

THE TRIBUNAL RESUMED ON THE 14TH JUNE, 2005 AS FOLLOWS:

CHAIRMAN: Whilst further matters may have to be referred to in coming weeks, I shall, at this stage of the recommenced sittings, confine myself to a few short observations on the potential remaining course of public business of this Tribunal.

In view of the ongoing litigation arising out of the judicial review challenge of public hearings related to Doncaster Rovers, the Tribunal has since in or about the latter weeks of last year intensified private investigations that already had been ongoing in relation to some, at most four, remaining matters of inquiry in addition to the matter which will, in a short few minutes, be opened by Ms. Jacqueline O'Brien on behalf of the Tribunal.

As to these other potential matters, a prompt decision will be communicated in coming weeks as to whether it has been found necessary to proceed to public hearings in any or all of these matters, and if so, as to the extent to which evidence should be heard in public.

Because of the intense and thorough work which has been undertaken on these additional potential matters, I am satisfied that if public hearings do prove necessary, they will be of short duration, and I mean "short" in the context of an awareness and commitment on my part that it is incumbent to conclude this Tribunal's business and report on it in the minimum further time

that is consistent with fair procedures. Insofar as any potential remaining matters, and in this is included the matter commencing today, concerning Terms of Reference relating to Mr. Charles Haughey, I have already stated that regard will be had to his age and state of health. Over and above today's matter and the potential ones that I have alluded to, there is the further necessity to conclude the reasonably limited remaining matters of evidence to be heard in relation to the second GSM competition, and I will ensure that appropriate priority is given to this.

Together, then, with contingent on determination in the courts, any such evidence as may require to be heard in relation to the Doncaster Rovers matter, these aspects appear to represent the maximum potential scope of remaining public hearings.

#### OPENING STATEMENT:

MS. O'BRIEN: May it please you, sir.

In these public sittings, the Tribunal intends to hear evidence pursuant to paragraph (d) of its Terms of Reference. Paragraph (d) relates to acts and decisions of Mr. Charles Haughey and provides as follows:

"Whether Mr. Charles Haughey did any act or made any decision in the course of his ministerial offices to confer any benefit on any person making a payment referred to in paragraph (a) or any person who was the source of money referred to in paragraph (b) or any

other person in return for such payments being made or procured or directed any other person to do such an act or make such a decision. "

Paragraph (d), it will be recalled, is connected to paragraphs (a) and (b) of the Tribunal's Terms of Reference which respectively provide as follows:

Paragraph (a) provides: "Whether any substantial payments were made, directly or indirectly, to Mr. Charles Haughey, whether or not used to discharge monies or debts due by Mr. Charles Haughey or due by any company with which he was associated or due by any connected person to Mr. Charles Haughey within the meaning of the Ethics in Public Office Act 1995 or discharged at his direction during any period when he held public office commencing on 1st January 1979 and thereafter up to 31st December 1996 in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office held by him or had the potential to influence the discharge of such office."

Paragraph (b) provides: "The source of any money held in the Ansbacher accounts for the benefit or in the name of Mr. Charles Haughey or any other person who holds or has held ministerial office or in any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr. Haughey or for the benefit or in the name of a connected person within the

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

The Tribunal has already heard evidence in connection with both paragraphs (a) and (b) of its Terms of Reference over the period from January 1999 to May 2001. In total, the Tribunal tracked payments and sources of money to or for the benefit of Mr. Haughey which appear to amount to a figure in the region of  $\text{€}8.5$  million.

These funds included payments amounting to  $\text{€}232,200$  and sterling  $\text{€}282,500$  from Dunnes Stores to or for the benefit of Mr. Charles Haughey. These payments were, in addition to the payments identified by the McCracken Tribunal and brought the total payments from Dunnes Stores to Mr. Charles Haughey identified by this Tribunal and the McCracken Tribunal to over  $\text{€}1.9$  million in the period from January 1987 to May 1993.

The additional payments discovered by the Tribunal are as follows:

Firstly, what has come to be known as the bearer cheques, comprising six cheques in all, each of which was dated 28th January 1987 and signed by Mr. Bernard Dunne, and which in total amounted to  $\text{€}32,200$ .

Secondly, the Tripleplan payment in the sum of sterling  $\text{€}282,500$  which was made by cheque dated 20th May 1987, drawn on an account of Dunnes Stores (Bangor) Limited

and signed by Mr. Matt Price, who was an executive of Dunnes Stores in Bangor. The proceeds of the cheque were ultimately lodged to Mr. Charles Haughey's current account with Guinness & Mahon in Dublin and discharged the overdrawn balance on that account.

Thirdly, the Carlisle Trust cheques in the amount of IR£49,620, IR£50,962, and IR£79,418 and respectively dated 20th November 1992, 23rd November 1992, and 27th November 1992, and amounting in total to IR£180,000 which were applied for the benefit of Mr. Haughey.

Fourthly, a cheque for IR£20,000 dated 29th May 1993 and lodged to Mr. Haughey's account with National Irish Bank.

Both Mr. Bernard Dunne and Mr. Charles Haughey have accepted that each of these additional payments were made for Mr. Haughey's benefit.

It is the existence of these four additional payments, and in particular the payments in January 1987 and May 1987, together with a number of further matters, which I will refer to shortly, that prompted the Tribunal's initial inquiries into the dealings between the Dunnes interests and the Revenue Commissioners during the years that Mr. Haughey held office as Taoiseach from 10th March 1987 to 30th January 1992.

It will be recalled that the McCracken Tribunal heard evidence from the then Chairman of the Revenue

Commissioners, Mr. Cathal McDomhnaill and from a former Chairman of the Revenue Commissioners, Mr. Philip Curran. Mr. MacDomhnaill in his evidence provided the McCracken Tribunal with an overview of the dealings between the Dunnes interests and the Revenue Commissioners during the ten-year period from 1984 to 1994. Mr. Philip Curran, who was Chairman of the Revenue Commissioners from 12th September 1987 until 3rd October 1990, gave evidence to the McCracken Tribunal about a meeting which he had with Mr. Bernard Dunne in March of 1988 and which had been arranged at the request of Mr. Charles Haughey.

The McCracken Tribunal also heard evidence from Mr. Bernard Dunne in relation to his meeting with Mr. Curran. Mr. Dunne stated in evidence that he had not previously met the Chairman of the Revenue Commissioners, and was anxious to do so, and that while he did not recall any discussion with Mr. Haughey, he accepted that he must have asked Mr. Haughey to arrange the meeting.

The McCracken Tribunal, on the basis of the evidence available to it, concluded as follows, and this is an extract from page 51 of the report of the McCracken Tribunal which reads as follows:

"The only request for special favours which the Tribunal has been able to uncover was a request by Mr. Ben Dunne for a personal meeting with the Chairman

of the Revenue Commissioners. The Tribunal has heard evidence of this meeting and is quite satisfied that it was merely a routine meeting at which nothing specific was requested by Mr. Ben Dunne. The Tribunal is also quite satisfied that the only part played in the meeting by Mr. Charles Haughey was to actually arrange it, but that no representations were made by Mr. Charles Haughey on behalf of Mr. Ben Dunne or the Dunnes Stores Group. The Tribunal is satisfied that there was no wrongful use of his position by Mr. Charles Haughey in this regard."

Before proceeding to indicate why the Tribunal has considered it necessary to revisit inquiries at public sittings into the dealings between the Dunnes interests and the Revenue Commissioners, it is helpful to outline briefly the potential liabilities to taxation to which the Dunnes interests were exposed in the mid-to-late 1980s. These potential liabilities were of an exceptional nature and were not the usual instances of taxation to which commercial organisations are commonly subject such as corporation tax, PAYE, PRSI, excise duty or VAT. The liabilities in question were liabilities to capital taxes which had not previously arisen and which had their roots in the ownership structure of the Dunnes organisation and which I will refer to briefly.

In 1964, the late Mr. Bernard Dunne and the late

Mrs. Norah Dunne settled property on trust. The property the subject matter of the trust comprised the shares in the overall Dunnes Holding Company. This was an unlimited company, and each of the Dunnes Stores trading companies was a wholly-owned subsidiary of the Dunnes Holding Company. The effect of this structure was that the entire ownership of the trading companies was held through the Dunnes Holding Company by the trust and was subject to the terms of the trust.

The trust was a discretionary trust, and the original Trustees were the late Mr. Bernard Dunne, the late Mrs. Norah Dunne, Mrs. John Dunne and Mr. John Spillane. The beneficiaries were each of the six children of the late Bernard Dunne and Norah Dunne. By the mid-1980s, the Trustees were Mr. Oliver Freaney, Mr. Noel Fox, Mr. Frank Bowen, Mr. Bernard Uniacke and the late Mr. Edward Montgomery. Under the terms of the deed of settlement, the Trustees were permitted, in their absolute discretion, to apply both the income and the capital of the trust for the benefit of the beneficiaries. The deed also provided that in default of the Trustees making an appointment of the capital of the trust fund by the 15th March 1985 (being 21 years from the date of the trust deed) the capital of the trust (being the shares in the Dunnes Holding Company) was to vest equally in the beneficiaries. Therefore, in the absence of the Trustees making an appointment of



the shares amongst the beneficiaries before the 15th March 1985, the shares would automatically vest in the six siblings including Mr. Ben Dunne equally on that date. Discretionary trusts, are a form of tax planning which enable income which would otherwise be subject to the ordinary tax regime to enjoy limited exposure to tax as long as the income remains within the trust.

