue Commissioners. That

relationship involves dealings with a number of

different sections of the Revenue, and the Tribunal

will be focusing in the main on his dealings with the

Revenue Commissioners through the Investigation Branch.

Reference will also be made to his long-term

relationship with the Revenue Commissioners through his

dealings with his District Inspector, and also, a certain amount of time will be devoted to the dealings he had with the Revenue Commissioners in connection with Residential Property Tax.

As I said, the main relationship Mr. Lowry now has with the Revenue Commissioners is being handled by the Investigation Branch. This is not, in fact, as a result of the work of this Tribunal, the McCracken Tribunal or the report prepared by Judge Buchanan and, in fact, I think, as I mentioned last week, the Revenue Commissioners' recent dealings with Mr. Lowry or their recent relationship with Mr. Lowry since in or about 1996, and in particular his relationship with the Investigation Branch, predated the work of this Tribunal, of the McCracken Tribunal and the work of the inquiry carried out by Judge Buchanan. And, in fact, it would appear that the Revenue inquiry was prompted by the selfsame revelations which ultimately led to the setting up of those three inquiries.

It seems that in November of 1996, the Revenue Commissioners received, from an informant, certain information concerning Mr. Lowry's financial affairs. This information was apparently based on an extract from, or the contents of, an extract from the Price Waterhouse Report which had been prepared for the Dunnes Stores Group in connection with disputes between

members of the Dunne Family and, in particular, between Mr. Bernard Dunne on the one part, and other members of his family on the other part, in the early 1990s.

The information concerning the contents of the Price Waterhouse Report was brought to the notice of the Revenue Commissioners at or around the same time that newspaper articles were appearing concerning Mr. Lowry's relationship with Mr. Bernard Dunne. On foot of the details of the contents of the Price Waterhouse Report provided by an informant to the Revenue Commissioners, the Commissioners subsequently sought and obtained a copy of, or, at least, a significant section of a copy of the Price Waterhouse Report.

The Revenue Commissioners' initial dealings, therefore, with Mr. Lowry, stemmed from those revelations and from subsequent statements Mr. Lowry made in the Dail. Of course, while the original Investigation Branch involvement in Mr. Lowry's case (and in the associated cases of Garuda his company) was prompted by those revelations, they have, since that time, since 1996, been conducted against the backdrop of Judge Buchanan's inquiry, the McCracken Report and the evidence to date at this Tribunal.

Shortly after the Revenue became aware, as did other members of the public, of the newspaper revelations

concerning Mr. Lowry's relationship with Mr. Bernard Dunne, his then tax agents contacted the Revenue Commissioners with a view to bringing to the Revenue Commissioners' notice certain omissions from or errors in the returns of income that had been made on behalf of Mr. Lowry in previous years. When I say "returns of income," I include all of his tax affairs and the related tax affairs of Garuda; in other words, tax under various headings, not just Income Tax but including, also, Capital Acquisitions Tax, Residential Property Tax, Value Added Tax, Corporation Tax, and so forth.

From a very early stage, the approach of the Revenue Commissioners to dealing with Mr. Lowry's affairs involved a consideration of three important issues: The first of these was to ascertain what tax apparently due by Mr. Lowry had not been paid in the light of information which became available from the Price Waterhouse Report, from the inquiry conducted by Judge Buchanan and other inquiries, and from information made available by Mr. Lowry himself through his tax agents and by way of his statement to the Dail. That was the first issue - assessing the amount of tax due.

Next, the Revenue had to decide whether, in approaching Mr. Lowry's relationship with them, he ought to be dealt with on the basis that he had made a voluntary

disclosure. This issue arose because the letter or communication from his tax agents informing the Revenue Commissioners of errors and omissions in returns did not come to the Revenue's attention until after there had been certain disclosures in the press.

The next issue was whether Mr. Lowry had exposed himself to the risk of criminal prosecution; whether, in other words, there was a question of criminal culpability in relation to his tax affairs.

These three issues have complicated the relationship between Mr. Lowry and the Revenue Commissioners.

Firstly, the relationship is complicated by the fact that there are differences between Mr. Lowry and his tax agents on the one part, and the Revenue Commissioners on the other part, as to how much is actually due. In other words, there are differences between them as to the resolution of the first issue - how much tax is due. Mr. Lowry has indicated that the total amount of undeclared income is in the order of in or about  $\text{€}500,000$  and that includes the cost of works carried out on his house at Glenreigh, Holycross, County Tipperary. The Revenue Commissioners take the view that the amount of undeclared income is greater than that and may be up to  $\text{€}700,000$ , but there are genuine differences of opinion

to be resolved between them. I should say that Mr. Lowry has, in fact, paid, on account, a substantial amount of tax, in excess of  $\frac{1}{2}$ 300,000.

Apart from the fact that in dealing with the Revenue Commissioners, Mr. Lowry's tax agents would wish to treat any information they provide to the Revenue Commissioners as constituting a voluntary disclosure; in other words, they would wish to deal with the tax issues on the basis that they would ultimately lead to a settlement, a simple contractual or commercial settlement, perhaps similar to the kind we have heard discussed in evidence here in connection with Mr. Haughey. Because the Revenue Commissioners took the view that there could be a question of criminal culpability that relationship has been complicated, as I stated, and that is because, in dealing with an individual after an issue has arisen as to criminal culpability, the hands, both of the Revenue Commissioners and of the taxpayer's advisers, could be tied. Again, we had references to that in the case of Mr. Haughey's relationship with the Revenue Commissioners in the evidence that was given last week.

In Mr. Lowry's case, things went even further and it would appear that, at one point, the Revenue Commissioners took the view that they should formally deal with Mr. Lowry's affairs on the basis that a

criminal investigation was in being. Having taken that step, the Revenue Commissioners, in fact, went so far as to caution Mr. Lowry. A caution of this kind is something that is given so as to warn a taxpayer that admissions he might make or that might be made on his behalf could, in certain circumstances, be used against him in a prosecution if, at the end of the day, the Director of Public Prosecutions decided so to prosecute. That issue, the issue of criminal culpability, is a live one. As I said, the issue of voluntary disclosure is a live one, and the issue of the quantum of tax is a live issue. None of those issues has yet been resolved and are in the course of being resolved.

Mr. Lowry's historical relationship with the Revenue Commissioners involved mainly his local district office at Thurles, and the Tribunal will hear evidence from Mr. John Hussey, Senior Inspector of Taxes and District Manager of the Thurles tax office, in relation to his dealings with the Revenue Commissioners over a number of years. During the years which are the primary focus of the Tribunal's inquiries, that is from 1987 to 1996, the Thurles branch was responsible for Mr. Lowry's tax affairs, although responsibility moved to the Inspector of Taxes, Public Departments on a number of occasions. As I think was mentioned in evidence at the Tribunal on earlier occasions, this

latter department is responsible for the PAYE taxation affairs of the members of the Oireachtas.

During those later years, Mr. Lowry's personal tax principally arose under Schedule E as a PAYE employee of Butlers Refrigeration, and subsequently of Garuda and as a member of the Oireachtas. In later years, Mr. Lowry was also liable for tax on rental income generated from certain investment properties.

Prior to 1991, it appears that Mr. Lowry, in common with the vast bulk of PAYE taxpayers, had not engaged the services of a tax agent and had omitted to make returns for a number of years; that is to say, had omitted to make returns of income during the period when he was a PAYE taxpayer. In August of 1991, Messrs. Oliver Freaney & Company, Chartered Accountants, telephoned the Inspector of Taxes, Public Departments to say that they were acting for Mr. Lowry. Under cover of a letter of the 23rd April, 1992, Messrs. Oliver Freaney & Company furnished returns of income for the years 1987/'88, 1988/'89, 1989/'90, and 1990 itself. As has already been mentioned on a number of occasions in the course of recent sittings, there is nothing unusual about a PAYE taxpayer making late returns, or, indeed, as appears from evidence from a number of officials of the Revenue Commissioners, failing to make any returns at all.



The Tribunal has been informed that no action was taken by the Revenue Commissioners to prompt the making of the outstanding returns in April of 1992 and that no request was issued either to Mr. Lowry or to his tax agents asking that these returns be submitted. The returns of income filed in April of 1992 disclosed income within the scope of the PAYE code from Mr. Lowry's private occupation, initially as an employee of Butlers and subsequently as an employee and director of Garuda Limited and from his state emoluments as a member of the Oireachtas. Following their receipt, the returns for each of the four years were reviewed and, as a result of that review, it was found that Mr. Lowry was entitled to a tax refund, and a net refund of  $\text{€}1,2850.27$  was issued to him in July of 1992.

On the 28th January, 1993, Messrs. Oliver Freaney & Company submitted Mr. Lowry's returns of income for the years 1990/'91 and for 1991/1992. Those returns disclosed the same sources of income and, following their review, appropriate tax refunds were issued.

The Thurles district took the case over for the year 1992/'93, and while the return of income was submitted to the Inspector, Dublin PAYE Number 2 District (a new District which included the former Public Departments) they were processed by the Thurles branch. Following

the Finance Act of 1992, Mr. Lowry, as a director of Garuda Limited, became a chargeable person for the purposes of self-assessment with effect from 1992/1993 tax year. The Tribunal has been informed that, in accordance with standard Revenue procedure, the returns for that year and the subsequent years were processed on a non-judgmental basis, meaning that the returns were accepted on their face but could be selected for audit at a later stage.

The returns for '91/'92 and '92/'93 disclosed Mr. Lowry had purchased certain properties. The manner in which those properties were financed was disclosed in correspondence from Mr. Lowry's tax agents, and in each case the Revenue Commissioners were informed that the properties had been financed by building society or bank loans.

Mr. Lowry became a government minister at the end of 1994 and the responsibility for his tax affairs passed to the Dublin PAYE Number 2 District. The return for the year '93/ '94 was received at the end of January '95 with an assessment issuing in February of that year. The return of income for the year '95/'96 was received on 4th September, 2000.

In addition to Mr. Lowry's PAYE income, the returns for each of the years '93/'94 to '95/'96 disclosed rental

income from an apartment property which had been acquired in October 1991, and also from 35 acres of land attached to Glenreigh which had been purchased by Mr. Lowry in May of 1992.

When information on the Dunnes Stores payments to Mr. Lowry became a matter of public controversy, then, as I already mentioned, his tax affairs from in or around December 1996 were taken over by the Inspector of Taxes Investigation Branch.

The Tribunal will also hear evidence from Mr. Hussey in relation to the taxation affairs of Garuda Limited, trading as Streamline Enterprises. This was the company beneficially owned by Mr. Lowry and its business was the provision of refrigeration services.

It featured in the Report of the McCracken Tribunal as the recipient of certain payments from Dunnes Stores.

It appears that the accounts and returns of Garuda were also prepared by Messrs. Oliver Freaney, Chartered Accountants, who were Mr. Lowry's own tax agents, and the filing of the accounts with the Revenue

Commissioners was accompanied by standard audit certification issued by Oliver Freaney. Returns for Corporation Tax, Value Added Tax, PAYE and PRSI in respect of the company's employees were filed fairly promptly and taxes were also paid regularly, though not always precisely on time.

Mr. Hussey has informed the Tribunal that he screened most of the company accounts that were filed with the Revenue Commissioners. Based on the information which was then available to him, he had no reason to doubt that the accounts, which were supplied with an auditor's certificate, showed the correct turnover earned by the company. Mr. Hussey was also aware, on the basis of local knowledge, that Garuda's business was exclusively with Dunnes Stores. As the company appeared to have a single customer, it would have been a relatively straightforward exercise for the company's auditors to crosscheck the figures with Dunnes Stores, and accordingly, for taxation purposes, the company was regarded as low risk.

As of December 1996, Garuda had been short-listed for a comprehensive PAYE/PRSI audit. With regard to PAYE/PRSI remitted to the Revenue Commissioners by Garuda as an employer, an annual reconciliation was carried out between the figures for wages shown in the company's accounts and the wages shown on the P 35 annual return of employee's pay and tax. The company had also been the subject of a number of VAT audits and examinations. It would appear that on each occasion that such a VAT audit or examination was carried out, a VAT refund was claimed and there was a full review of the basis upon which the refund claim had been made.

As in the case of Mr. Lowry's own personal taxation affairs, once the controversy surrounding the payments by Dunnes Stores entered the public domain, all of the records relating to the taxation affairs of Garuda Limited, as with those of Mr. Lowry, were forwarded to the Investigation Branch.

The Tribunal will hear evidence from Mr. Fergus Carroll, an Assistant Principal Officer in the Capital Taxes Division in relation to Residential Property Tax on Mr. Lowry's residential property. As we heard on previous occasions, Residential Property Tax was collected on a self-assessment basis. The self-assessment market value of the Holycross property owned by Mr. Lowry and in which he resided was shown on the self-assessment returns as follows:

For 1993, it was shown as having a market value of  $\text{€}115,000$ .

For 1994, it was shown as having a market value again for  $\text{€}115,000$ .

The same for 1995.

And in 1996, it was shown as having a market value of  $\text{€}125,000$ .

In support of that valuation of  $\text{€}115,000$ , the return stated that the property had been purchased for

€155,000 in 1993, but of course, it included 35 acres of land and an adjustment was being made, and indeed as is usually made, to distinguish between the agricultural land and the residential property itself.

The Revenue Commissioners have indicated that given the purchase price of the property, the location and the size of the property, and the fact that the self-assessment returns gave no indication of what the Revenue Commissioners now know, and the public knows through various reports, were significant improvements and refurbishments actually carried out, there was no basis for suspecting a substantial under-valuation or under-payment of tax. Following the revelations in the press and subsequently in the evidence at the McCracken Tribunal, and following the launching of a full investigation into Mr. Lowry's tax affairs, the valuations of these properties and the self-assessment valuation or the self-assessment returns were revisited. As a result of the review of those valuations, revised valuations were submitted by Mr. Lowry as follows:

For 1993, a revised valuation of €90,000, which was, in fact, of course, less than what had originally been submitted.

For 1994, a revised valuation of €220,000, which was a

substantial uplift.

For 1995, a revised valuation of  $\$240,000$ .

And for 1996, a revised valuation of  $\$275,000$ .

Those revised valuations were agreed and, as a result of that revision of the valuations accepted by the Revenue Commissioners, the net additional Residential Property Tax and interest due was calculated at  $\$4,831$ ; that's  $\$4,831$ , was the net additional tax and interest due by Mr. Lowry. And that was, in fact, included in the in excess of  $\$300,000$  which Mr. Lowry has already paid on account.

MR. COUGHLAN: Mr. John Hussey, please.

JOHN HUSSEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Hussey, I think you prepared a memorandum of proposed evidence for the assistance of the Tribunal, isn't that correct?

A. That is correct.

Q. And do you have that with you?

A. I have indeed.

Q. And what I intend doing, it's fairly lengthy, is taking you through it and then perhaps coming back to one or two matters to seek clarification, if necessary.

A. Okay.

Q. I think you informed the Tribunal that you are a Senior Inspector of Taxes and the District Manager of the Thurles Tax Office, and you give the address in Thurles, County Tipperary?

A. That is correct.

Q. And I think you have informed the Tribunal that the document that you prepared is broken down into three parts: Part 1 you describe as being an introduction and background; part 2, Michael Lowry and Garuda Limited; part 3, general outline of the responsibilities of Thurles Tax Office with particular emphasis on the compliance and audit operations, isn't that correct?

A. That is correct.

Q. I think you informed the Tribunal in part 1 that you are the Senior Inspector of Taxes in the employment of Revenue Commissioners and you have been the District Manager of the Thurles Tax Office since July of 1975.

A. That is correct.

Q. I think you say that you were appointed Inspector of Taxes in accordance with Section 85 (2) of the Taxes Consolidation Act, 1997, and that you have held this appointment since 1974, is that correct?

A. Yes, that is correct.

Q. I think you say that you are an Authorised Officer of the Revenue Commissioners in respect of the exercise of powers under a number of different sections in the



various tax acts, and then you set out the various sections. I don't think we need to go into them in any great detail.

And I think that you have informed the Tribunal that the powers that you held and hold are also powers held by a number of other officers in the Thurles office who work under your general direction?

A. That is correct.

Q. I think you say that in your capacity as manager, you are responsible for the administration of the following taxes in the Thurles Tax District, which covers only part of the County of Tipperary; the remainder of the county is covered by the Limerick and Waterford offices, is that correct?

A. That's correct.

Q. under the heading "Income Tax", 9,000 self-employed persons and 16,000 PAYE employees. Is that correct?

A. That is correct.

Q. Under "Corporation Tax" you have 650 cases to deal with?

A. Approximately.

Q. Roughly. Under "Capital Gains Tax" you would have a varying number of cases, depending on what activity was taking place?

A. That is true.

Q. Under "Value Added Tax" you would have responsibility for about 3,300 cases, approximately?

A. Correct.

Q. And on the PAYE/PRSI, 2,700 employers approximately, is that correct?

A. That is correct.

Q. And then relevant to Contracts Tax, principal contractors, 470 approximately; and subcontractors, approximately 830.

A. Yes.

Q. I think you say that the number of staff, including staff as cleaners at your office, total 71, and a number of these work share work. Of the 71, 14 are inspectors, the rest are other grades, as you say, down to cleaning grade.

A. Yeah.

Q. I think you have informed the Tribunal that in dealing with customers, the work of the office is broken down into three main functional areas: Customer service, compliance and audit, is that correct?

A. That is correct.

Q. And I think you go on to deal with those at a later stage in your statement.

A. Yes indeed.

Q. Now, I think turning to part 2 of your memorandum dealing with Mr. Lowry. I think you have informed the Tribunal that the earliest document on file on Michael Lowry goes back to 1981/'82, is that correct?

A. That is correct.

Q. Up to 1986/'87, he was an employee of Butler

Refrigeration limited, is that correct?

A. That is correct.

Q. And in February 1987, he was elected to Dail Eireann and he has remained a member of the Dail ever since, is that correct?

A. That is correct.

Q. I think on the 31st December, 1987, he ceased as an employee of Butler Refrigeration, and on the 11th August, 1988, Garuda Limited was set up.

Now, I think you have prepared a table, isn't that correct, which details the income and the net tax payable paid for each of the years 1986/'87 to 1995/'96 inclusive?

A. That is correct.

Q. And if we just put the table up. And it's very helpful to have prepared it in this form. And it shows that for 1986/'87, there were wages from Butlers of  $\text{€}16,500$ . There was TD/Minister that was TD at the time

A. Yeah.

Q. of  $\text{€}2,113$ , is that correct?

A. That is correct.

Q. there was a total income of  $\text{€}18,613$ . There was mortgage relief and the tax payable was  $\text{€}3,709.09$ .

A. That is correct.

Q. For the year 1987/'88 of course the reason why the small figure there relates to TD is it was only for a portion of that year, of course.

A. That is correct.

Q. Now, in 1987/'88, there were wages from Butlers of i£½12,375, i£½18,184 as a TD, making a total income of i£½30,500, approximately. And then there was the mortgage relief and there was tax payable paid of i£½6,988.48.

A. That is correct.

Q. 1988/'89, Garuda had now been established, of course. And there were directors' fees of i£½769, Dail salary of i£½20,729, making a total income of i£½21,498; mortgage relief of i£½993 and the tax was i£½2,823.30, is that correct?

A. That's correct.

Q. In 1989/'90, there were directors' payments of i£½10,192 from Garuda, i£½23,057 as a Dail salary. There was a benefit-in-kind brought in there, i£½780. There was a total income of i£½34,000.29, the mortgage relief. There was a small business expenses scheme relief and there was a tax of i£½7,048.77.

A. Yes, that is correct.

Q. Now, 1990/'91, there were directors' payments of i£½33,370 from Garuda. i£½25,714 as a deputy. Again, a small benefit-in-kind, i£½780; total income of i£½59,864. Mortgage relief, just i£½1,000. There was BES relief of

€10,000 and there was tax of €10,175.25?

A. That is correct.

Q. 1991/'92, there were directors' payments of €10,040. €27,240 as a deputy. €293 benefit-in-kind. There was a minus in respect of rent and investment income?

A. That's a loss.

Q. It's a loss. A total income, then, of €37,578, small mortgage relief of €914 and then tax of €8,590.27?

A. That's correct.

Q. In '92/'93 there were directors' payments of €40,000 from Garuda. €26,290 as a deputy. €2,163 benefit-in-kind. A loss in respect of investment, or whatever it was. A total income of €66,839.

Mortgage interest of €10,288. That must have involved a commercial

A. No, that was the interest claimed on Glenreigh.

Q. On Glenreigh. And then there was net tax payable of €25,371, isn't that correct?

A. That is correct.

Q. Then '93/'94, there were directors' payments of €42,298. €29,699 from the Dail. Benefit-in-kind, €4,080. Investment income of €1,878. Total income, €77,955. Mortgage interest, €13,826. And net tax payable of €28,330.74.

'94/'95, there is €36,747, which includes, I think,

€5,000 director's salary paid to Mrs. Lowry, isn't that correct?

A. That's correct.

Q. Dail minister then,  $\text{€}39,766$ . Benefit-in-kind,  $\text{€}4,100$ .

Investment income of  $\text{€}1,096$ . Total income,  $\text{€}81,709$ .

Mortgage interest,  $\text{€}9,631$ . And there was tax payable

of  $\text{€}31,083.84$ , is that correct?

A. That's correct.

Q. Then in '95/ '96, there is  $\text{€}23,129$  directors' payment,

but that, in fact, was a salary paid to Mrs. Lowry,

isn't that correct, from Garuda?

A. Yes.

Q. TD/Minister,  $\text{€}66,679$ . Benefit-in-kind,  $\text{€}2,880$ . Rent

and investment,  $\text{€}20,043$ . Total income,  $\text{€}112,731$ .

Mortgage interest,  $\text{€}9,616$ , and net tax payable

$\text{€}40,402.59$ . Isn't that correct?

A. That is correct.

Q. Now, I think that responsibility for Mr. Lowry's tax

affairs changed between Thurles and the Inspector of

Taxes Public Departments. That is the district which

dealt with PAYE tax affairs of members of the

Oireachtas on a number of occasions between 1987 and

1996, is that correct?

A. That is correct.

Q. Public Departments ceased to exist in 1992/1993, and

PAYE number 2 district now looks after the tax affairs

of public representatives, is that correct?

A. That is correct.

Q. When Mr. Lowry became a TD, Public Departments took

over the case, is that right?

A. That is correct.

Q. Thurles District took over the case from 1992/1993?

A. Yes.

Q. The reason for this was that Mr. Lowry had acquired a farm of land; and also, under the 1992 Finance Act, he had, as a director, become a chargeable person, isn't that correct?

A. That is correct.

Q. Mr. Lowry became a government minister in December 1994, and immediately, PAYE number 2 district took over responsibility for his tax affairs?

A. That is true.

Q. Now, I think prior to 1991, Mr. Lowry did not have an agent acting for him, is that correct?

A. That is correct.

Q. In August 1991, Messrs. Oliver Freaney & Company telephoned the Inspector of Taxes Public Department to say that they were acting for Mr. Lowry, is that correct?

A. Yeah.

Q. The agents, with their covering letter dated 23rd April, 1992, sent in returns of income for the years 1987/'88, 1988/'89, 1989/'90 and 1990.

A. That is true.

Q. No return was supplied for 1986/1987, is that correct?

Reviews were carried out for the four years. The

result was that in July 1992, Mr. Lowry got a net refund of  $\text{€}850.27$ ?

A. Yes.

Q. Now, I think on the 28th January, 1993, Messrs. Oliver Freaney & Company submitted the returns for 1990/'91 and 1991/'92, is that correct?

A. That is correct.

Q. On the 21st March, 1994, as part of a conversation with the Inspector, Dublin PAYE Number 2 District that was the new district which took over from the Public Department

A. Yes.

Q. Messrs. Oliver Freaney indicated that their client had availed of the 1993 Amnesty and that there was no need to review 1990/'91 or any earlier years, is that correct?

A. That is correct.

Q. The appropriate certificate under the amnesty legislation was sought, and later on the same day, the agents phoned to say the amnesty submission did not relate to the years 1989/'90 and 1990/'91 and that those years could be reviewed, is that correct?

A. That is correct.

Q. The year 1990/'91 was then reviewed and showed an over-payment of  $\text{€}5,863.39$ , which arose primarily from an allowance for an investment of  $\text{€}10,000$  in a BES scheme. Is that correct?



A. That is correct.

Q. And for 1991/1992, there was an over-payment of  
€12893.47?

A. That is correct.

Q. Now, I think Thurles District took over the case for  
the year 1992/1993 and the return of income for the  
year 1992/1993 was submitted to the Inspector, Dublin  
PAYE Number 2 District, but was processed by Thurles  
District. The Notice of Assessment issued for  
1992/1993 was on the 15th April, 1994, is that correct?