There were two events in the mid-1980s which potentially had a significant impact on the tax liability of the Trustees and indirectly on the tax liabilities of the beneficiaries, who were Mr. Ben Dunne and his five siblings. These events were as follows:

Firstly, the Finance Act of 1984 introduced a form of capital taxation of discretionary trusts known as Discretionary Trust Tax. There were two instances of this tax, which were, firstly, an annual tax of 1% on the value of the assets the subject matter of the trust; and secondly, a one-off tax at a rate of 3% of the value of the assets the subject matter of the trust on the death of a settlor.

Apart from a short time during the 1970s when wealth tax was payable, there had not previously been any form of capital tax payable by the Trustees of a discretionary trust.

The Dunnes Trust of 1964, which I have just referred to, was a discretionary trust and accordingly, as and

from the year 1986, the Trustees were liable for an annual charge to discretionary trust tax of 1% of the value of the shares held by the trust and were also liable for a 3% charge in respect of both the deaths of the late Mr. Bernard Dunne and the late Mrs. Norah Dunne who respectively died on the 25th January 1984 and the 5th April 1986.

The Revenue Commissioners raised assessments to discretionary trust tax on the Dunnes Trustees on the 8th September 1986 on the basis of a valuation of the shares held in the trust of IR£100 million. The assessments were appealed by the Trustees to the Appeal Commissioners and were listed for hearing on the 16th March 1987. The assessments were settled on that date on the basis of an agreed valuation of IR£82 million, and ultimately a payment of IR£3,564,000 was made on the 25th May 1987.

The second significant event arose from the fact that the 1964 trust deed provided that in default of the Trustees making an appointment of the shares before the 15th March 1985, the shares were to vest equally in the six beneficiaries. The tax consequences of the shares vesting in the beneficiaries was that the Trustees would have been liable to Capital Gains Tax and the beneficiaries would have been liable to capital acquisitions tax; and from the information available to the Tribunal, it appears that the Dunnes interests

reckoned that the total exposure to taxation would be in the region of 50% of the value of the shares. In other words, 50% of the value of the entire Dunnes enterprise would have been payable in capital taxes to the Revenue. As of the 13th March 1985, two days prior to the vesting date, no appointment had been made by the Trustees.

The Tribunal has been informed that the advisers to the Dunne family devised a tax planning strategy in order to prevent the shares vesting in the beneficiaries and thereby avoiding the potential liabilities to Capital Gains Tax and to Capital Acquisitions Tax. By executing a deed devised to extend the life of the original trust deed, the vesting of the shares in the beneficiaries was postponed. Under this scheme the Trustees transferred, subject to certain terms, the shares held under the original trust to be held by them as Trustees under a new trust deed.

The Revenue Commissioners, having considered the matter and having obtained legal advice, took the view that this resulted in a deemed disposal of the assets to the new trust for Capital Gains Tax purposes and that a charge to Capital Gains Tax arose. The Revenue Commissioners, on the 27th November 1986, raised an assessment to Capital Gains Tax in the sum of IR£1/238.8 million. This was appealed by the Trustees to the Appeal Commissioners. The Appeal Commissioners

heard the appeal on the 22nd and 23rd September 1988 and delivered a determination in favour of the Trustees on the 11th November 1988. The Revenue Commissioners did not appeal the adverse finding of the Appeal Commissioners to the High Court, on the advice of senior counsel, and no tax was ultimately payable by the Trustees.

It is these exceptional instances of or potential liabilities to taxation which are at the core of the dealings between the Dunnes interests and the Revenue Commissioners and into which the Tribunal has, in the course of the investigative phase of its work, and now intends in the course of public sittings, to pursue further inquiries.

I now turn to deal with the additional matters which I referred to earlier which have prompted the Tribunal to determine that it was necessary to revisit inquiries already made by the McCracken Tribunal into the dealings between the Dunnes interests and the Revenue Commissioners in connection with the Discretionary Trust Tax and Capital Gains Tax assessments.

Firstly, as already mentioned, the McCracken Tribunal was not aware of the earlier payments from Mr. Bernard Dunne to Mr. Charles Haughey in January 1987 in the sum of  $\pounds 32,200$  and in May 1987 in the sum of  $\pounds 282,500$  sterling. Nor was the McCracken Tribunal aware of the later payments of  $\pounds 180,000$  that was the Carlisle

Trust payments or the  $\frac{1}{2}$ 20,000 payment in November 1992 and May 1993.

Secondly, evidence was given to the McCracken Tribunal that all the matters in dispute between the Dunnes interests and the Revenue Commissioners had been disposed of and resolved in full prior to the first payment from Dunnes Stores to Mr. Charles Haughey of which the McCracken Tribunal was aware, which was in November 1987.

Thirdly, it appears that documents and information which have come to the attention of the Tribunal were not made available to the McCracken Tribunal, and in particular, documents and information in relation to the following matters:

Firstly, evidence was given to the McCracken Tribunal that Mr. Ben Dunne's meeting with Mr. Philip Curran in March 1988 was arranged by Mr. Charles Haughey.

Mr. Dunne gave evidence that prior to that date he had not met the head of the Revenue Commissioners. From the documents made available to the Tribunal by the Revenue Commissioners, it appears that this was not in fact Mr. Ben Dunne's first meeting with the head of that organisation. Mr. Dunne met Mr. Seamus Pairceir, Mr. Philip Curran's immediate predecessor, on a number of occasions commencing in late April 1987 and continuing, it appears from the documents, up to the day on which Mr. Pairceir retired from his position as

Chairman on the 11th September, 1987. What is more, it appears that the initial meeting in late April 1987 was also arranged at the instigation of Mr. Charles Haughey, and this has been confirmed by Mr. Pairceir. It appears that Mr. Noel Fox was present at a number of these meetings.

Secondly, it appears that none of these meetings was brought to the attention of the McCracken Tribunal either by Mr. Haughey, the Revenue Commissioners, Mr. Ben Dunne, Mr. Noel Fox, or Mr. Seamus Pairceir.

When the Tribunal took this matter up with

Mr. Pairceir, he indicated as follows to the Tribunal.

He said: "With regard to the inquiries made by the McCracken Tribunal, Mr. Haughey asked me in May 1987 if I would meet Mr. Dunne. I did not regard Mr. Haughey's request to me as constituting a representation or submission as mentioned in the McCracken Tribunal's letter of 8th April 1997."

The third matter is as follows:

The Revenue Commissioners have provided the Tribunal with a significant amount of documentation relating to the contacts between Mr. Ben Dunne and the Revenue Commissioners. From information made available by the Revenue Commissioners, it appears that this documentation was not provided to the McCracken Tribunal. From these documents, it appears that the dealings between Mr. Ben Dunne and the Chairman of the

Revenue Commissioners may have been more extensive than appears from the evidence given to the McCracken Tribunal. The Tribunal will wish to examine the true nature of these dealings in the course of its public sittings.

The fourth matter, then, which has prompted the Tribunal to revisit these matters in the course of its public sittings is that the McCracken Tribunal was not apparently aware of the fact that after his retirement as Chairman of the Revenue Commissioners in September 1987, Mr. Pairceir was apparently retained in a consultancy capacity by the Dunnes interests, and initially was retained for the purposes of advising in relation to the appeal against the Capital Gains Tax assessment raised on the 27th November 1986, and which was the subject matter of his meetings with Mr. Ben Dunne between April and September 1987. Mr. Pairceir was paid a fee of  $\text{€}10,000$  plus VAT in August 1988.

I now wish to outline in more detail what appears to have been the dealings between the Dunnes interests and the Revenue Commissioners in connection with the Discretionary Trust Tax and the Capital Gains Tax assessments, and to identify the particular matters into which the Tribunal intends to inquire in the course of these public sittings to determine whether Mr. Haughey did any act or made any decision in his capacity as Taoiseach to confer any benefit on the

Dunnes interests or procured any other person to do such act or make such decision in relation to the tax liabilities of the Dunnes interests.

In order to put these matters into context, it is necessary to refer back to events which commenced in late 1987. Mr. Frank Bowen, an accountant and one of the Trustees of the Dunnes Trust, has informed the Tribunal that with the introduction of Capital Gains Tax in 1975, Capital Acquisitions Tax in 1976 and Discretionary Trust Tax in 1984, the tax reliefs or benefits previously associated with discretionary trusts were eliminated, and that these taxes imposed potentially very substantial tax liabilities if the shares held by the trust were to be appointed amongst the Dunnes siblings or allowed to vest in them in March of 1985. Mr. Liam Horgan, an accountant and adviser to the Dunnes interests, has informed the Tribunal that there was concern on the part of the Trustees, the beneficiaries, and the Dunnes advisers that either the Dunnes Holding Company would have to raise funds publicly or that part of the Dunnes enterprise would have to be sold to meet the potential tax liabilities. Mr. Frank Bowen has further informed the Tribunal that the long-term future of the trust had been under discussion for many years, and that by the end of 1984, the options available to the Trustees were either to appoint the shares or to extend the terms of the trust



beyond 1985. The preferred option of the Trustees was to appoint the trust fund, provided the cost was manageable, and Mr. Bowen has indicated that the only source of funding available to the Trustees would have been from the assets of the Dunnes Stores Group of companies. According to Mr. Bowen, the Trustees decided to approach the Revenue Commissioners with a view to establishing whether a basis existed whereby the shares held by the trust could be vested in the beneficiaries with Capital Acquisitions Tax and Capital Gains Tax being paid at a level which the Dunnes Group of Companies could afford.

In February of 1985, Mr. Bowen, following an introduction from the late Mr. Hugh Coveney TD, met the then Minister for Finance, Mr. Alan Dukes, and made certain points to him regarding the impact that the potential Capital Acquisitions Tax and Capital Gains Tax liability would have on the Dunnes enterprise if the shares were to vest in the beneficiaries.

The Tribunal understands that Mr. Bowen and Mr. Dukes spoke on the telephone on the 15th February 1985, when Mr. Dukes apparently indicated to Mr. Bowen that he had spoken to the Revenue Commissioners and that a meeting could be arranged between the Trustees and the Revenue Commissioners regarding the matter. Following a telephone conversation between Mr. Bowen and Mr. Seamus Pairceir, the then Chairman of the Revenue

Commissioners, a meeting was arranged between the Trustees and the Revenue Commissioners for the 7th March, 1985.

From the information made available to the Tribunal, it appears that the purpose of the meeting on the 7th March 1985, at least as far as the Trustees were concerned, was to discuss the likely valuation which the Revenue Commissioners would place on the shares held by the trust, the consequent liability to taxation of the Trustees, and the terms that might be allowed by the Revenue Commissioners for the payment of such tax liabilities. In advance of the scheduled meeting on the 25th February, 1985, the Dunnes Trustees made a return in respect of Discretionary Trust Tax; that is, the 1% annual charge and the one-off 3% charge which arose in respect of the death of the late Mr. Bernard Dunne. A payment on account of IR£½500,000 was made, and the return was based on a valuation of IR£½33.4 million for the entire of the shares held by the trust; that is, the entire of the shareholding in the overall Dunnes Holding Company. In other words, the Trustees were proposing a valuation of i£½33.4 million for the entire of the Dunnes Stores enterprise. It should be borne in mind, of course, that this was a different tax, but the return is of interest in terms of the valuation proposed for the assets held by the trust. That is in the context of valuation for Capital

Acquisitions Tax and Capital Gains Tax purposes, which was the matter under discussion, or was to be under discussion, at the proposed meeting which had been arranged for the 7th March, 1985.

The meeting of 7th March 1985 proceeded, and a formal typed record of the meeting was prepared by the Revenue Commissioners. It appears that the meeting was attended by the Trustees; by the Chairman of the Revenue Commissioners, Mr. Seamus Pairceir; and by the relevant officials. From the record kept by the Revenue Commissioners, there appears to have been discussion of the technical approach that might be adopted to the task of the valuation of the trust assets. The Trustees had already submitted a valuation of approximately  $\text{€}1234$  million for the shares, albeit in respect of a different tax, and the notes record that the Revenue Commissioners considered that the minimum valuation that could be accepted by them was in the region of  $\text{€}1280$  million, which would have given rise to a tax liability of  $\text{€}1244.2$  million if the trust terminated and the shares vested in the beneficiaries.

Mr. Bowen has informed the Tribunal that following that meeting, it was clear that there was no capacity within the Dunnes Stores Group to pay the tax bill associated with the level of valuation which had been indicated by the Revenue Commissioners, and that in the circumstances, the Trustees considered that they had no

alternative but to extend the trust.

The Trustees then proceeded, on the day prior to the vesting day as provided for in the 1964 deed, to execute two deeds, each of which was dated the 14th March, 1985. The first trust deed settled all of the ordinary shares in the Dunnes Holding Company on the same five Trustees subject to the terms of that settlement. The second deed vested the entire of the preference shares in the holding company formerly held by the Trustees in three of the Dunnes siblings.

Mr. Christopher Clayton, who was in charge of the Capital Gains Tax section in the office of the Chief Inspector at that time, has informed the Tribunal that in May 1985 he was told that the legal documentation had been submitted to the Revenue Commissioners by the Trustees, and the two deeds of 14th March 1985 were referred to him for consideration and for his opinion as to their effect. After examining the deeds, it was his view that the Trustees of the 1985 deed that is, the first deed, to which I have just referred seemed to have become absolutely entitled to the ordinary shares as against the Trustees of the 1964 deed at the time that the new deed was executed, thus triggering a Capital Gains Tax liability under the code governing the payment of Capital Gains Tax. Mr. Clayton has indicated that because of the large sums involved and the provisions of the legal deeds, Revenue decided to

consult with senior counsel in the matter. Senior counsel's opinion was to the effect that a disposal of the shares for Capital Gains Tax purposes had occurred on the execution of the new deed, and Mr. Clayton has confirmed to the Tribunal that he agreed with that view.

It appears from the documents and information provided by Mr. Bowen that he was in telephone contact with Mr. Pairceir on two occasions in August 1985. From Mr. Bowen's contemporaneous notes and from a typed file note which he subsequently prepared and which was dated the 19th August 1985, it appears that on the 9th August 1985, Mr. Pairceir informed Mr. Bowen that the Revenue Commissioners accepted that the 1985 deed did not give rise to a charge to Capital Acquisitions Tax, but that the Revenue Commissioners were of the view that it did give rise to a charge to Capital Gains Tax. It appears that there was also discussion during these conversations of the manner in which the matter might proceed, the concerns of the Trustees regarding confidentiality, and the possibility that both the issues of liability to Capital Gains Tax and the valuation of the assets for that purpose might be settled.

Again from the documents and information provided by Mr. Bowen, it appears that Mr. Bowen met Mr. Pairceir on the 23rd October 1985, and from Mr. Bowen's note, it

would appear that at that meeting, he and Mr. Pairceir covered much of the same ground as had been the subject of their telephone discussions during the previous August. There are no records of these contacts between Mr. Pairceir and Mr. Bowen on the files produced to the Tribunal by the Revenue Commissioners.

The position, therefore, as of January 1986 was that the Trustees directly and Mr. Ben Dunne and his siblings indirectly were potentially liable to the Revenue Commissioners for the following charges to tax:

Firstly, Discretionary Trust Tax in respect of both the annual 1% charge for each year from 1986 and a 3% charge in respect of the death of the late Mr. Bernard Dunne.

Secondly, Capital Gains Tax in respect of the deemed disposal arising from the deed of the 14th March 1985, which, on the basis of the valuation of  $\text{€}1280$  million, which the Revenue Commissioners had indicated at the meeting on 7th March 1985 was the minimum that they could accept, would have given rise to a potential exposure in the region of  $\text{€}32$  million and which, on the basis of the valuation proposed by the Trustees, of approximately  $\text{€}34$  million, would have given rise to an exposure in the region of  $\text{€}13.6$  million.

These charges to Discretionary Trust Tax and Capital Gains Tax were at that time administered by two different divisions within the Revenue Commissioners.

The Capital Taxes Division administered Discretionary Trust Tax, and the Office of the Chief Inspector of Taxes administered Capital Gains Tax. Mr. Christopher Clayton, from whom the Tribunal has heard evidence on previous occasions, was responsible for the Capital Gains Tax section of the office of the Chief Inspector, and he was the senior official involved in relation to the charge to Capital Gains Tax until his promotion in 1986, although he still appears to have had a significant input until late 1987.

During this time, Mr. Clayton was assisted by Mr. Sean O'Cathain. Dr. Don Thornhill was Assistant Secretary of the Capital Taxes Branch of the Revenue, having been appointed in mid-1985; and as regards the liability to Discretionary Trust Tax of the Dunnes Trustees, he was assisted by Mr. John Reid.

Dr. Don Thornhill, Assistant Secretary in the Capital Taxes Branch, has informed the Tribunal that it is his recollection that the Chairman of the Revenue Commissioners, Mr. Pairceir, at an early stage in the Dunnes matter, took the view that it was necessary to adopt a "cross-cutting", as Dr. Thornhill puts it, approach to the handling of the case, and that Mr. Pairceir saw it as appropriate that he, Mr. Pairceir, should lead on this, in view of the reporting relationships to the Board of the Revenue and to the two Revenue divisions involved.

Dr. Thornhill has informed the Tribunal that

Mr. Pairceir assembled a small group of officials drawn from the Office of the Chief Inspector and from the Capital Taxes Branch to undertake a review of the preparation of the valuation of the Dunnes Trust for both Discretionary Trust Tax purposes and for Capital Gains Tax purposes.