A. That is correct.

Q. Now, I think Mr. Lowry became a government minister at  
the end of 1994, is that correct?

A. Yes.

Q. The Inspector of Taxes Dublin PAYE Number 2 District  
immediately resumed responsibility for the case and all  
papers held in Thurles were passed over, is that  
correct?

A. That's correct.

Q. That's the full file?

A. Yes.

Q. The return for the year 1993/1994 was received in  
Thurles at the end of January 1995 and it was  
immediately transferred to the Dublin district.

A. (Nods).

Q. And an assessment issued on the 22nd February, 1995.  
The Inspector, Dublin PAYE number 2 district, received

the return for the year 1994/1995 at the end of January 1996, a Notice of Assessment issued on the 21st February, 1996. The return of income for the year 1995/1996 was received on the 4th September, 2000.

A. That's correct.

Q. Just to clarify there, other matters had intervened, of course, and it wasn't a question of, in the normal course of events, the returns not being submitted, isn't that correct?

A. That's correct.

Q. Now, I think you have informed the Tribunal that in accordance with normal standard review procedures which you will mention in Part 3, the returns for the year of 1992/1993 and 1995/1996 were processed on a non-judgmental basis. By that it is meant that the returns were processed as they stood but could be selected for audit at a later stage?

A. That's correct.

Q. Now, I think you have informed the Tribunal that for the year 1986/1987 to 1991/1992, Mr. Lowry's remuneration, be it his wages from Butlers, his director's remuneration from Garuda or his Oireachtas income, was within the scope of PAYE and he was treated in the same way as other PAYE taxpayers. You said that following the Finance Act 1992, he became a chargeable person for the purpose of self-assessment with effect from 1992/1993, and he remained a

chargeable person for the years 1992/1993 to 1995/1996, inclusive?

A. That is correct.

Q. Now, I think the return of income 1991/1992 and the agents' covering letter dated 28th January, 1993, showed that Mr. Lowry had, on the 9th October 1991, agreed to purchase an apartment, isn't that correct?

A. That is correct.

Q. And the price was indicated, isn't that right?

A. Yes.

Q. I think it was financed initially by an Allied Irish Bank, Thurles, bridging loan for  $\text{€}1/240,000$ , but that was later converted to an AIB home loan of  $\text{€}1/240,000$ , isn't that correct?

A. That is correct.

Q. And on the information supplied, the apartment had been let, isn't that correct?

A. That is correct.

Q. Now, I think Messrs. Oliver Freaney & Company, by letter dated 28th February, 1994, with the 1992/1993 returns of income, stated, "Our client purchased the property known as Glenreigh, Holycross, County Tipperary, which included 35 acres of land, on the 1st May, 1992, for  $\text{€}1/2155,000$ . The purchase was financed by a mortgage with the Irish Permanent Building Society.

Our client was unable to sell his property at The Green, Holycross" which was his former

residence "and he commenced to let same as of the

6th June 1993." Is that correct?

A. That is correct.

Q. And I think the interest of £10,288, for the year

1992/'93, which we dealt with in the table earlier,

relates to the purchase of the Glenreigh, Holycross,

isn't that right?

A. Yes, that is correct. And just to clarify that, there

was relief under the heading "mortgage interest," but

it's probably in the category of "bridging interest,"

is it, or

A. This was the interest that was actually shown in the

return of income?

Q. Yes.

A. The full amount of that may not necessarily be allowed.

Q. I see. What would be stated would be the full amount

of interest, and then the question arises as to what is

allowed then at the end of the day.

A. Yes.

Q. Very good. It's just that not the full amount is

necessarily allowed, or it may be, depending on

circumstances?

A. That is true.

Q. Well, just going back to the table we dealt with and

bearing in mind the interest which is indicated on the

returns, is that deducted for the purpose of assessing

the necessary tax payable or does it have any

particular relationship to it at all?

A. No, it was just when I was making out this, I just wrote out the interest that came on the

Q. Just interest. Just to clarify that, in relation to mortgage interest, that is set out, there is a statutory basis whereby that is allowed?

A. That is the statutory basis. Some of the interest would be allowed against the rental income, arriving at the net rental income figure too.

Q. What about bridging interest; is there any allowance made in respect of that?

A. Bridging interest would be related to the house itself, and again, we would have the statutory figures, there is statutory limits.

Q. Similar to mortgage interest relief?

A. Yes.

Q. Now, I think you have informed the Tribunal that on the information made available to the Revenue, for the years 1993/1994 to 1995/1996 the land around the house at Glenreigh was let?

A. Yes.

Q. Now, I think on the 10th January, 1997, Mr. Lowry applied for a Capital Gains Tax clearance certificate in respect of the sale by him of number 43 ^ Carysfort Avenue, Blackrock, County Dublin?

A. That is correct.

Q. It was stated in the covering letter that he acquired

this property on the 4th September, 1994, is that

correct?

A. That is correct.

Q. And the certificate of Capital Gains clearance was granted, isn't that correct?

A. That is correct.

Q. Now, I think you have informed the Tribunal that when information on the Dunnes Stores payment to Michael Lowry became a matter of public controversy in December 1996, his case, and that of Garuda Limited, were taken over by the Inspector of Taxes Investigation Branch, Dublin, who gathered in the relevant papers. And it is that branch which is now dealing with the case for the pre 1996 periods?

A. That is correct.

Q. Now, I think you have informed the Tribunal that an anonymous letter was received in the Thurles office at the end of August 1992 to the effect that a builder working on Mr. Lowry's new house at Glenreigh, Holycross, had workers who were officially unemployed, is that correct?

A. That is correct.

Q. In other words, you were tipped off that there were people working over there and that they were registered for unemployment benefit?

A. That is true.

Q. Now, just to be clear about this, the taxpayer you were

interested in, as a result of this information coming to your attention, was the employer of these people, not Mr. Lowry?

A. That is correct.

Q. And I think you have informed the Tribunal that a joint unannounced visit between a higher tax officer and an officer from the then Department of Social Welfare was made to the site on the 31st August, 1992, is that correct?

A. That is correct.

Q. I think a number of unregistered people employed by a subcontractor were discovered on the site, and you regarded the matter as a problem for the subcontractor involved, rather than Mr. Lowry, isn't that correct?

A. That is correct.

Q. No note of the matter was put on the file.

A. That is correct.

Q. The possible when you say put on the file, you mean on Mr. Lowry's file?

A. Yes.

Q. Obviously you dealt with it on another file. I think you have informed the Tribunal that the possible tax consequences for him arising from the work being done and how it was financed were not considered at the time, is that correct?

A. That is correct.

Q. For information purposes, you sent a brief note to

Mr. O'Ceallachain, Principal Inspector of Taxes in the Office of the Chief Inspectors of Taxes, at the time of the visit, the work that was being done was to the inside of the house and to the roof, is that correct?

A. That is correct.

Q. Can you, from memory, perhaps just indicate what note was sent to the Principal Inspector of Taxes, Mr. O'Ceallachain, in the office of the Chief Inspector of Taxes at the time?

A. Just a brief report was faxed, a brief report was faxed up to him prepared by the higher tax officer who carried out the investigation.

Q. And was that sent up for Mr. Lowry's file?

A. No, no, it was just in case there was inquiries raised or representations received.

Q. If I could just clarify it at the moment, Mr. Hussey?

A. Yeah.

Q. The Revenue got a tip-off that there were people who were registered for unemployment benefit working; it didn't matter where they were working, but that they were working?

A. Yes.

Q. And together with an official from the then Department of Social Welfare, there was an unannounced visit to see if this was true?

A. Yes.

Q. And if true, that had consequences for the person who



was employing them and perhaps for the people themselves who were registered for unemployment benefit?

A. That is true.

Q. Now, the consequences for those people, that is the people working, would have been taken up, perhaps, on a social welfare file, perhaps on a tax file; I don't know if there was a tax file for them, but the consequences for the subcontractor was probably taken up on his tax file, would that be

A. That is correct.

Q. That be would be the way

A. That would be the normal way.

Q. But over and above that, there was a brief report faxed to the Chief Inspector of Taxes?

A. Yes, indeed.

Q. Or to the office of the Chief Inspector of Taxes?

A. Yes, indeed.

Q. And was that for the general information of the Chief Inspector of Taxes or was it for an inclusion on Mr. Lowry's file?

A. No, it wasn't. It was just to let my boss know that this thing had happened. It's unusual that you would be visiting or raiding the property belonging to a public representative.

Q. I understand that entirely. And you were sending this up for the information in case somebody raised or made

a representation. You had informed your superiors of the position and you were in the position to brief them fully about the matter in respect of that?

A. Yes, indeed.

Q. And it didn't raise did it furnish any information of the nature of the work that was being carried out at Glenreigh?

A. As far as I know, the work in Glenreigh at the time had only just started. The report was just we had, let's say, raided the place, and that certain people were seen and they had disappeared off-site, and so forth.

Q. And how many people, approximately, were involved, do you know?

A. I haven't the exact number.

Q. There were a number of people, a number of workers?

A. A number of people.

Q. And to the best of your knowledge, the information coming to you was that there was work being done on the inside of the house and on the roof?

A. And on the roof.

Q. And I think you indicated there that it looked like the commencement of an extension, did it?

A. No, it didn't. There was no extension had been started, as far as I know, no extension had been started at the time.

Q. Well, I think another official from Head Office may have, sorry, from the person who attended from the

Department of attended with an official from the Department of Social Welfare, Ms. Kathleen Maher, in her Memorandum of Evidence, indicates that at the time of the visit, the renovations had just commenced.

"The work at that time consisted of clearing the rubble from inside the house. We only entered the hallway. There was no indication of any extension being built. We took details of registered numbers of cars on the site and later checked the ownership of same."

A. Yes.

Q. Is that the information that was brought to your attention?

A. That would be the sort of thing they would be doing if they are making an unannounced visit to building sites. People had in tradition - lets say, if we appeared on the site, people from the Revenue - of disappearing.

Q. I think that was the end of matters as regards the site, is that correct?

A. That is correct.

Q. Were the people the subcontractor, was the subcontractor followed up?

A. Yes. And we investigated the subcontractor.

Q. Was any information obtained as to what work was going on there?

A. No, there wasn't. We were only interested in a sense of wages being paid and those details and whether any tax was due or going to be due.

Q. Now, I think you have informed the Tribunal that, as a result of the Tribunal asking you to comment on the circumstances in which no returns were made for the year from 1986 to 1987 through to 1991 until March of 1992, and whether any action was taken by the Revenue Commissioners to prompt the making of the outstanding returns in March 1992, and in particular, whether any request was made to Mr. Lowry or to his tax agents that an outstanding return be submitted, and if so, details of such requests and all matters which prompted the making of such a request at the time? Your reply is that the returns, Mr. Lowry's returns, were received in June 1992 and not in March 1992.

A. A slight correction there. The returns were received in April in the Public Departments. They were received in June they were transferred in June to us.

Q. To you. So they came into the Public Departments in April and they came to you in June?

A. Yeah.

Q. And I think you are able to say that no action was taken by the Revenue Commissioners to prompt the issuing of the outstanding returns and no request was issued to either Mr. Lowry or to his agents asking that these returns be submitted?

A. That is correct.

Q. So it wasn't a situation of either Public Departments or yourself saying to Mr. Lowry, 'would you make

returns?' You didn't know nobody knew about an agent until the agent made the returns, isn't that correct?

A. Yes, indeed.

Q. I think you go on to say, as mentioned already, Mr. Lowry's income for the years in question was, to your knowledge, within the scope of the PAYE, isn't that correct?

A. That is correct.

Q. And as far as you were concerned, there was no policy to pursue PAYE taxpayers generally for outstanding returns of income?

A. That is correct.

Q. I think we have had a fair amount of evidence about that from various officials of the Revenue here. And I think you say that the I'll come back to that in a moment if I may you say that the situation had pertained up to 1992 in relation to taxpayers whose income was subject to PAYE. And after 1992 in relation to PAYE taxpayers, other than directors, was that there was no obligation to submit a return of income unless specifically required to do so under Section 879 of the Taxes Consolidated Act, 1997, formerly Section 172 of the Income Tax Act, 1967?

A. That's correct.

Q. And only a fraction of those on PAYE who were issued with returns of income each year actually completed and

returned them?

A. That is correct.

Q. You give a table which shows a flavour of what happened in Thurles Public Departments and nationally, and as there are no accurate figures in relation to returns received, you have not included any, is that correct?