During 1986, there appear to have been intensive work undertaken within the Revenue Commissioners, and from the documents available to the Tribunal, this appears to have been addressed primarily to three matters.

Firstly, the valuation of the shares held by the trust for both Discretionary Trust Tax and Capital Gains Tax purposes.

Secondly, consideration of the issue of liability for the purposes of Capital Gains Tax.

Thirdly, deliberations addressed to the manner in which the Revenue should proceed in the case.

The documents available to the Tribunal appear to confirm what the Tribunal has been told by

Dr. Thornhill, namely that the Chairman, Mr. Seamus Pairceir, took a lead role in all aspects of the case.

Mr. Pairceir appears to have had regular meetings with the officials from both sections who reported directly to him.

The information and documents made available by both the Revenue Commissioners and by the Trustees of the



Dunnes Trust, including Mr. Bowen, also indicate that there were regular contacts between the Trustees and Mr. Pairceir during 1986. There appear to have been meetings and telephone discussions, primarily between the Chairman and Mr. Bowen, but also, although to a somewhat lesser extent, between the Chairman, Mr. Pairceir, and Mr. Noel Fox. Mr. Pairceir appears to have kept Mr. Bowen regularly informed of the steps being taken and the approach being adopted by the Revenue Commissioners. From the material assembled by the Tribunal, there appeared to have been the following contacts between March of 1986 and November of 1986:

Firstly, on the 10th March, 1986, when Mr. Pairceir appears to have telephoned Mr. Bowen to indicate that the Revenue were considering bringing in an outside expert to assist them in the valuation of the shares the subject matter of the 1985 trust.

Secondly, from a note prepared by Mr. Sean O'Cathain on 5th June 1986, it appears that the Chairman had a meeting with Mr. Bowen, although there is no other record of that meeting.

Thirdly, a note of Mr. John Reid to Dr. Thornhill, dated the 16th July 1986, records that the Chairman had informed Mr. Reid that he had had a meeting on his own with Mr. Bowen and with Mr. Fox, when the Trustees had apparently informed Mr. Pairceir that they intended to make representations to the Minister for Finance

regarding the inequality of the Capital Gains Tax charge which the Revenue Commissioners intended to raise.

Fourthly, a note of Mr. Clayton, dated the 4th September 1986, which records that the Chairman informed him that he, the Chairman, had told Mr. Bowen that the "big bang", as the note records it, Capital Gains Tax charge would not be made just yet, but that the Discretionary Trust Tax liability would be the subject of two assessments.

Fifthly, a note of Mr. Clayton's dated the 10th November 1986 records that he had been informed by the Chairman that the Dunnes Trustees had not made representations to the Minister, and that the Chairman had telephoned Mr. Bowen to indicate to him that he, the Chairman, proposed to have the Capital Gains Tax assessments made.

On the 27th November 1986, an assessment to Capital Gains Tax was raised by the Revenue Commissioners in the sum of IR£38,800,000, which was based on a chargeable gain of IR£97 million by reference to a valuation of IR£120 million. The Revenue Commissioners had previously raised two assessments to Discretionary Trust Tax in respect of the 1% annual charge and in respect of the 3% charge arising on the death of the late Bernard Dunne, and both of which were based on a valuation of IR£100 million.

Prior to raising the Capital Gains Tax assessment, Mr. Christopher Clayton wrote to the representatives of the Trustees on the 24th November 1986 and informed them that the Revenue intended to raise an assessment to Capital Gains Tax indicating that the assessment would be for  $\pounds 38.8$  million and explaining how the Revenue Commissioners had computed the liability.

Mr. Clayton's letter reads as follows:

"Dear sir,

"I refer to your letter dated 17 April 1986 and subsequent discussions concerning Capital Gains Tax liability.

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

"Indexation relief" multiplier (4.140) and to possible expenses, an assessment in the amount of  $\pounds 97$  million, chargeable at the rate of 40% (tax  $\pounds 38,800,000$ ) appears appropriate.

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

There is also a handwritten manuscript entry on the right-hand corner of that letter which reads as follows:

"Mr. Chairman,  
Copy of minute of 18 November 1986 and enclosures are attached. Please change accordingly assessment to be made on 27/11/86, notice to be sent by registered post. Please treat very confidentially" which appears to be underlined "And abbreviate the settlor's name in the computer notification to "BND." And that appears to be signed "C. Clayton" and dated 25th November 1986.

The assessment itself dated the 27th November 1986. The reference number appears at the right-hand side at the top of the page. It is entitled Assessment to Capital Gains Tax for the year ending 5th April 1985.

It is addressed to Mr. Oliver Freaney, Chartered Accountant, 45 Northumberland Road, Ballsbridge, Dublin 4, as Trustees of the Bernard Dunne and Norah Dunne settlement of 16th March 1964. And it shows on the left, chargeable gain. On the right, in manuscript, is

entered the figure of  $\text{€}1297$  million.

Below that, then, "Less allowable losses", and there does not appear to be any entry for that.

The next entry is "Net chargeable gains", which is also shown at  $\text{€}1297$  million. Less: Amount not chargeable 16 relief, that does not appear to apply.

The next entry is "Net amount chargeable to tax:

$\text{€}1297$  million. And then below that, Capital Gains Tax there on  $\text{€}1238.8$  million. On the far right-hand corner, net Capital Gains Tax,  $\text{€}1238.8$  million. And below that, payable not later than 27th January, 1987. It appears

to be signed Sean O'Siochain, and it is stamped

"Inspector of Taxes, Dublin No. 1 District, 27th

November 1986. Clanwilliam Court, Dublin 2."

The Tribunal has been informed that the figure of

$\text{€}125.5$  million which was mentioned in Mr. Clayton's

letter for the 1974 valuation was a valuation which the

Trustees had agreed in 1975 for wealth tax purposes,

and that the figure of  $\text{€}120$  million for the value of

the shares as of March 1985, which was also mentioned

in Mr. Clayton's letter, was arrived at following an

extensive consideration by the Capital Taxes Branch and

was at the lower end of their estimated valuations.

It is the Tribunal's understanding that the assessment

of  $\text{€}1238.8$  million was not, in the view of the Revenue

Commissioners, at an unrealistic level, although, given

the uncertainty attaching to the valuation of the

shares, the Revenue Commissioners could not guarantee that they would recover the entire of the tax assessed.

The position therefore was as of January 1987, the following assessments to capital taxes had been raised by the Revenue Commissioners.

Firstly, Discretionary Trust Tax on the basis of a valuation of  $\text{€}100$  million.

Secondly, Capital Gains Tax in the sum of  $\text{€}38.8$  million based on a valuation of  $\text{€}120$  million.

The Tribunal understands that the different valuations on which the assessments were based arose from differences in the statutory provisions governing the valuation of assets for Discretionary Trust Tax and Capital Gains Tax purposes.

The Trustees, as was their entitlement, appealed both assessments to the Appeal Commissioners. The first of the appeals to be listed before the Appeal

Commissioners was the appeal against Discretionary Trust Tax, which was listed for hearing on the 16th March 1987. On that date there were discussions

between the representatives of the Revenue Commissioners and the representatives of the Dunnes Trustees, and the assessment was settled on the basis

of an agreed valuation of  $\text{€}82$  million. This resulted in a formal written settlement containing detailed provisions for both tax due and interest payable. The

tax due was to be paid within 21 days, and in the event

of nonpayment within that time, interest was to run from the date of settlement to the actual date of payment. The terms of settlement read as follows:

Re: Dunnes settlement.

"Bernard Dunne.

"Agreed valuation of 100%, i.e. £2 million.

"Value of this 50% inheritance i.e. £1 million.

"Interest payable from 23/5/84 to 24/12/84 at 1.25% per month in addition to the 3% Discretionary Trust Tax.

"Both payments to be made within 21 days from 16/3/87.

"In event of nonpayment within the 21 days, interest to run.

"1% payable on i.e. £1 million, 5/4/86, as annual discretionary tax.

"Interest payable on this from 27/5/86 up to 16th March 1987.

"Both payments to be made within 21 days, and in event of nonpayment, interest to be payable.

"Further 1% Discretionary Trust Tax payable for '87 on same valuation of i.e. £1 million. (50% share)."

The Norah Dunne aspect of the settlement is then dealt with.

"Agreed i.e. £2 million value.

"100% at date of her death 9/3/86.

"£1 million her 50% inheritance.

"Trustees accept liability for payment.

"Interest payable 1.25% from 9/3/86 to 16/3/87.

"Both payments to be made within 21 days, and in event of nonpayment, interest to run.

1% Discretionary Trust Tax payable for year 1986 exempt only one payment.

"1987 to make statutory return and payable in April '87 on a valuation of  $i\frac{1}{2}$ 41 million.

"All without prejudice to any liability for Capital Gains Tax."

And they were the terms of the settlement concluded on the 16th March 1987.

The Revenue Commissioners were represented at the appeal by senior counsel and junior counsel and by the Revenue Solicitors; and Dr. Thornhill, Assistant Secretary in the Capital Tax Section, and Mr. Reid were also in attendance. The Trustees were also represented by senior counsel, junior counsel, and by solicitors, and Mr. Bowen, Mr. Fox and Mr. Uniacke appear to have been present.

Dr. Thornhill has informed the Tribunal that he did not have detailed instructions in advance of the hearing of the appeal, except that Mr. Pairceir had asked Dr. Thornhill to telephone him and to keep him informed. Dr. Thornhill regarded that request as reasonable, as Mr. Pairceir was au fait with the valuation issues and had been involved in dealings with the representatives acting for the trust.

Dr. Thornhill's recollection is that when negotiations



led by senior counsel on both sides resulted in a figure, he then telephoned Mr. Pairceir, who agreed to accept the valuation offered.

On the 20th March 1987, following the settlement, Mr. Reid wrote to Mr. Bowen setting out details of the liability to Discretionary Trust Tax on foot of the settlement which had been reached. This letter reads as follows:

"Dear Mr. Bowen,

"With reference to your telephone call yesterday, the details of tax and interest are as follows:

"The late Bernard Dunne as disponer:

Valuation date 25 January 1984.

£41 million."

That would have been the 50% of the total value referable to the funds and provided to the settlement by the late Bernard Dunne.

"Tax at 3%, 1.23 million."

Then there is the computation of interest, less the payment of £500,000, which will be recalled was paid on account in December 1984. The total due for that, then, was £853,000.

Then the 1% annual charge on the £41 million for the year 1986, plus interest amounting to £461,250. And then the same computation for 1987. And obviously no interest accrued there because the liability was due on the 5th April. And the tax was £410,000. And then,

under the heading, the late Norah Dunne as disponer, valuation 9th March 1986, again the 41 million tax at 3%, i.e. 1.23 million. Interest computed from the 9/3/86, being the date of death of the deceased, to the 16/3/87, being the date of the settlement: i.e. 199,875 and the total due as regards that event was i.e. 1,429,675, and then the 1% annual charge in respect of the Norah Dunne Valuation date for the 5th April 1987 was i.e. 410,000. And Mr. Reid went on to state that the "Total now due in respect of 1(a) and (b) and 2(a) is i.e. 2,744,125, which is to be paid within 21 days of the 16 March 1987 to prevent further interest accruing.

"The total due in respect of 1C and 2B, i.e. valuation date 5 April 1987, is i.e. 820,000. And it's signed Mr. John Reid, and it is addressed to Mr. Frank Bowen. Mr. Bowen responded on the 24th March 1987, and he noted that in relation to the tax due in respect of the death of the late Norah Dunne, interest had been calculated to run from the date of death of the deceased right up to the date of the agreement. While Mr. Bowen accepted that that was in accordance with what had been agreed between the parties on the 16th March, he indicated that it was perhaps a little unfair that the interest was calculated to run from the precise date of death, and he wondered if consideration could be given to a hypothetical reasonable time-frame within which to complete the tax return and to make a

payment in such circumstances.

This letter is from Mr. Frank Bowen to Mr. John Reid, dated the 24th March, and it reads as follows:

"Re Discretionary Trust" dated 16 March 1964.

"Dear Mr. Reid,

"Thank you for your letter of 20 March setting out details of the tax and interest in the above matter.

"In relation to the late Norah Dunne, under paragraph 2(a), I noticed that interest is calculated to run from the 9 March 1986 to the 16 March 1987, in effect from the date of death right up to the date of agreement.

While I would accept that this is in accordance with the agreement of the 16 March, I think it is perhaps a little bit unfair that the interest runs from the precise date of death and I was wondering if consideration could be given to a reasonable time-frame within which to complete the return and make a payment in such circumstances."

Mr. Reid replied on the 26th March, as follows:

"Re discretionary trust dated 16 March 1964.

"Dear Mr. Bowen, I refer to your letter of 24th March 1987. The claim for inheritance tax in connection with the death of the late Norah Dunne (ob. 9 March 1986) was first notified to the Trustees on 7 May, 1986, and a further request to lodge a return was made in a letter dated 8 September 1986. In another letter dated 7 January, 1987, the outstanding claims were detailed

and the position as to interest charges was set out in full.

"The statutory position is that interest is payable from the valuation date unless tax is paid within three months of that date. As regards the tax and interest due in connection with the death of the late Norah Dunne, the Revenue Commissioners did not consider it appropriate to depart from the statutory position which, as you point out, now forms part of the agreement of 16 March, 1987."

Yours sincerely, John Reid. Principal Officer."

Under the terms of the settlement, it will be recalled that the outstanding Discretionary Trust Tax was to be paid within 21 days; otherwise, interest was to apply. Payment was not made by the Dunnes Trustees within 21 days. It appears that Mr. Reid pursued the matter with Mr. Bowen, and from documentation available from the Revenue Commissioners, it appears that a number of assurances were given that the outstanding tax and agreed interest would be discharged, and Mr. Reid was informed by Mr. Bowen that it was merely a matter of the cheque being countersigned by Mr. Dunne.

On the 25th May 1987, Mr. Reid wrote to Mr. Noel Fox setting out details of the tax and interest due as of that date. The total due, including interest, calculated to 25th May 1987, in accordance with what had been agreed on the previous 16th March, was

£3,626,450.

The second page of this letter sets out much the same calculations as were set out in the earlier letter, following the settlement, the letter of the 20th March, 1987, and the total figure then for tax and interest now due was £3,526,450. And that letter was dated the 25th May of 1987.

The documents produced to the Tribunal by the Revenue Commissioners include a written record made by Mr. Reid of a telephone call which he received from Mr. Pairceir on the same day, the 25th May 1987, and reads as follows:

"Chairman Pairceir asked if all interest up to date had been included in my letter of 25/5/87 I said it had.

"He then asked if £62,450 represented interest since the date of the hearing on 16/3/97 I said it did.

"He then said he proposed not to charge those two months' interest in the circumstances of the case, and he promised to let me have a note of the matter for our files."

And it's dated 25/5/87.

There does not appear to be any such note of the matter as referred to by Mr. Pairceir within the files of the Revenue Commissioners produced to the Tribunal.

On the same date, the 25th May 1987, Mr. Noel Fox wrote to Mr. Reid enclosing his client's cheque for £3,564,000 and described that figure "as now agreed in

settlement." The letter reads:

"Dear Mr. Reid,

"Thank you for your letter of the 25th May 1987.

"I enclose herewith my client's cheque for  $\pounds 3,564,000$  as now agreed in settlement.

"You should let me have a receipt in respect of this amount in due course.

"Yours sincerely, Noel Fox."

And there is a handwritten note on the face of the letter with a dash from the figure  $\pounds 3,564,000$ , and it appears to read: "Cheque to cash office 26/5/87."

The Tribunal, in the course of its private investigative work, has raised this matter with Mr. Pairceir and has asked Mr. Pairceir why he agreed to waive the sum of  $\pounds 62,450$  which was due by the Dunnes Trustees and which they had agreed to pay under the terms of the settlement of the 16th March, 1987.

Mr. Pairceir has provided the Tribunal with a Memorandum of Intended Evidence which states as follows:

"Mr. Pairceir has examined the papers enclosed with the Tribunal's letter of 21st March 2005, including the copy of Mr. Reid's manuscript note of 25th May, 1987.

It would appear that at a meeting on 25th May 1987, Mr. Pairceir conceded that  $\pounds 62,450$  interest accrued viewed after the date of settlement on 16th March 1987 might be foregone. Mr. Pairceir does not recall the

circumstances, but it was probably because the total interest payable up to the date of settlement was already  $\frac{1}{2}$ 405,287, it was not uncommon for the Revenue to concede some interest in arriving at a settlement of liabilities."

Mr. Pairceir's memorandum continues:

"During Mr. Pairceir's time as Accounting Officer, the matter of all accrued interest not being collected was raised at the Public Accounts Committee, and as a result, a memorandum dealing with the issue was submitted to the Attorney General. The authority for the practice was claimed to be the provision which is in every Finance Act placing the taxes and duties imposed under the care and management of the Revenue Commissioners. The Attorney General's opinion agreed broadly with the Revenue view.

After an interval of nearly 18 years, Mr. Pairceir does not remember having agreed to waive interest in this instance, nor why. The only thing that strikes him is that the economic and budgetary positions were extremely bad in 1986 and 1987, and it may be that he hoped that forgoing the interest accruing after the date of the settlement may have led to payment."

The Tribunal also asked Mr. Noel Fox about this matter, as he appears to have been the trustee who was corresponding with Mr. Reid on the 25th May 1987.

Mr. Fox has informed the Tribunal that he currently has

no direct recollection of negotiations or dealings between the Trustees and the Revenue Commissioners in respect of the interest on the late payment which amounted to i£1/262,450 some 18 years ago. He has no documentary records in relation to the agreement with Mr. Pairceir to agree not to proceed with the demand for interest on the payment of the settlement monies.

However, if there were such discussions with the Revenue, Mr. Fox believes that it would have been he that conducted those discussions on behalf of the Trustees. His understanding would have been that such an agreement would have been entirely normal practice for the Revenue at the time in the context of any settlement of a significant payment of taxes.