A. That is correct.

Q. Many of the cases reviewed would have been required to submit returns of income and many did not. The reviews would have been carried out on the basis of letters, P60s, etc., and computer lists, is that right?

A. That is correct.

Q. And you say that per records, Mr. Lowry was sent returns of income for 1985/'86 and 1991/1992 for completion, and you say it is safe to assume he was sent out returns for the intervening years; these documents were not used. Other blank copies were obtained from the tax office, is that correct?

A. Yeah.

Q. And then if I might just deal with Garuda.

Now, I think you have informed the Tribunal that one of the companies for which you had responsibility in Thurles was Garuda Limited, isn't that correct?

A. That is correct.

Q. This company was incorporated on the 11th August, 1998, with Michael and Catherine Lowry the sole directors and

shareholders, and its business was the provision of refrigeration services?

A. That is correct.

Q. Now, you refer to the Report of the McCracken Tribunal, and chapter 5, to the background of the setting up of the company.

A. Yes.

Q. And you have informed the Tribunal that the accounts and returns of Garuda Limited, trading as Streamline Enterprises, were prepared by Messrs. Oliver Freaney & Company, a long established firm of chartered accountants, and these accounts had the usual standard audit certificates attached to them, is that correct?

A. That is correct.

Q. You then prepared two tables, isn't that correct?

A. Yes, indeed.

Q. One details the profits returned for Corporation Tax purposes, Corporation Tax VAT; and the other PAYE/PRSI paid, and you set out two tables setting those out, isn't that correct?

A. That is correct.

Q. Now, in Table 1, you show that for the year these for year end of the actual year, isn't it, 31st December?

A. Yes.

Q. 1989, there were profits returned of  $\text{£}31,564$ , isn't that correct?

A. That is correct.

Q. Now, what's the next charge and paid?

A. That was the liability. Just used the word "charge" rather than liability that was the amount as per the assessments.

Q. There were  $\pounds 4,040.17$ , isn't that correct?

A. That is correct.

Q. Then there were liabilities?

A. This is the VAT. The other side is actually three tables: Corporation Tax, there is Value Added Tax, there is VAT

Q. Just to explain and take me through them so.

A. Yes, indeed.

Q. The liabilities is the VAT, is that correct?

A. Liabilities there, the VAT, per the VAT trees, the two monthly VAT trees applied for the year. The VAT trees, some returns showed liabilities. Other returns showed refunds that could be claimed.

Q. So there was a liability in respect of VAT, 48 odd thousand pounds. There was a refunded or monies refunded of 2,250 odd pounds?

A. Yes, and the net amount.

Q. I see. Then in 1991, there is a loss returned, is that correct?

A. That is correct. 1990.

Q. 1990, I beg your pardon, of  $\pounds 26,635$ . Then the liabilities sorry, there was no tax, of course?



A. No tax.

Q. The liabilities in respect of VAT was 51 odd thousand pounds. There was refund allowances of  $\pounds 47,356$ . Then the net paid was  $\pounds 3,669.74$ ?

A. That is correct.

Q. 1991, there was a profit of  $\pounds 43,220$ . The tax payable was  $\pounds 15,803$ . The VAT liabilities was  $\pounds 77,840$ . There was a refund of 15 and a half thousand pounds, approximately. Now, what's the next column, then?

A. Because of late payments, the Collector-General charged interest.

Q. That's just interest on the VAT. Then the net paid was almost  $\pounds 6,500$ ?

A. Yes.

Q. Then 1992, there were profits of  $\pounds 17,021$ . There was tax payable of  $\pounds 6,800$  odd. There were VAT liabilities of  $\pounds 120,722$ . VAT refunds of  $\pounds 5,271$ . There was a small bit of interest there,  $\pounds 8,768$ . The net paid was  $\pounds 116,438.17$ .

A. That is correct.

Q. 1993, there was a profit of  $\pounds 33,111$ . There was tax payable of  $\pounds 13,244$ . VAT payable of  $\pounds 148,000$ , almost. VAT refund of  $\pounds 14,346$ . Some interest there, just over  $\pounds 1,000$ . And the net paid was  $\pounds 134,748.78$ , isn't that correct?

Then in 1994, there were profits of  $\pounds 84,545$ . There was tax of  $\pounds 33,818$ . VAT liabilities of  $\pounds 135,859$ .

VAT refund, £64,880. About £1,500 interest and then net paid £72,444.48?

A. That's correct.

Q. 1995, there was a loss. No tax. VAT liabilities, 40 and a half thousand pounds. VAT refunds of £45,000, and then there would have been that would have been a sum paid, wouldn't it?

A. Net paid

Q. That would be net paid, yeah, £4,788. And then 1996, what is that referable to there? It says "£55,757 before losses"?

A. There was pre losses carrying over from the previous year.

Q. Carrying the losses?

A. Yeah.

Q. That made tax paid almost £17,500. Just over £58,000 in respect of VAT liabilities. £4,175 refund and net paid £54,019.71, is that correct?

A. That is correct.

Q. Now, coming to table 2, this deals with PAYE this is PAYE payments, is that correct?

A. PAYE/PRSI for the employees.

Q. For the employees?

A. For the employees.

Q. Now, I think this particular table I'll just put it up for the moment. But you, in fact, or your office, went through a process of checking these against the

P60s?

A. The P35s.

Q. And

A. They are per the P35s.

Q. And they match what appears in this table, isn't that correct?

A. Yes.

Q. I don't think we need to, unless you want to go specifically into any particular one, but that is the table as a result of you checking the P35s?

A. That is it. The last one is the only one where there was an amendment. There was an original

Q. Sorry, '94/'97. This was amended upwards?

A. Slightly upwards, yeah.

Q. Now, I think Garuda Limited did not appear on the surface to have a compliance problem, isn't that correct?

A. That is correct.

Q. VAT was dealt with; there may have been small bits of interest, but no different to

A. Everything was more or less

Q. to any other enterprises. PAYE, PRSI, satisfactory?

A. Yes.

Q. And the tax was paid regularly and, whilst not precisely on time, more or less on time most of the time?

A. Yes, indeed.

Q. And where it wasn't paid precisely on time, in fact, there was no real loss to the Revenue in that you picked up some interest charges along the way?

A. Collected some interest.

Q. Now, I think you have informed the Tribunal that Garuda's balance sheet for the years 1990, '91, '92 and 1994 showed a net minus asset position and it did not appear to be financially healthy, isn't that correct?

A. Sure. That was my view

Q. That was your view?

A. Looking at the accounts.

Q. And I think you screened most of the company's accounts?

A. I screened most of the company accounts.

Q. And I think you have informed the Tribunal that, based on the information then available to you, you had no reason to doubt that the accounts supplied showed the correct turnover earned by the company, is that correct?

A. That is correct.

Q. You were aware, on the basis of local knowledge, that the company only appeared to work for Dunnes Stores?

A. That is correct.

Q. The company, for the purpose of all taxes, was regarded as low risk?

A. That is correct.

Q. As it had apparently only one customer, it would have been quite a simple matter for the company's auditors to crosscheck the figure with Dunnes Stores?

A. That's correct.

Q. Of course, that's all things being equal?

A. That's all things being equal.

Q. Yes. Now, I think Garuda has never been the subject of a comprehensive PAYE/PRSI audit, is that correct?

A. A comprehensive or a

Q. So it never had a comprehensive audit, you mean an audit by a company and an audit by a PAYE/PRSI

A. A comprehensive audit is you look at everything.

Q. Bar the PAYE?

A. You look at everything. The Corporation Tax elements, the PAYE elements, and the VAT elements or Capital Gains Tax elements. Let's say PAYE/PRSI audit, you'd only be looking just at wages and those elements.

Q. Yes. Now, I think the company was on a short-list for a PAYE/PRSI audit at the time the news broke in relation to Mr. Lowry's financial situation?

A. That is correct.

Q. That was in the normal course of just being selected for an audit on a random basis, is that correct?

A. No, it had been picked by the office, sort of, in due course. They do a PAYE audit. It would be in a bundle of files that the Inspector would have available.

Q. Would that have been a random selection?

A. No, it wouldn't be.

Q. Well, could you just explain, you had, I think, if I remember correctly, dealing with, say, Corporation Tax, there were about 650 odd cases in your district, in your office?

A. Yeah.

Q. So you had, say, between 600 and 700 companies, is that correct?

A. That's true.

Q. And obviously you wouldn't set about carrying out a PAYE audit or a comprehensive audit in respect of every company the whole time. You would select

A. Some cases.

Q. some cases?

A. Some cases mentioned later on, some cases would be selected for comprehensive; some cases could be selected for just VAT audit; some cases could be selected for just verification of just one or two items maybe, assets and things like that, and you could have a case elected for VAT audit.

Q. Or PAYE/PRSI audit?

A. Yeah, different.

Q. What criteria would have been applied for the purpose of selecting or short-listing a company for audit?

A. Very often, sometimes if it had been if a company had been audited before; let's say, for example, the size of wages that were being paid, number of

employees, those would be some of the areas you would look at and, sort of, the amount of wages that were being paid to the employees, if it looked on a bit of the low side than normal.

Q. I see. But from your own particular assessment of this particular company, it was low risk from a tax point of view?

A. It was, let's say, essentially from a Corporation Tax point of view.

Q. And even from a PAYE/PRSI, did it look like a low risk?

A. It was sort of on the whole it was on the whole to be low risk, because if we were certain that the entire income was being shown, it would follow on from that that, as you mention, all things being equal, that every other thing was being done correctly.

Q. But what particular factors existed that warranted Garuda being short-listed for a PAYE/PRSI audit around the time that the news broke?

A. Well, it had been on the list before it had been on the list before that, just before that. It hadn't one of the reasons would be that it hadn't got an audit in this area previously.

Q. That's what I am just trying to identify, the factors. Was it was there any suspicion

A. No, no suspicion.

Q. that the wage-roll or that the payroll looked too small?

A. No, there was no suspicion.

Q. Very good. So as far as you were concerned, what was being returned for PAYE and PRSI looked reasonably okay?

A. Yeah.

Q. It wasn't randomly selected, you say?

A. It wasn't randomly selected. We would have lists of people that hadn't been visited before, and that sort of thing.

Q. That's what I am just trying to establish. Is it that you'd hope to get around to most people at some stage?

A. At some stage, because the aim is to audit the aim is at some stage to audit, we'll call it, every self-employed person.

Q. It might not be capable of achievement but that is the aim, is that correct?

A. That is the aim.

Q. And as far as you were concerned here, the factor which caused Garuda to be short-listed was that it had not been audited before?

A. Before, and for this particular tax.

Q. although there was nothing significant in the returns which made it jump up or look suspicious?

A. No, no.

Q. And in relation to the other 6 to 700 companies in your district, would you have adopted the same procedure or was Garuda significant in being picked out?



A. It was no different from anybody else. At the time, it was only just one of 5 or 600 people we had about 3,000 is it 2,700, or thereabouts, people registered as employers. I use the word "people", that covers individuals and companies, so you have to pick a small number of those every year to look at. And mostly you would have nothing going out, you'd just it's a check.

Q. But just to be clear, and maybe we are talking at cross-purposes here, it didn't fall into any type of category which made the returns look suspicious?

A. That is correct.

Q. They were perhaps within the normal boundaries of what one might expect on returns of PAYE and PRSI for the number of employees and of employers?

A. That is correct.

Q. Returns were being made?

A. Returns were being made, yeah.

Q. Well, then, maybe I am using the term incorrectly, but it suggests to me that this was just a random selection, so there was no particular reason why this company should have been selected, applying any of the criteria that might prompt an audit?

A. Our use of the word maybe means something different from you. We would have a list. Random is, we would somebody picked this, like the Lotto tickets. That sort of a way. We do random audits but those

audits we get the numbers from Head Office and they are selected, I don't know, there is some sort of a system for selecting those.

Q. They just send the numbers down to you and

A. The names and the tax numbers, and you are required to audit those. I think we would regard that as a random audit. The other audits we wouldn't regard as random, as such.

Q. And this particular audit would have been initiated at Thurles, would it?

A. At Thurles.

Q. And not Head Office?

A. Not Head Office.

Q. Perhaps I am having difficulty in understanding it, but I still don't understand why Garuda was picked?

A. No, I said it was on the short-list. It wasn't picked for audit, it was on a short-list. We would sort of pick a number of we would screen cases for, let's say, for audit. You would pick initial screening; you'd pick a number of cases for possible audit. Then you would reduce that list a bit further and then you would have

Q. How would you reduce it further?

A. We would let's assume I would pick, let's say, 100 cases. We can only do so many. Let's say we can only do 40, we might pick 100, 150 first; somebody else would have a look at those.