Concurrently, there were other events occurring in the early months of 1987 involving dealings between Mr. Dunne and Mr. Haughey on the one hand, and between Mr. Haughey and Mr. Pairceir on the other hand, and the Tribunal will wish to inquire into whether these dealings had an impact on the Revenue Commissioners' treatment of the tax affairs of the Dunnes interests.

These events are as follows:

Firstly, on 10th March 1987, there was a change of government, and Mr. Charles Haughey was elected Taoiseach. Mr. Haughey had already received the benefit of the bearer cheques in late January 1987 in the sum of IR£1/232,200.



Secondly, it will be recalled that the McCracken Tribunal heard evidence and so found that an initial approach was made by the late Mr. Desmond Traynor to Mr. Noel Fox when he telephoned him and indicated that Mr. Charles Haughey had a significant financial problem and he was seeking to raise a sum of approximately  $\frac{1}{2}$ 150,000 each from about a half a dozen people, and asked Mr. Fox whether Mr. Ben Dunne would become part of the consortium. At that time, Mr. Fox was a close adviser to the Dunnes Stores Group and attended management meetings every morning at 8am in the head office in Stephen's Green. At the next meeting after his conversation with Mr. Traynor, he spoke to Mr. Ben Dunne and told him of the approach. Mr. Dunne's recollection is that he took a few days to consider the matter and then spoke to Mr. Noel Fox about it and indicated that he, Mr. Dunne, felt that Mr. Haughey was making a huge mistake to get six or seven people together, and that he would pay the entire amount needed.

As the McCracken Tribunal was not made aware of the bearer cheques in 1987 or of the Tripleplan payment in May 1987, it found that as the first payment to Mr. Charles Haughey from Mr. Ben Dunne in late November 1987, that this initial approach by Mr. Traynor to Mr. Noel Fox and the dealings between Mr. Fox and Mr. Dunne occurred sometime in late 1987 and probably

in early or mid-November of that year.

When the Tribunal discovered the bearer cheque payments and the Tripleplan payment, it revisited these matters in evidence with Mr. Fox and with Mr. Dunne. Both Mr. Fox and Mr. Dunne agreed that the initial approach by Mr. Traynor to Mr. Fox must have predated the Tripleplan payment in May 1987. Mr. Fox thought it could have been as early as March or April of 1987, and Mr. Dunne felt it must have been at least two months prior to the first payment in May 1987, and could have been as much as six months earlier.

Thirdly, from the documents made available to the Tribunal, it appears that Mr. Ben Dunne's meeting with Mr. Philip Curran, which had been arranged at the request of Mr. Charles Haughey, was not the first time that Mr. Dunne met the Chairman of the Revenue Commissioners. The documents available to this Tribunal establish that Mr. Dunne met with Mr. Pairceir, the Chairman of the Revenue Commissioners, in late April 1987; and what is more, it appears that this meeting was also arranged at the request of Mr. Charles Haughey. The McCracken Tribunal was not informed of this meeting or of subsequent meetings between Mr. Dunne and Mr. Pairceir. At least some of these meetings were attended by Mr. Noel Fox, who had acted as a conduit between the late Mr. Traynor and Mr. Ben Dunne a short time earlier in relation to

the provision of a sum of  $\text{€}1\frac{1}{2}$  million to Mr. Haughey.

Mr. Dunne has no records of these meetings.

Mr. Pairceir has no records of these meetings, and there is no contemporaneous record of the meetings within the files held by the Revenue Commissioners.

The records which exist consist of notes made by officials of the Revenue Commissioners of matters conveyed to them either directly or indirectly by Mr. Pairceir. The details of these notes are as follows

CHAIRMAN: I think, Ms. O'Brien, you are now proposing to open a series of Revenue memoranda, and it's probably a sensible point to adjourn for lunch. We'll resume at five to two.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MS. O'BRIEN: Before lunch, I was referring to events which were happening concurrently with the settlement and payment of the Discretionary Trust Tax assessment and I was referring particularly to dealings between Mr. Haughey and Mr. Pairceir on the one hand and between Mr. Pairceir and Mr. Dunne on the other hand.

And as I had indicated, Mr. Dunne had no record of these meetings, Mr. Pairceir had no record of these meetings, and there is no contemporaneous record of the meetings within the files held by the Revenue Commissioners. The records which exist consist of

notes made by the officials of the Revenue

Commissioners of matters conveyed to them either directly or indirectly by Mr. Pairceir.

And I was about to deal with the records, such as they are, and the notes which exist in the Revenue files.

Now, the first note is a handwritten note made by Mr. Sean O'Cathain recording telephone conversations which he had with Mr. John Reid of the Capital Taxes Branch on the 13th and 14th April of 1987.

There is a date entry on the top of this note "13th April 1987: Call from John Reid; their tax has not yet been paid. BD Ben Dunne has arranged a meeting with the Chairman for the 27th. JR John Reid wants to know what liability will be thrown up by the  $\frac{1}{2}$ 82 million value."

Below that, there is an entry for the 14th April 1987: "Call from John Reid. D. Spillane wants a note on the dividend to Trustees position.

"Based on the 82 million value in 1984, our claim for Capital Gains Tax would now be  $\frac{1}{2}$ 23.4 million, as over."

Now, the second record in the Revenue Commissioners' files is a handwritten note dated the 5th May 1987, also made by Mr. Sean O'Cathain, and that's in the following terms: On the left is the date, 5th May 1987.

It's headed: "Meeting with an Cathaoirleach arranged for 10.30am on Monday next. CC and myself to attend.

"Per CC" I think that's per Christopher Clayton

"on Cath", that's Mr. Pairceir, "met BD" Ben Dunne  
"and had full and frank discussion. He does not  
accept there is a disposal but would rather not gamble  
on the outcome, especially in view of the fact that it  
might take some years to resolve. Am Cathaoirleach  
pointed out that the Revenue believe that there was a  
disposal and have to pursue it.

Apparently Ben Dunne would like to settle. No  
indication of what figure might bring a settlement.

Only figure was that mentioned of  $\frac{1}{2}$ 23.6 million as  
being our revised claim based on the 82 million market  
value at 1985.

"Case discussed earlier with Christopher Clayton along  
the lines of my memo attached of this date."

Now, the next record on the Revenue Commissioners'  
files is a handwritten note dated the 11th May 1987,  
also prepared by Mr. O'Cathain of a meeting on that  
date attended by Mr. Pairceir, the Chairman; Mr.  
Christopher Clayton; and Mr. O'Cathain himself.

I am going to deal with just the first page of that  
note. Again, it's dated the 11th May 1987.

"Meeting with Chairman 10.30 to 12.45. Christopher  
Clayton and self from this office.

"He had met Ben Dunne and Mr. Fox recently at the  
request of an Taoiseach. It was the CGT they wished to  
talk about. The C.A.T. million would be paid. They  
had had a frank discussion. BD did not believe, on his

advice, that there was any CGT due but he recognised that at best, the full tax would only be deferred. Ii½3 million was too much for him to pay now. He would like to come to some agreement if possible. The Chairman pointed out that Revenue's claim was for the full amount and he was only the nominee for the Dail and the Board in this matter, but he would seek further advice on the matter.

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

Now, the next record is a handwritten note of Mr. O'Cathain dated the 4th June 1987, which records what appears to have been a telephone call which Mr. O'Cathain received from Mr. Pairceir, the Chairman. The note was made by Mr. O'Cathain in Irish, and we can refer to it. And in translation, it reads as follows:

"Memo 4th June 1987. Call from the Chairman. He met Ben Dunne. They settled on agreed i½16 million. He was offered three years to pay it. Maybe he will clear it within that time. It isn't accepted yet by Ben Dunne. He is going to think about it and come back to the

Chairman. I explained to him about the provisions of Great Britain, look at the figures for this."

Below that, the signature is SOC, and again it is dated 4th June, and there is a further note at the bottom:

"Value forward at 14/3/85, circa  $\frac{1}{2}$ 67 million. We must bring in revised Section 34 in the next Finance Act to ensure the value is not reduced further in disposition."

The next record is a handwritten note of Mr. O'Cathain dated the 9th July 1987, and it also records the contents of a telephone call which he received from Mr. Pairceir, and which was also made in Irish. It's a short note.

On the left is the date, the 9th July 1987. And in translation, it reads: "Call from the Chairman. Ben Dunne and Noel Fox are coming in next week. He would like to get a draft of a settlement form that would be needed."

The next record of these dealings and events is a handwritten note, again of Mr. O'Cathain, recording events which appear to have occurred on the 27th July 1987, 29th July 1987, and the 30th July 1987.

The heading of this note is in Irish. The main body of the note is not in Irish.

Now, this note dated 27th July 1987 reads: "Per JS and CC" "JS" I think was Joe Savage, and "CC" is Christopher Clayton "The negotiations with Ben Dunne

have floundered. Apparently Ben Dunne wanted to deal with C.A.T. also now as if the beneficiaries had or were taking the shares.

The C.A.T. would be of the order of  $\frac{1}{2}$  million, and five years would have been allowed to pay it. The CGT would be allowed as a credit against the C.A.T..

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

There is then another entry below that for the 29th July 1987: "Per Christopher Clayton, appellants interested again and request to pay by way of huge fees from company to directors each year. See note attached. Exclusively in relation to directors' emolument."

Then the final entry on that note is for the 30th July 1987, and it records: "See attached re problem on figures to be published. Per Christopher Clayton the beneficiaries may be assessed by agreement instead of the trust. This would bring forward charge in interest and abolish the charge on the trust."

Then the next document in the series of these records is a handwritten note of Mr. O'Cathain addressed to the Chairman, also made in Irish, and according to the Chairman, a settlement form and a formal note which Mr. O'Cathain had prepared regarding the technical



provisions of the Tax Acts governing the settlement of assessments.

Again, the note to the Chairman in this instance was made in Irish, but the actual form that he forwarded and the note regarding the settlement of assessments on appeal was made in English.

The note to the Chairman in translation reads:

"Chairman, settlement form with this as you requested", and it's signed "S. O'Cathain".

With that, Mr. O'Cathain forwarded a standard form for use in the event that the assessment was settled I don't propose reading it all out and also a note to him in relation to the statutory provisions governing the settlement of assessments raised by the Revenue Commissioners.

Now, the final document in this record of documents in the Revenue Commissioners' files is a further handwritten note of Mr. O'Cathain dated the 10th September 1987, and this appears to record information which Mr. O'Cathain received either from Mr.

Christopher Clayton or from Mr. Pairceir, the Chairman.

And at the top left is the date, the 10th September, 1987.

And it records as follows: "Call to CC from 'An C'.

Call from Christopher Clayton to the Cathaoirleach.

Bowens coming in. How much CGT. They wish to proceed on the basis that the deed of 14/3 was invalid and that

the beneficiaries became absolutely entitled on the 15th March. The C.A.T. on this would be about  $\text{£}32,000,000$  with revision to be given for trust tax paid since 1985. Any CGT paid would be allowed against this. Christopher Clayton had a figure of  $\text{£}97$  million calculated on a basis of 50% discount of the  $\text{£}82$  million. Market value of the preference and ordinary which the trust held. He argues for a discount of the value in relation to the size of cash holding acquired by the beneficiaries, presumably one-sixth each. This would have  $\text{£}49$  million value forward, which they would hardly accept. I pointed out Capital Gains 1572 of British instructions in support of a disposal of full trust holding with no discount.

"The figures finally in place before summer were  $\text{£}82$  million, discounted by  $\text{£}15$  million to  $\text{£}67$  million, for want of voting power, giving  $\text{£}16$  million Capital Gains Tax and value forward of  $\text{£}67$  million. He was in favour of saying  $\text{£}97$  million CGT and values forward to be negotiated later. He took copies of the computation giving  $\text{£}16$  million tax and 67 million forward. He will discuss it with An Cathaoirleach."

Now, Mr. Pairceir, the Chairman of the Revenue Commissioners, retired the day following receipt of that note from Mr. O'Cathain, on the 11th September 1987.

The Tribunal, in the course of its investigative work,

has raised queries with Mr. Pairceir, Mr. Dunne and Mr. Fox regarding these meetings.

Mr. Pairceir has informed the Tribunal that he first met Mr. Dunne on the 5th May 1987. That the meeting with Mr. Dunne was arranged at the request of Mr. Charles Haughey, that he does not remember when Mr. Haughey asked him to meet Mr. Dunne and that he does not recall the terms of that request apart from Mr. Haughey asking him to meet Mr. Dunne. Mr. Pairceir has informed the Tribunal that he has no record of the meetings he had with Mr. Dunne during 1987, nor does he have any detailed recollection of them apart from the fact that the subject matter of the meetings had to do with the consequences of the exercise by the Dunnes Trustees of the power of appointment in 1985.

Mr. Pairceir has informed the Tribunal that he did not meet with Mr. Dunne on any other matter. Mr. Pairceir accepts the notes prepared by Mr. O'Cathain as a summary of the subject matter of the meetings. It is Mr. Pairceir's recollection that Mr. Noel Fox attended with Mr. Dunne.

Mr. Pairceir has further indicated that earlier meetings which he had with Mr. Noel Fox and Mr. Frank Bowen did not reach any agreed conclusion, and that the meeting with Mr. Dunne was probably by way of an attempt to resume some kind of negotiation.

Mr. Pairceir also wishes to confirm that Mr. Haughey

asked him once only to meet with Mr. Dunne, and that subsequent meetings arose out of the progress or lack of progress of the preceding ones.

Mr. Dunne has informed the Tribunal that having reviewed documents made available to him, he accepts

Mr. Pairceir's confirmation that the meeting in early May 1987 was arranged at the request of Mr. Haughey.

Mr. Dunne has no recollection of any dealings with Mr. Haughey in relation to the taxation affairs of the Dunnes Settlement Trust or any other aspect of his taxation affairs or the taxation affairs of any member of his family or any company within the Dunnes Stores Group. Mr. Dunne has no notes of any meetings or details of any dates of meetings he had with Mr. Pairceir during his tenure as Chairman of the Revenue Commissioners and is relying solely on Mr. Pairceir's notes. Mr. Dunne has no recollection of any details of what steps he took (if any) following discussions with Mr. Pairceir on or about the 4th June 1987, and he is relying solely on the various memoranda furnished by the Tribunal.

Mr. Fox was also asked about these matters, and he has informed the Tribunal that he has no specific recollection of the meetings which commenced in May 1987, as he did not keep notes, but he does not disagree with the notes prepared by the Revenue Commissioners insofar as they concern such meetings.

Mr. Bowen has informed the Tribunal that he has no knowledge of the meetings between Mr. Dunne and Mr. Pairceir, and Mr. Uniacke, who was also a co-Trustee, has informed the Tribunal that he does not recollect being told about such meetings.

Mr. Haughey's solicitors have been asked to comment on these matters which are now being outlined in the course of the Tribunal's Opening Statement, and Mr. Haughey's solicitors have responded to the Tribunal by two separate letters, one dated the 21st February 2005, and the other dated the 1st June 2005.

The letter of the 21st February 2005, from Ivor Fitzpatrick & Co., Solicitors, for the attention of Michael Heneghan, Tribunal office, reads as follows:

"Re the Tribunal of Inquiry (Evidence) Acts.

"Dear Sirs,

"We are in receipt of your letter dated 14 February 2005 together with enclosures.

"We would advise that given our client's ill health, he is not in a position to give instructions at this time."

And in response to further material brought to the attention of Mr. Haughey's solicitors by the Tribunal, the Tribunal received a letter of the 1st June last, again from Ivor Fitzpatrick & Co., Solicitors, re our client, Charles J. Haughey, Tribunal of Inquiry (Evidence) Acts 1921 and 1979 (No. 2) Order 1997, which

reads as follows:

"Dear Sirs,

"We acknowledge receipt of your letters and documents dated 19th May and 30th May last.

"Our client is gravely ill and accordingly is not in a position to give instructions or to give evidence in respect of any matters arising in the Tribunal. This has been confirmed by our client's medical advisers.

"We would be obliged if you would note this for the record.

"Yours faithfully, Ivor Fitzpatrick & Co., Solicitors."

In summary, therefore, from the documents and information available to the Tribunal, it appears as follows:

1. At the end of January or early February 1987, the bearer cheques amounting to  $\text{£}32,200$  were lodged to an account in Guinness & Mahon for the benefit of Mr. Charles Haughey.
2. On 10th March 1987, there was a change of Government, and Mr. Charles Haughey was elected Taoiseach.
3. On the 16th March 1987, the assessment of Discretionary Trust Tax raised by the Revenue Commissioners was appealed by the Dunnes Trustees to the Appeal Commissioners and was settled on the basis of an agreed valuation of  $\text{£}82$  million. The agreement provided for the payment of interest to that date and

for the payment of continuing interest if the Trustees did not discharge the liability to the Revenue Commissioners within 21 days.

4. The liability was not paid within 21 days and was not in fact discharged until 25th May 1987.

5. At some time prior to May 1987, possibly in the month of March or February 1987, and possibly some months earlier, Mr. Fox had acted as a conduit for communications by the late Mr. Traynor to Mr. Dunne in connection with the latter's request for financial assistance for Mr. Charles Haughey. Mr. Dunne had decided to assume responsibility for the full amount which was mentioned, which was then estimated at  $\text{€}1,000,000$ , and his decision was communicated by Mr. Fox to Mr. Traynor.

6. At some time prior to 5th May 1987, and possibly on 27th April 1987, Mr. Haughey, who was then Taoiseach, appears to have intervened in the dealings between the Dunnes Trustees and the Revenue Commissioners and asked Mr. Pairceir, the Chairman of the Revenue Commissioners, to meet with Mr. Dunne. The Tribunal will wish to inquire as to why it was felt necessary for Mr. Haughey to make this request, as both Mr. Bowen and Mr. Fox had been in regular contact with Mr. Pairceir over the previous two years and presumably could have asked Mr. Pairceir to meet with Mr. Dunne.