Q. And how would they exclude them?

A. Pardon?

Q. How would they exclude them? Accepting that you can only get around to do so many, of course, how would you what criteria would apply to excluding them?

A. Some of them might be, in a sense, we had looked at this case maybe last year under another heading. We would maybe the size of the case, we would sort of try to cover all areas, you know, big cases, small cases, in the middle. We have too many small cases or too many big cases that we wouldn't be able to handle, that might exclude that from this particular year and you would have just a bank of cases then. You mightn't be able to get through the whole lot of them in a particular year.

Q. Of course.

A. And then they would go to the next year.

Q. Is there any documentary record of this process having been engaged in the year 1996 which shows Garuda being short-listed and other companies being excluded?

A. The only thing that was in existence were the pads were with my audit inspector, PAYE audit inspector, for that particular year, that he had a bundle of cases to work on at the time the disclosures appeared in the papers.

Q. But are there any documents in the Thurles office which show this process during the year?

A. No, there wouldn't be.

Q. And were there ever?

A. There wouldn't be.

Q. And how is it done? Do you just get the cold files and

A. Get the cold files and things like that.

CHAIRMAN: I think you are getting into, perhaps, more specific matters. It might now be a convenient time to adjourn until five past two.

MR. HEALY: Before I finish, Mr. Barniville drew something to my attention a moment ago and I think it is only appropriate that I should correct it now.

It's in relation to something I said in opening, a slip which could give the wrong impression. At page 5, line 25 of the transcript, I indicated that I think I was saying that Mr. Lowry had, through his agents, made a return correcting earlier returns, and suggesting that undeclared income on his part to include monies spent on his house in Glenreigh amounted to  $\frac{1}{2}$ 500,000. I then went on to say that the Revenue Commissioners took the view that the amount of tax due is greater than that and may be up to  $\frac{1}{2}$ 700,000. Obviously what I should have said was that the Revenue Commissioners take the view that the amount of undeclared income is  $\frac{1}{2}$ 700,000.

CHAIRMAN: Does that seem to satisfactory meet it from

your standpoint, Mr. Barniville?

MR. BARNIVILLE: It is. I am grateful to Mr. Healy for that clarification.

CHAIRMAN: All right. Five past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.05PM:

CONTINUATION OF EXAMINATION OF MR. JOHN HUSSEY BY  
MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. Hussey, I think before lunch we were dealing with the situation whereby Garuda had been short-listed for a PAYE/PRSI audit when it was overtaken by events?

A. Yeah.

Q. And I think with regard to the PAYE/PRSI, an annual reconciliation was carried out between the wages shown in the accounts and the wages shown in the P35 annual return of employees' pay and tax, and that the last inquiry arises from this exercise issued on the 2nd February, 1996, and the agents cleared up the matter on the 19th February, 1996. In other words, there was nothing

A. There was nothing

Q. Turning on it at all?

A. Nothing turning.

Q. Now, I think Garuda had been subject to a number of VAT audits for examinations, isn't that correct?

A. That is correct.

Q. Again, that wasn't out of the ordinary?

A. It wasn't.

Q. And Garuda was registered for VAT as and from the 1st September, 1988, and it would appear from an undated note on the file that it was you who arranged for it to be registered in August 1988, is that correct?

A. That is correct.

Q. I think the first return, VAT return of Garuda, was made for the period March/April 1989, and it was a claim for repayment. That was received at Thurles on the 7th June, 1989. An audit to check this repayment started on the 22nd June, 1989. This entailed a check of the company's records for the period in question.

Mr. Lowry was not present during the audit. Would that be standard enough practice?

A. Would have been standard enough practice. At that stage we would a company starting off, sort of we visit them at an early stage in order to see if they were meeting their requirements in relation to the record-keeping.

Q. That's the point of a VAT inspection, to see are they keeping the records properly. It's really to ensure that the thing is set up properly and looks right and can follow through?

A. Yes.

Q. Now, I think a letter issued to Mr. Lowry on the 23rd June, 1989, asking him to confirm, amongst other things, that no invoices were issued by him or the company prior to that date, March 1989. The letter pointed out that as the bank account was in the name of Mr. Lowry, the company could not be deemed to be trading and that the VAT refund could not be verified. If confirmation were got that the bank account was changed, the matter would be reconsidered. The Inspector issued a reminder on the 11th September, 1989. He again wrote to Mr. Lowry on the 5th January, 1990, pointing out that, as the necessary documentation had not been received, the VAT repayment claim was being disallowed, and if he did not reply within ten days the registration of Garuda would be cancelled and he himself would be registered for VAT as a sole trader. No reply was ever received to the letter, is that correct?

A. That's correct.

Q. And what pertained then?

A. The Inspector had called a few days afterwards, on the 16th January, and he saw that the bank account was had been changed from Michael Lowry's name into Garuda, so

Q. And matters proceeded and could be dealt with. So really, the only issue arising out of the audit to get

things right was to make sure that the bank account was in the name of the company and not in 'Mr. Lowry trading as', or anything like that?

A. Yes, indeed.

Q. And that was done. Now, I think a VAT repayment claim was lodged for the period July/August 1990. A desk examination was carried out in that an officer phoned the company on the 10th January, 1991, and asked for the larger invoices on which the claim was based.

This was obtained and the claim was certified on the 14th January, 1991, is that correct?

A. That is correct.

Q. I think an audit was started on the 24th September, 1991, in relation to a claim for a repayment of £10,987.07 for the period May/June 1991 received in Thurles on the 16th September, 1991. This involved an examination of the records on which the claim was based. The records for the other periods were spot-checked. The sale and purchase records agreed with the VAT returns. The outcome of the audit was a deduction in the claim to £9,739.25 - £1,000 or thereabouts of a deduction. Because of the disallowance of VAT on a leased van, the amount was certified for repayment on the 25th September, 1991.

And I think a desk examination was carried out on the VAT return for the period September/October 1994. A repayment claim for £55,672 in December 1994/January



1995. Some invoices were obtained. The examination was concerned with work carried out for Dunnes Stores in Northern Ireland, the rate of VAT applicable thereto and whether Garuda should be registered for UK VAT.

The claim was certified on the 18th January 1995. As part of the examination what's that advice?

A. Interstaff assistance.

Q. the office was consulted both by phone and in writing. What was that office?

A. There was an office in Dundalk, a sort of more or less a sort of a it was a channel through which you channel inquiries to the UK and other revenues in relation to VAT in the single market.

Q. And in relation to VAT repayments made for the period July/August 1995, you obtained, as a result of phone calls, the invoices of the work done in Northern Ireland. The claim was in order and there were no outdoor visits made to Garuda between 1991 and 1996.

A. That's correct.

Q. In other words, if I might just summarise there: That initially when the company was set up, there was a visit

A. Yes.

Q. to check the system, make sure things were the records were being kept properly. There was a matter brought to the attention of the company and Mr. Lowry; namely that the bank account had to be put in the

company's name to deal with matters. And then subsequently, where substantial reclaims or repayments were sought, the Revenue checked those by way of looking for the invoices relating to these reclaims and they were checked and adjusted or dealt with accordingly, is that correct?

A. That's correct.

Q. And

CHAIRMAN: This, Mr. Hussey, seems to bear out something that was in the overall written submission made by the Revenue to the Tribunal quite some time ago; that in VAT and in other spheres, if there is a substantial claim for repayment, it's normal practice to check it reasonably carefully by way of a limited audit.

A. It is.

Q. MR. COUGHLAN: And that did not take Garuda or Mr. Lowry out of the ordinary

A. No, it didn't.

Q. Now, I think, and we can come to the question of audit in due course now, but dealing with the structure of the office at Thurles and what you deal with, I think you say that the work of the office is broken down into three areas: Customer service, compliance and audit, is that correct?

A. That is correct.

Q. There are three units dealing with customer service in the district. Between them, they process applications for registration of tax, process returns of income, issue tax-free allowances to employees, handle amendments thereto, deal with applications for certificates of authorisation under the relevant Contracts Tax regime and associated work, such as the issue of payment cards, deal with repayment claims in respect of all the taxes dealt with in the district and handle any queries that may arise therefrom, provide a public inquiry office service; is that correct?

A. That's correct.

Q. The normal day-to-day processing of matters coming through the office and dealing with taxpayers on queries and claims they may make or amendments to claims?

A. That's correct.

Q. Now, I think a major part of the customer service work is the processing of the Income Tax returns or Corporation Tax returns for chargeable persons under the self-assessment system, is that correct?

A. That is correct.

Q. And what you mean by processing is, firstly, a brief examination of the return of income to see if it is complete and ready for input. And then subsequently, the inputting of the income reliefs and allowances into a computer database so that a Notice of Assessment can

issue to the person concerned?

A. That is correct.

Q. That's just a physical examination. In the form they filled up, is there sufficient information or do we need to raise any query to enable us to load

A. Is assigned.

Q. matters of that nature. And for the purpose of dealing with the return, the processor presumed that the customer has dealt with his or her affairs honestly. He or she is not concerned with the adequacy or inadequacy of the income shown on the return. Accordingly, the return is treated on a non-judgmental basis?

A. That is true.

Q. It's just accepted. As long as the form is complete, signed, it can then be processed, is that correct?

A. Yes, that's the position.

Q. The procedures that are followed in Thurles Tax Office in the processing of returns follows the guideline issued by the office of the Chief Inspector of Taxes. So, to the best of your knowledge, this is what's done everywhere?

A. It is.

Q. Then on the question of compliance, the compliance area deals with relevant customers who have not submitted returns and/or have not paid their taxes, is that correct?

A. That is correct.

Q. Compliance work can be broken down into three strands:

Return compliance, collection of arrears of tax, or a combination of both. Programmes that cover all three strands are worked out in the Thurles Tax District, is that correct?

A. That is correct.

Q. Now, I think you say that returns compliance work in relation to Income Tax returns started at the end of 1989?

A. That is correct.

Q. Corporation Tax return compliance started earlier, is that correct?

A. That is correct.

Q. Each year from then on, districts have operated on lists of non-filers supplied by Tax Computer Branch and within the policy framework laid down by the Chief Inspector of Taxes, is that correct?

A. That is correct.

Q. This work entails writing letters, making phone calls and making visits to customers' homes or businesses to try to get the outstanding returns, is that correct?

A. That is correct.

Q. In some instances, it involves getting the Revenue Solicitor to institute legal proceedings through the local Chief State Solicitor in the District Court against the customer for failure to submit Income Tax

or corporation returns, is that correct?

A. That is correct.

Q. In the earlier years, the original and reminder letters issued locally, but since 1997, the original and reminder letters are issued centrally for the entire country?

A. That is correct.

Q. Now, I think you say that returns compliance work was virtually suspended for the period of the 1993 amnesty, is that correct?

A. That is correct.

Q. The amnesty did bring an improvement in the timely filing rates, is that right?

A. Yes.

Q. However, in recent years, the timely filing rates has fallen somewhat, resulting in the continuing need for compliance action?

A. That's correct.

Q. So, for some years after 1993, more people were making their returns

A. In time.

Q. in time. Now, I think you have supplied fairly comprehensive tables and break them down into percentages and matters of that nature. Unless you wish to refer to them specifically, I don't think I need to refer to them. I think you just provide those for the assistance of the Tribunal.

Now, I think you say that a number of individuals and companies in the Thurles Tax District area have, over the years, been prosecuted before the courts for failure to submit Income Tax returns. And I think you have furnished some figures in this regard which we might deal with, that you have provisional figures for 1997 and 1998, you deal with, and mainly these prosecutions would be where returns were outstanding for a number of years?

A. Income Tax returns.

Q. Income Tax returns

A. Or very few Corporation Tax returns.

Q. But it would be normally where they were outstanding for a number of years. That would be

A. That is the situation.

Q. That you'd move to a prosecution footing in relation to them?

A. You had to.

CHAIRMAN: It follows, again, that these would be the self-employed people.

A. Yes, indeed, they would have been all self-employed.

Q. MR. COUGHLAN: And if we just look at that. In the year 1997, you have these figures, provisional figures at least. The number of cases referred to the courts were 35, is that correct?

A. Yeah, around that figure.

Q. Roughly 35.

A. Yeah.

Q. And in about eight cases, fines were imposed?

A. Were imposed, yes.

Q. In the year 1998, there was roughly 127 cases referred to the courts. And there was roughly 69 cases where there were fines imposed?

A. Some of those cases, they wouldn't have been heard while they would have been referred to the court, they wouldn't have been heard in the courts, adjournments would have been granted to further they would come in at later years.

Q. And there would be situations where cases were referred to the courts where the taxpayer would then comply and matters might rest then?

A. Yes, indeed.

Q. The purpose is to try and ensure that people make returns, isn't that right?

A. That is correct.

Q. Now, in the cases that were referred to the courts that you have referred to in your tables, as the Sole Member has asked you, these were all self-employed?

A. They were all self-employed.

Q. There were no PAYE cases?

A. No PAYE cases. A PAYE case can only you could only chase a PAYE customer if you directed him to supply a return of income under Section 879. That would be the



only circumstances where you could bring a PAYE case before the courts.

Q. It would be very rare?

A. It would be extremely rare.

Q. Almost

A. Nil.

Q. Nil, yes. I think you say that since June 1989, there has been a campaign directed at tax collection from those who had fallen into arrears of payment. During the period of the 1993 tax amnesty, that was June '93 to March 1994, this particular work was put on hold.

Staff were fully occupied dealing with amnesty queries and, because of the volume of the queries, other staff had to be assigned to the work?

A. That's true.

Q. And of course, that, perhaps, overlapped with some of the work in attempting to collect arrears, I suppose?

A. That's true.

Q. Now, I think compliance work was reorganised in 1996 on a national basis and giving a much higher profile for the setting up of the active intervention management system, AIM, and a much enhanced computer system geared towards persons who were not paying their taxes?

A. That's correct.

Q. The AIM system was installed in Thurles in March 1996.

Under the AIM system, once a case is taken up by the officer working, the objective is not to get all

outstanding returns of income is not only to get all outstanding returns of income under all tax headings, but also to collect all outstanding tax from the customer?

A. That is correct.

Q. So there is a dual function for the officer then - get the return and collect the tax?

A. Yes, indeed.

Q. Now, as part of his work, one officer has the job of dealing with very old arrears for companies and individuals; most of those would be cases where the companies would have ceased trading or

A. That is true.

Q. Now, you say that in the period June 1989 to the end of 1997, sums totalling a little over £6 million were collected in tax and interest; in the year 1998, the sum of £2,062,437; and for 1999, the figure was £2,591,624. Those are cases of old arrears?

A. Old arrears. Well, they would be including the other cases as well that you mentioned earlier on.

Q. So we'd be talking about arrears, old arrears, interest?

A. All old tax anyway.

Q. Now, you say that in tax districts, a special inquiry unit acts as a support to the compliance and audit area by supplying information relating to work of those areas. Up to 1993, you did not have a dedicated

special inquiry unit in Thurles. You did have an officer, who was then called a Collector-General's agent, who acted as an outdoor officer and who supplied information on specific cases as requested by the inspectors. What specific role would that officer have?

A. It would be we would regard it as intelligence-gathering

Q. I see.

A. That's the responsibility.

Q. And I think you say that in 1993, an outdoor officer who was given responsibility for compliance was allocated responsibility for special inquiry unit work.

It was the minor element of the allocation of work. We continued mainly to operate in this area on a reactive basis rather than on a pro-active basis. In March 1996, the special inquiry branch function was moved into the audit area. Because of this, and other changes in circumstances, the unit has become more pro-active in recent times. In other words, you go out looking for situations of non-compliance

A. Yeah.

Q. rather than waiting for them to come at all, is that correct?

A. Yes, that's true.

Q. To the best of your ability anyway?

A. Yes, indeed.

Q. Now, you say that audit is a form of compliance work, is that correct?

A. It is.

Q. It is a programme designed to verify the correctness of the returns, whether for Income Tax, Corporation Tax or Capital Gains Tax actually submitted, and to ensure that the customer has complied with the appropriate Revenue law. It can also entail the examination of a declaration of liability or a repayment claim for PAYE, PRSI, VAT or relevant Contracts Tax. In recent times, it has been extended to persons who have not made returns of income, is that correct?

A. That is correct.

Q. I think you say that the system and structure of audit in use today developed gradually since audit commenced in late 1989 for individuals, and in 1991 for companies, is that correct?

A. That is correct.

Q. The environment, be it external or internal, in which Revenue operates, is continually changing, therefore Revenue has to continually adapt its structures, organisation of work practices in audit and other areas. Thurles was, and is, in this respect, no different from any other tax district, and you have changed over the years?

A. Changed our structures over the years.

Q. You say that the type of audits carried out in the

Thurles Tax District can be broken down in the following general headings: Field, audits or desk audits. Other descriptions have been used down through the years to describe these particular activities?

A. Yeah.

Q. You say that a field audit can be either comprehensive or a single tax head or verification. If the audit is a single tax head, one of the records are looked at from the standpoint of one tax only; whereas if it is comprehensive, the case is examined from all tax perspectives. "Verification" means checking out a particular aspect to the exclusion of all others.

Single tax head or verification audits can, depending on discovery, lead to a full comprehensive audit.

Field audits involve a visit to the customer's premises, whether they be business premises or home; is that correct?

A. Yes.

Q. Desk audits are conducted from the office by letter or phone. Invariably, they relate to the verification of specific items of claims for expenses or reliefs, is that correct?

A. That is correct. In some cases it's where people have died - you could have quite an amount of money. It would be handled as a desk audit, obviously, because of the nature.

Q. The sensitivity or the

Now, I think a selection of cases can arise in a number of different ways. In Thurles, cases down the years have been selected in a number of different ways.

These include general screening of returns; select relevant analysis or emphasis on a particular sector of the economy; computer lists; other audits; intelligence or information obtained, including information in the media; audits done in prior years, random selection by computer. These cases have to be worked.

Now, if I could go through and then you go on to say, each year there would be slightly different emphasis placed on the annual audit plans under the audit plans laid down by the Chief Inspector of Taxes and the Revenue's strategic plan. And you say that the screening of Income Tax and Corporation Tax returns mainly for comprehensive audits has been carried out each year since 1990 for inspectors. Percentage of returns are examined. The general aim is that all returns are screened over a three or four-year period?

A. Yes.

Q. "Screening involves the examination of the return.

The accounts and the tax computation supplied, in addition to picking cases for comprehensive audit, auditors pick cases for possible single tax or verification audit. From the list selected by the

auditors, the audit manager makes the final selection of cases that are to be comprehensive audited. Before the case is finally selected, the audit manager thoroughly examines all the papers in the case, gathering up all other information available in the office, applies knowledge and experience and makes a decision. One of the real determinants in the final selection of a case for audit would be the perceived tax risk for Revenue. The audit manager also selects some single tax head ones. There have been instances where I, as District Manager, requested that certain cases be audited. The selected case is usually given to an auditor other than the person who selected it in the first instance."

A. That is correct.

Q. "Cases for single tax head audits are selected from screening repayment claims, local computer files, information or intelligence gleaned. At certain times, certain categories of businesses have been concentrated on. Cases from different turnover ranges and different wage/employee categories have been selected." And I think you say that you have personally screened in 1990, '91, '92, in 1994, Corporation Tax returns. Your audit manager screened the 1993 returns. Your audit manager and you screened the 1995, '96 and '97 returns between you.

"In examining the accounts, we would have been primarily looking at the case from a Corporation Tax point of view. Audits are not carried out in every case selected. There is always a bank of cases on hand."

And then you furnish a table of the number of cases screened, isn't that correct?

A. That is correct.

Q. And then you have a table furnishing what the yield is?

A. Yes, indeed.

Q. Now, if I could go back to this question of selection of cases for audit.

A. Yes.

Q. And at paragraph 24 of your memorandum you set out the basis whereby the case may be selected for audit and, of course, these criteria can change as well

A. Yes.

Q. from year to year, or depending on what is happening. And if we could exclude random selection by computer, that is something that comes down to you from Head Office. The computer has just picked somebody out at random?

A. And you have to work those you have no choice in relation to that.

Q. You just work those?

A. Just work those.

Q. Now so they don't form part of screening process



so

A. They don't form part, no.

Q. And the way you would start off then is that you would receive everyone's returns in, to begin with. You would then set about screening of returns if somebody was being selected for audit?

A. That is true.

Q. I can understand you might decide that it would be appropriate to carry out an audit on a sectoral analysis or emphasis on a particular sector of the economy?

A. That is true.

Q. You might decide farmers this year, somebody else next year?

A. Yes.

Q. Of course. Computer lists, what are computer lists?

A. We would have lists let's assume we would have lists of people that have maybe, so many I am just using an example so many VAT returns are outstanding, so many P35s haven't been paid, that type of thing. We would have had lists over the years of people let's lists of people who would have been audited in the previous years and lists of people who had never received an audit.

Q. On the computer list, you would have a situation of, maybe, delay in returns or returns not made. That might be one situation, is that correct?

A. Possibly.

Q. Possibly. And then the computer might also indicate, look, this one we are looking at at the moment for the purpose of screening, they were audited last year

A. This would be separate from the screening.

Q. I see.

A. That would be separate from the screening. We are obliged to screen so many returns a year. It's a requirement of the Comptroller and Auditor-General, that we have to everybody has an equal chance of being selected. And we have to do that. That's one bank of cases. You can have a bank of cases from, let's say, a sectoral analysis, and you have to do a sectoral analysis. If you have to do so many cases from a sectoral analysis, when you are screening, you would concentrate on the cases from that particular take for example sectoral let's take, for example, you were to look at pubs in the whole area, that if we were screening, you would look at the concentrate on the pubs. As I mentioned earlier on, the C and AG requirements are out three and four years. They said this year we would do tax numbers from, say, 1 to 100; next year, 200 to 300.

The next year after that then

Q. I understand.

A. other cases would arise. In death cases, they wouldn't be screened. They central issue would be

the assets and you see there are substantial

discrepancies to

Q. That might trigger off a line of inquiry?

A. Those would have to be worked because the estate has to be settled up.

Q. Now, if, when you were going through this process, it appeared to you, or the information was there that this person or this company was audited last year or the year before, you might exclude them?

A. You would probably sometimes the person that's selecting may not be aware that the company was or a person was looked at the year before in screening, because each year is kept separate.

Q. Or they may have been audited in a particular area to a single issue audit?

A. For a single issue, unless something jumps out at you, you wouldn't go back again.

Q. And then one of the headings that you would take into account or you took into account in Thurles was intelligence. Obviously, if information came to you that indicated that perhaps something was going on, that would be a ground that you'd

A. It would.

Q. consider an audit?

A. Yeah.

Q. Or information obtained, including information in the media?

A. Yes.

Q. So can I take it that you would, in general terms, monitor what was going on in the media?

A. We would.

Q. You would keep newspaper cuttings

A. Local papers or

Q. The local papers in particular, of course?

A. Anything like that, yeah.

Q. And this would be a source of information which might result in you initiating an audit?

A. It would, indeed. It could it could

Q. I am not saying it has to. It could?

A. It could.

Q. And might that information be I suppose it could be anything, but might it relate to local business activity, activity of individuals in the area?

A. It can. Advertisements.

Q. Advertisements, yes. Now, at paragraph 28, you say that the selected case, once it is selected for, having gone through the process and is selected, is usually given to an auditor other than the person who selected it in the first instance?

A. Yes, indeed.

Q. Is that to ensure that there would be effectively a safeguard there for the taxpayer

A. It's one of the safeguards.

Q. that the person carrying out the audit wouldn't come

with any preconceived notion about

A. That is true.

Q. Thank you, Mr. Hussey.

CHAIRMAN: I maintain the usual sequence. Anything to be asked on behalf of Mr. Lowry?

MR. BARNIVILLE: No, Sir.

CHAIRMAN: Mr. Connolly?

MR. CONNOLLY: Nothing arises, Sir.

CHAIRMAN: Well, I should just thank you, Mr. Hussey, for the very considerable amount of work you have done in preparing your statement. And I think it's important to point out that the material that you have put before us has been of importance and assistance, not just as regards Mr. Lowry's tax affairs in the context of that specific Term of Reference, but also in the context of Term of Reference (m) which effectively requires us to make such recommendations as might seem appropriate in the context of taking an overview of how the tax collection system is working in the context of producing the money whilst yet fairly respecting the interests of both taxpayers and Revenue.

In that context, do you think, from your annual conferences and meetings with colleagues from other districts, that Thurles is a fairly typical district in

itself?

A. Yes, it is. I would say so.

CHAIRMAN: Thanks very much.

A. Thank you.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Fergus Carroll, please.

FERGUS CARROLL, ALREADY SWORN, WAS EXAMINED AS FOLLOWS

BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Carroll, you have already given evidence to the Tribunal on a previous occasion, I think in relation to Mr. Charles Haughey's Residential Property Tax affairs.

A. Yes.

Q. And on this occasion, the Tribunal has asked you to gather evidence in relation to Mr. Michael Lowry's Residential Property Tax position. I think you have provided the Tribunal with a memorandum of the evidence which you are in a position to give regarding this matter?

A. Yes.

Q. And that, Sir, is at divider 1 in the book, Mr. Carroll's memorandum. What I propose, Mr. Carroll, is that I take you through the memorandum. There may be one or two documents that we may wish to

look at and possibly one or two inquiries, if that's

all right with you?

A. Fine.

Q. You say you are an Assistant Principal Officer in the Revenue Commissioners' Capital Taxes Division. That from 1983 to March 1998 you were manager of the RPT section within Capital Taxes Division?

A. Correct.

Q. You state that, at the request of the Tribunal, you are submitting a statement in relation to the Residential Property Tax position of Mr. Michael Lowry, following examination by you of the relevant papers and documents on his Residential Property Tax file?

A. Correct.

Q. You state that self-assessed Residential Property Tax returns, together with payment of the self-assessed tax, had been made by Mr. Lowry in respect of the property at Glenreigh, Holycross, Thurles, County Tipperary for each of the valuation dates - 5th April, 1993, to 1996, inclusive?

A. That's correct.

Q. I think that we have heard evidence from Mr. Hussey this morning, and indeed previously when you were giving evidence in relation to Mr. Lowry, that that property at Thurles was acquired in May 1992?

A. That's correct.

Q. I think you state that prior to the delivery of

completed return of valuation dated 5th April, 1993,

Mr. Lowry had not made Residential Property Tax returns?

A. Correct.

Q. You state this would indicate that the market value of any residential property previously owned and occupied by him was below the market value thresholds for RPT for the valuation dates 1983 to 1992 inclusive?

A. Yes, correct.

Q. Just generally, what were the levels of those thresholds during those years, 1983 to 1992?

A. Well, 1983 was the first year of the tax. The valuation date was 5th of April each year, and in that first year the market value threshold was  $\frac{1}{2}$ 65,000. And the threshold then, in subsequent years, was indexed upwards in accordance with an index compiled by the Department of the Environment. And just going up, say, to 1992, the last year there, the threshold would have been  $\frac{1}{2}$ 91,000.

Q. So it's quite a high threshold?

A. In those years it was, yes.

Q. In those years?

A. Yes.

Q. You state that in relation to the apartment at Beroma, Kimmage Road, as this property was let by Mr. Lowry from the date of acquisition, it did not form part of his relevant residential property for Residential



Property Tax purposes?

A. Yes.

Q. Again, I think we have heard evidence today, and indeed previously dealing with matters regarding Mr. Lowry, that that apartment was acquired sometime late in 1991?

A. Yes.

Q. And you have just indicated there that it would be excluded from the definition of relevant residential property for Residential Property Tax purposes, and is that because, in fact, that apartment the evidence has been that that apartment was rented?

A. Yes.

Q. It was rented out. I think, in fact, Mr. Hussey referred, during the course of his evidence today, to rental income being included in Mr. Lowry's returns of income?

A. Correct.

Q. And I take it, therefore, that where a property is rented out, it doesn't form part of available property for residential purposes for the purposes of that tax, is that correct?

A. Well, it doesn't form part of the residential property of the landlord or the owner of the property. It is possible, in certain situations, that the tenant could be liable to Residential Property Tax.

Q. I see, but in the hands of the landlord, there is no liability?

A. No.

Q. You state that the self-assessed market value of the Holycross property as shown in the returns and the tax paid for each valuation date were as follows: I think you provided the Tribunal with a helpful table setting out the returned values. I think we can see from that that on the 5th April, 1993, the valuation returned was  $\text{€}115,000$ , with a consequent tax paid of  $\text{€}252$ , is that correct?

A. Yes.

Q. And I think then for 1994, again there was no change in the market value, it remained at  $\text{€}115,000$ , but the tax paid was increased to  $\text{€}332.50$ . Is that because of an increase in the actual rate of tax applicable?

A. Well, also the threshold was dropped in that year.

Q. I see.

A. It was dropped to  $\text{€}75,000$  for valuation date 5th April, '94, and in addition, as you say, there were different rates of tax in that. There were three rates that year as distinct from one.

Q. That would explain the slight increase in the tax payable even though there is no change in the market value returned?

A. Correct.

Q. Then 1995, again the same market value,  $\text{€}115,000$ . And this time a drop in the tax paid, to  $\text{€}227$ ?

A. Yes.

Q. That presumably is also explained by some alteration in tax rates or thresholds or such like?

A. What happened for 1995 was a single rate of tax came back and the threshold was increased up to 91,000, from memory.

Q. It was restored back to the 91,000 level?

A. It was.

Q. Finally in 1996, there was an increase in the market value returned of 125,000. And also, an increase in the tax, back to the 1993 level of 252.

A. Yes.

Q. Now, you state that in respect of each valuation date, Mr. Lowry claimed relief for three qualifying children, which reduced the tax due by 30 percent, which was 10 percent for each qualifying child?

A. That's correct.

Q. And presumably, that would be each child under the age of 18 years living at home?

A. Or, if over that age, in receipt of full-time education.

Q. And there was a drop of 10 percent in the tax paid for each of those children?

A. Correct.

Q. Just in relation to those tax returns, I don't intend to go into all of them in detail. Can I take it that they were all filed at approximately the correct time, or within the time permitted, and that the tax paid was

also paid promptly?

A. Of the four valuation dates listed on the table there, all but the 1995 returns were lodged on time, and the 1995 one was just two months late. There was a small amount of interest paid.

Q. So in three of the years they were absolutely bang on time, and in one year they were slightly a couple of weeks or a couple of months out?

A. Yes.

Q. You say in your memorandum that, in support of the opinion of market value, the 1993 return states that the property at Holycross was purchased for  $\text{€}155,000$ , to include 35 acres of land. I think we might just have a look at that page of the 1993 return which I think is the second page of the first of the returns.

If we can put that on the overhead projector.

Now, you say in your statement where the property is described in the returns as being detached with five bedrooms, two reception rooms, kitchen and garage, and that in the reply to a question concerning particulars, including costs of improvements to the properties, its acquisition, the return states, "general repairs and refurbishment to the property since purchase." You say that subsequent returns also indicate the purchase price at  $\text{€}115,000$ , to include 35 acres of land, and describe the property as detached with five bedrooms and two reception rooms. You can say that no special

features of the property were ever indicated on any return.

So if we just look a little more closely at the particulars of the residential property, and that's the standard form, Residential Property Tax return form, and that portion of it deals with the physical description of the property. We can see that there it gives the address at the top, the name of the owners, the tenure of the leasehold, the date of the lease. Of course, that doesn't apply here because it was freehold. And the market value as of the 5th April, 1993, was the unincumbered fee simple of  $\text{£}115,000$ .

Then the actual questions asked in relation to the physical description and the physical characteristics of the property: "State when the property was acquired and the total purchase price." I think there it was stated that it was purchased for  $\text{£}115,000$  or  $\text{£}155,000$ , to include 35 acres of land.

A. Yes.

Q. And then below that: "Furnish particulars, including cost of improvements to the property since acquisition. General repairs and refurbishment to the property since purchase."

Now, I see there that there was no estimate of cost of these works provided at the time. Would that have been unusual or would any step have been taken to

query, in the ordinary course, to query costs incurred on works of that nature?

A. It wouldn't have been unusual not to query where costs weren't shown. If there was a reply given and it was general repairs and refurbishments, as stated on the return there, it would have been accepted. It would have been the norm.

Q. That would have been accepted?

A. Yes.

Q. So if it was simply repairs and refurbishment, as it was, it wouldn't be the usual to query?

A. No.

Q. Would it not be usual to go back, given that there is some information furnished in response to that, would it not have been, perhaps, appropriate to go back and query whether or not these repairs and refurbishments amounted to improvements?

A. Well, if the improvements involved were quite substantial, and might have just if I illustrated by, maybe, of example: If a swimming pool was added or a tennis court or something of nature, which would be regarded as substantial, the inquiry regarding cost of same may be added, but that, as I said, wouldn't be it would be in a small number of cases.

Q. But where the term was simply "repairs and refurbishment," it would be usual to accept it?

A. Yes.

Q. It says then: "State the amount for which the property is insured". You see that that information wasn't provided either. Would it be usual to query the absence of that information?

A. It wouldn't really, in fact, that was just there originally I might just add that the return actually was redesigned after 1993.

Q. I see.

A. I am just throwing that in. If you look at the 1994, '95, '96 returns, the design was different. But that was the last return, that design. The fact that the question there relating to the amount for which the property is insured, that that was put there from day 1, really just to give the Revenue some sort of a guide as to the adequacy of the value that may have been returned under the self-assessment system.

Q. It would have been in aid of the Revenue to compare the value for which it was insured as against the market value for which it was returned?

A. It would have been would have only been a rare case where the query might come in if a property was insured way in excess for which it was valued. The two are not directly related, as the insurance people will tell you better than I would.

CHAIRMAN: I think the memorandum handed out at the time made that point.

A. Correct, that's right.

Q. MS. O'BRIEN: Below that it was to state the type of property, and attached is the response given. And finally: "State the number of rooms of the property. Distinguish between reception rooms and bedrooms." And details of those rooms were given also. And "State if the property has any other features such as a conservatory, garage, sauna ... etc." and the information given there was that there was a garage attached to the property.

Generally, in your experience, would you consider that to be a fully-completed adequate return for Residential Property Tax?

A. Yes, I would, yes.

Q. And not a return that would prompt you to make any further inquiries or prompt the Revenue to return to the taxpayer with any query on the adequacy of the information furnished?

A. It wouldn't prompt me to do it, given the location of the property and the information that has been supplied.

Q. I see. Just going back to your memorandum, you state at paragraph 5: "Given the purchase price, the location and the size of the property, and the fact that the self-assessed returns gave no indication of the significant improvements and refurbishments



actually carried out, there was no basis for suspected substantial under-valuation and under-payment of tax in this case. There was no reason, therefore, to refer the property to the Commissioner of Valuation for an opinion of value."

Can I just raise one general matter there with you, Mr. Carroll. You state that as there was no basis for suspecting substantial under-valuation and under-payment of tax, that there was no justification for referring the matter to the Commissioners for Valuation. Are you thereby suggesting that it is only in circumstances where there is such a suspicion that it would be usual for Residential Property Tax division to refer a property to the Commissioners for Valuation?

A. Yes, that would be one reason. Also, another reason would be where staff, say in the Capital Taxes Division, his opinion of value of a property might be at variance with what has been returned in a particular case and negotiations might go on directly between the taxpayer, his or her professional adviser and the Capital Taxes Division. If, at that stage, agreement couldn't be reached, the case would be referred to the Valuation Office for their opinion of value. That's another instance in which we would go.

Q. So it would either be in circumstances that there was a suspicion of undervalue or, in the opinion of somebody within RPT, there had been an under-payment, there were

negotiations between the Revenue Commissioners and the taxpayer and there was a difference of opinion of valuation?

A. Yes.

Q. And those would be the principal circumstances that would prompt RPT to refer a return to the Commissioners of Valuation?

A. Yes.

Q. You say that subsequent revelations indicated that substantial improvements had, in fact, been carried out to the property at Holycross following its purchase in 1992; that these improvements were not reflected in the market values of the profit returned for RPT purposes.

You state that following the launch of a full investigation into Mr. Lowry's tax affairs by the Investigation Branch of the Chief Inspector's Office in late 1996, Mr. Lowry's agents, Ernst & Young, provided certain information to Investigation Branch in April of 1997. This included a valuation of the property at Holycross by a local auctioneer and revised valuations and computations of Residential Property Tax for Holycross for the years 1993 to 1996. At the request of yourself and your principal officer, Mr. Brian McCabe, a copy of the relevant material was faxed to you by Mr. Liam Liston, Investigation Branch, on the 30th July and 26th August, 1997, respectively, and the revised valuation submitted were as follows; and I

think we have a copy of the table that appears within your memorandum which is there on the overhead screen.

And I think for the valuation date, 5th April, 1993, the valuation has, in fact, fallen from  $\frac{1}{2}$ 115,000 to  $\frac{1}{2}$ 90,000. On the 5th April, 1994, increase from  $\frac{1}{2}$ 115,000 to  $\frac{1}{2}$ 220,000. For the 5th April, 1995, there is an increase from  $\frac{1}{2}$ 115,000 to  $\frac{1}{2}$ 240,000. And then finally, for the year dated 5th April, 1996, an increase of  $\frac{1}{2}$ 125,000 to  $\frac{1}{2}$ 275,000. And those were the figures which were submitted on Mr. Lowry's behalf by Ernst & Young, who were acting for him at that time?

A. Yes.

Q. Now, if I could just refer you to the actual document that was furnished by Ernst & Young to the Investigation Branch, and it was then forwarded to you in Residential Property Tax. And perhaps we could get a copy of that on the overhead screen. And this is actually, I think, headed "Appendix to" - to a larger document - "Residential Property Tax Calculation of RPT on Valuer'S Value." And then there is the calculation of RPT showing the value returned, the increased values which were then being submitted, the exempt amount, the gross amount, and the net RPT for each year based on the higher value; is that correct?

A. Yes.

Q. Then below that, Ernst & Young, Mr. Lowry's accountants

at the time, have gone further and they have actually computed the additional tax that was payable, assuming those revised valuations. And they showed, for each year, the tax which should have been paid based on the new RPT figure, the amount actually paid, the balance that was outstanding which was payable and interest on each of the balances computed up to January 1997. And then in the final column of the lower table, the balance of the tax plus interest computed on the balance up to January 1997, giving a total of i½5,047.28.

A. Yes.

Q. And just as a matter of detail, in relation to the 5th April, 1993, valuation, that appears to have been reduced from i½115,000 to i½90,000, and there is just a note here at the bottom of that document, "At 5th April, 1993, the then property was still under renovation and was not being used by Mr. Lowry or his family."

A. Yes.

Q. Is that a time apportionment there at the i½90,000, and can you assist the Tribunal as to how that reduced valuation might have been arrived at?

A. No, the i½90,000 was the revised opinion of value on the 5th April, 1993. I can only assume that the reason it had dropped from i½115,000 is because renovations were going on at that time. And whilst it may have been

capable of being lived in, the fact that renovations were going on, and maybe some work to the roof or whatever, that I presume is the reason that it was reduced to that at that valuation date.

In fact, just one other item I might mention in relation to the last column there of "tax plus interest". Because the valuation was  $\frac{1}{2}$ 90,000, tax had already been paid in respect of valuation date 5th April, '93, so if that valuation were accepted, there was a slight over-payment.

Q. There was an actual tax rebate for that particular year?

A. Yes.

Q. In fact, you deal with, in the subsequent paragraphs of your memorandum, you deal with how these figures were assessed by the Commissioners and dealt with by Residential Property Tax. You say that, "Formal follow-up by Capital Taxes Division on the under-valuation of the property and under-payment of RPT was put on hold because of the wider investigations being carried out by Investigation Branch." However, on the 3rd November, 1997, you wrote to the office of the Commissioner of Valuation on an informal basis and looked for an opinion on the revised valuations furnished by Mr. Lowry's agents. That's the valuations we have just been looking at on the screen?

A. Yes.

Q. You say that subsequently you arranged to have a formal request issued to the Valuation Office for an opinion of value for valuation dates 5th April, 1993, to 5th April, 1996. You say that this was done on the 5th January, 1998. You understand that on foot of the request, an inspection of the Holycross property was carried out by the Valuation Office. You say that the replies you received from the Valuation Office in May and June of 1998 indicated that the revised value submitted by Mr. Lowry's agents in respect of Holycross were adequate?

A. Yes.

Q. So these valuations which were submitted, and which were just on the screen, were considered by the Commissioner for Valuation. The property at Holycross was valued itself, it was actually inspected and valued by the Valuation Office, and those figures as submitted were accepted and that was the advice that you received from the Commissioners of Valuation?

A. That's correct, yes.

Q. You state that, resulting from the revised valuations for Holycross, net additional Residential Property Tax and interest of £4,831 is due from Mr. Lowry. I take it, therefore, that the higher figure of £5,047.28, which was computed by Ernst & Young that the lower figure is accounted for by setting off the refund that Mr. Lowry will be entitled to for the year 1992?

A. Yes, plus interest on that refund, a very small amount, plus interest for the other three valuation dates, calculated to April '97, and not January '97 as the one done originally.

Q. Why would you calculate them to April of 1997?

A. Because we were informed that there were a number of payments on account made on behalf of Mr. Lowry to the office of the Chief Inspector of Taxes, and the first one of those was in April 1997.

Q. So it was to give Mr. Lowry the benefit?

A. Yes.

Q. You state that "The question of penalties on the grounds of negligence also arises. Mr. Lowry, as a result of the wider investigation into his tax affairs, has made a number of payments on account to Investigation Branch in respect of unpaid tax liability. It has been agreed with Investigation Branch that the collection of Residential Property Tax, interest and penalties will be dealt with by them in the context of the overall tax issues arising."

A. Yes.

Q. Of course, we have heard evidence, during the course of today's sittings, that Mr. Lowry has paid on account a sum in excess of  $\frac{1}{2}$ 300,000, which, of course, would more than meet any Residential Property Tax liability?

A. Yes, indeed.

Q. Thank you, Mr. Carroll.

A. Thank you.

CHAIRMAN: Thanks very much for your further assistance, Mr. Carroll.

THE WITNESS THEN WITHDREW.

MR. HEALY: Ms. Kathleen Maher, please.

KATHLEEN MAHER, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: You were a higher tax officer, Thurles Tax Office, and you have been employed by the Revenue Commissioners since 1969, is that correct?

A. That's correct.

Q. You have provided the Tribunal with a memorandum of your intended evidence and, as with the other witnesses here today, I intend to go through that memorandum and maybe ask you one or two questions afterwards.

You say that when an anonymous letter was received at your offices at the end of August of 1992, to the effect that a subcontractor working on Mr. Michael Lowry's house had people who were supposed to be unemployed, Mr. Hussey your boss, presumably, at that time asked you to visit the site as part of a joint investigation with the Department of Social Welfare. The purpose of the visit was to find out whether the subcontractor had any employees who were



drawing unemployment benefits and working at the same time, and whether the tax system was being operated for them; whether they were, in other words, on the books?

A. Correct.

Q. "On the 30th August, 1992, an officer from the Department of Social Welfare and I visited the site. We met a number of individuals and questioned them about their employment status and their earnings. Others disappeared off the site before we had the opportunity to question them. At the time of the visit, renovations had just commenced. The work at that time consisted of clearing the rubble from inside the house. We only entered the hallway. There was no indication of any extension being built. We took details of registered numbers of cars on the site and later checked the ownership of them."

You say that on the 31st August, 1992, you prepared a brief report of the visit and, on Mr. Hussey's instructions, you faxed a copy of that report to Mr. Sean O'Ceallachain, Principal Inspector, for his inspection. Mr. O'Ceallachain was the regional manager covering the Thurles district, and where did Mr. O'Ceallachain operate?

A. From the Chief Inspector's Office in Dublin.

Q. I see. The reason no notes were put on the file of Michael Lowry was that you were not investigating the affairs of Mr. Lowry, you were investigating the

subcontractor who was subsequently audited. And then you have provided the Tribunal with a certain amount of documentation. But most of it simply deals with the matters that you have referred to in your report, all of which concern another taxpayer or other taxpayers essentially, isn't that right?

A. Correct.

Q. Now, you say that you prepared a brief report of the visit and you sent that report to Mr. O'Ceallachain.

That report was again dealing, am I right, with the affairs of another taxpayer?

A. Correct.

Q. What prompted you to make this inquiry and make this carry out this investigation the first day was information that came to you by way of an anonymous letter?

A. Yes.

Q. And I take it that the Revenue Commissioners, in deciding how to proceed in relation to any taxpayer, will depend or may depend on information the taxpayer gives them; information they get from the taxpayer's employer, a return furnished by a taxpayer, an anonymous letter, or even a signed and identified informant's communication?

A. Yes, or casual site visits also.

Q. Or a site visit?

A. Mm-hmm.

Q. So that in the case of the last example, a site visit, the tax authorities depend on what they see with their own eyes?

A. Correct.

Q. In this case, what you saw was a building site in which, as you say, renovations had just commenced?

A. Mm-hmm.

Q. And a number of people working on the site?

A. Correct.

Q. Do you remember how many in all you identified on the site?

A. We would have interviewed about five or six on site, and others, of course, would have gone before we would have got as far as interviewing them.

Q. So how many, do you know, left on your arrival?

A. I don't really know the number of how many left, but we would also take the car registrations which would we would kind of bring together with our investigation into the builder and find the owners of those cars and see if they were his employees/subcontractors.

Q. But leaving aside for the moment whether they were employees or not, whether they were on the books or not and some of them may have been on the books, I don't know, I am not terribly interested there were six or seven five or six people you say interviewed on-site and then some other people had

A. Disappeared.

Q. disappeared?

A. Mmm.

Q. And you were able to identify a number of cars which

A. Yes.

Q. And had you to identify some of those people or track them down?

A. Yes.

Q. And there would have been another three, four, five people, can you remember?

A. There would have been one or two.

Q. One or two?

A. That's all, yeah.

Q. So there were somewhere between seven or eight people working on the site in total?

A. Possibly, yeah.

Q. When you say that renovations had commenced, you say you only went into the hall, is that right?

A. Mmm.

Q. Is it from speaking to people on the site or from something you observed yourself?

A. From the work we observed on-site, what people were doing when we interviewed them. We asked them what type of work they were doing on-site.

Q. It was from what they told you?

A. It was obvious that there was renovations going on.

There was site clearance there as well.

Q. When you went there, the house was unlivable in then?

A. Exactly, on the day we were there, yeah.

Q. They were going to do a complete revamp on it?

A. Doing some work on it, yeah.

Q. There were enough men there anyway to indicate the work that was being carried out was more than repairing a few windows or carrying out some general maintenance?

A. Oh, yes.

Q. There was a work team there?

A. Yes.

Q. Although you saw no evidence of an extension?

A. No.

Q. Do you think do you think, regardless of what the Revenue may think in general, that the information that you obtained concerning the scale of activities on the site would have been relevant to making an assessment of the value of the property for Residential Property Tax purposes?

A. Well, I wouldn't be qualified to value property, it wouldn't be my brief to value property.

Q. I understand that.

A. My whole interest in the thing was to investigate the builder and the employees there. Valuation of property wouldn't be my area.

Q. I fully understand that. And you prepared a report and you were making that report available to your own boss, Mr. Hussey, and subsequently, on his instructions, to somebody else?

A. Exactly.

Q. But did you tell anyone what you saw on-site, apart from simply handing over a report? Did you tell anyone that, for instance, renovations were being carried out there?

A. I said in the report that the renovations had just commenced.

Q. So I know that you couldn't make a valuation of the property. But I take it that you'd agree with me, and I am not a valuer either, that if somebody is having a lot of work done to a house, the family couldn't live there obviously at the time; that that's going to have a significant I won't say substantial, but a significant effect on the value of a property

A. Yes.

Q. turning it from a house that was in need of renovation to a house that's now renovated?

A. Yes.

Q. And that would be a material factor in determining its value, I would think, wouldn't you?

A. Yes, I would, yeah.

Q. Thanks very much.

CHAIRMAN: Thanks very much, Ms. Maher, for your help.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: I wonder, Sir, an issue has arisen in

relation to the next witness and I wonder if you would possibly rise for five minutes to see if we can sort the matter out between the various parties?

CHAIRMAN: Very good.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

MR. HEALY: The difficulty that arose, Sir, was the one I alluded to this morning and I made reference to last week as well: The problem of ventilating live issues. And it has been sorted out now and can be dealt with in the evidence of Mr. Liam Liston, which I would propose, with your approval, to put back until tomorrow morning, since there is no point in starting at ten to four.

And the agreement has to be, it will result in some documentation being changed which will have to be done overnight.

CHAIRMAN: Well, I am glad to note that progress has been made on that matter. I am fully mindful of the cares and concerns that are felt by the respective legal advisers in dealing with the Tribunal, but obviously, I am more than anxious, while safeguarding those legal rights of any persons, to ensure that the limited further portion of evidence relevant to these matters can be proceeded with, and I am glad to hear that appears to be the position as regards tomorrow.

As regards the public and Mr. Healy, is it preferable that I say 11.00, or can we definitely start at half ten?

MR. HEALY: 11.00.

CHAIRMAN: 11.00, then, tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, 22ND MARCH 2000 AT 11AM.