7. According to Mr. Pairceir, he met with Mr. Dunne on

the 5th May 1987, and that Mr. Fox was also in attendance at that meeting. The purpose of the meeting was to discuss a settlement of the assessment to Capital Gains Tax in the sum of  $\pounds 38.8$  million.

8. Mr. Pairceir then, it appears, held a series of intensive meetings with his officials to consider how and at what level the assessment might be compromised having regard to a number of considerations pertaining to the value of the shareholding and how it might be discounted. It appears that the starting point of this exercise was not the valuation of  $\pounds 120$  million on which the assessment was based, but was the figure of  $\pounds 82$  million, being the value at which the Discretionary Trust Tax assessment, which was a different tax, had been compromised.

9. On 20th May 1987, Mr. Matt Price of Dunnes Stores (Bangor) Limited, at the request of Mr. Fox or Mr. Dunne, drew a cheque in the sum of  $\pounds 282,500$  sterling in favour of Tripleplan Limited.

10. At some time after the 20th May 1987, but before the 28th May 1987, the cheque was received by Mr. Fox and was apparently transmitted by Mr. Fox to Mr. Traynor.

11. On the 25th May 1987, Mr. Fox discharged the liabilities of the Dunnes Trustees to the Revenue Commissioners on foot of the settlement of the Discretionary Trust Tax assessment. On that date,



Mr. Pairceir agreed with Mr. Fox that the continuing interest that the Dunnes Trustees had agreed to pay under the terms of the settlement concluded on the previous 16th May 1987, and by then amounting to  $\text{€}62,450$ , need not be paid, and he so directed Mr. Reid.

12. On the 29th May 1987, the proceeds of the Tripleplan cheque were lodged to Mr. Charles Haughey's current account with Guinness & Mahon in Dublin to meet the debit balance on that account.

13. On the 4th June 1987, Mr. Pairceir informed Mr. Dunne and Mr. Fox that the Revenue Commissioners would be agreeable to compromising the assessment of  $\text{€}38.8$  million for Capital Gains Tax at a figure of  $\text{€}16$  million.

14. Mr. Pairceir met Mr. Dunne and Mr. Fox on at least two subsequent occasions. The final meeting between them occurred on the 10th or 11th September 1987.

15. As already mentioned, Mr. Pairceir retired from his position as Chairman of the Revenue Commissioners on the 11th September, but this did not mark the end of Mr. Pairceir's involvement with the Capital Gains Tax assessment, to which I will now refer.

Mr. Pairceir has informed the Tribunal as follows:

"In 1988, following my leaving the Revenue in September 1987, I was engaged in an advisory role in the Custom House Dock Development Authority (CHDDA) in connection with aspects of the Master Agreement between the

development companies and CHDDA. About that time I was also engaged by the Industrial Development Authority, the IDA, in connection with the promotion of the International Financial Services Centre", which he again abbreviates as "IFSC".

"Mr. Noel Fox of Oliver Freaney & Co., Accountants, was a member of the CHDDA, and he asked me if I would help in researching the issues arising from the pending appeal, and I agreed to do so."

I should say that this is a reference to the Dunnes Trustees appeal against the Capital Gains Tax assessment to the Appeal Commissioners. That assessment had been raised by Mr. Pairceir and was under his overall management until his retirement in September 1987.

Mr. Pairceir has further informed the Tribunal as follows:

"I studied commentaries on the UK Capital Gains Tax legislation, a limited number of precedent cases and the various statements of practice published by the British Revenue on the topic. I prepared various papers by way of analysis of the range of potential outcomes to the appeal then pending. Later in 1989 I did some further work with the staff of Oliver Freaney in connection with a PAYE problem in Dunnes Stores. In 1990/'91, I helped in preparing a paper to be addressed to the Minister for Finance looking for some

alleviation of the perceived difficulties created by the Discretionary Trust Tax where the trust was a trading entity. In the event, nothing came of it."

He has further informed the Tribunal that "Following my agreeing with Mr. Noel Fox to undertake the research of the case, I had a brief meeting with Mr. Fox and Mr. Ben Dunne. The services were concerned only with the tax aspects and the case law. There was never any question of my representing the Trustees in their dealings with the Revenue.

"The services I agreed to provide were advisory services as described above. I did not agree to provide services by way of 'the representation of the Trustees in their dealings with the Revenue Commissioners', nor was there ever any question of me being asked to provide such services.

"For the services described in (b) and (d) above [services regarding the Capital Gains Tax assessment and the PAYE matter] I was paid  $\text{€}10,000$  plus VAT of  $\text{€}2,500$  on the 2nd August 1988, and  $\text{€}10,000$  plus VAT of  $\text{€}2,500$  on the 2nd October 1989. Both invoices are addressed to Mr. Bernard Dunne and were paid by him.

"I did not receive any other payments.

And that concludes the information provided by Mr. Pairceir on that matter.

It appears, therefore, that Mr. Pairceir's services must have been retained at some time between

Mr. Pairceir's retirement in 1987 and the appeal

hearing the following year, in September 1988.

Mr. Pairceir also produced documents for the assistance of the Tribunal, including copies of the two invoices of August 1988 and October 1989, copies of documents generated by him in the course of his consultancy work in connection with the Capital Gains Tax appeal and a copy of a draft letter which he prepared to be forwarded by the Trustees to the Minister for Finance in 1991. It appears that Mr. Pairceir may have continued to provide consultancy services to or for the benefit of the Trustees in subsequent years, even after the settlement with Mr. Ben Dunne. The Tribunal has been informed that Mr. Pairceir met with Mr. Cathal MacDomhnaill in 1996, who was then Chairman of Revenue Commissioners, and made submissions to him seeking changes in the law governing the taxation of discretionary trusts.

The Tribunal also raised this matter with Mr. Frank Bowen, who informed the Tribunal that the Trustees never engaged Mr. Pairceir in any capacity, nor did Mr. Pairceir act as an adviser to the trust. Mr. Bowen has further indicated that he had no knowledge of Mr. Pairceir's engagement by Mr. Dunne until this was brought to his attention by the Tribunal.

Mr. Fox, who was also a trustee, has informed the Tribunal that the Trustees never engaged Mr. Pairceir

in any capacity, nor did Mr. Pairceir act as an adviser to the trust. Mr. Fox's recollection is that Mr. Pairceir acted as a tax consultant following his retirement from the Revenue Commissioners in 1987 and that Mr. Fox passed this information on to Mr. Dunne.

Mr. Fox understands that Mr. Dunne engaged Mr. Pairceir personally through Mr. Fox. Mr. Fox does not dispute what Mr. Pairceir has said in relation to the matter, but he has no further recollection of the events.

Mr. Fox has no knowledge as to what capacity it was intended that Mr. Dunne would engage Mr. Pairceir other than to be on call to give Mr. Dunne advice or a second opinion from time to time on various tax matters.

Returning, then, to the Capital Gains Tax appeal itself, after Mr. Pairceir retired as Chairman of the Revenue Commissioners on 11th September 1987, Mr. Philip Curran was appointed to that position.

Mr. Curran does not appear to have had as close an involvement to the Capital Gains Tax assessment as his predecessor. By then Mr. Christopher Clayton, who had been in charge of the Capital Gains Tax section in the Office of the Chief Inspector of Taxes had been promoted to superintending Inspector of Taxes and Mr. Sean O'Cathain had been promoted to Mr. Clayton's previous position as a Senior Inspector of Taxes.

Mr. Clayton ceased to be as actively involved in the Capital Gains Tax matter after his promotion but

Mr. O'Cathain continued his involvement until he himself was promoted in June of 1988. It seems that the settlement negotiations between Mr. Pairceir, Mr. Dunne and Mr. Fox terminated on Mr. Pairceir's retirement.

From the material available to the Tribunal, there does not appear to have been any significant contact between the Dunnes Trustees and the Revenue Commissioners regarding the then pending Capital Gains Tax appeal in the latter months of 1987 or in the early months of 1988. On the 29th February 1988, the Revenue Commissioners were informed that the Capital Gains Tax appeal would be listed for hearing by the Appeal Commissioners on the 9th and 10th June 1988.

In March 1988, as reported by the McCracken Tribunal, Mr. Haughey requested Mr. Philip Curran, the then Chairman of the Revenue Commissioners, to meet with Mr. Ben Dunne. It appears that this was the second occasion on which Mr. Haughey had intervened in this manner. Mr. Curran gave evidence to the McCracken Tribunal, as outlined earlier, as did Mr. Dunne. None of the documents now available to the Tribunal were made available to the McCracken Tribunal, nor were they available to Mr. Curran, Mr. Dunne or Mr. Haughey.

The documents which the Tribunal has now obtained are not records of the meetings between Mr. Haughey and Mr. Curran on the one hand, or between Mr. Curran and

Mr. Dunne on the other hand, but again are primarily notes prepared by Mr. O'Cathain based on information made available to him concerning those meetings and other events. And those records are as follows:

The first document is a handwritten note of Mr. O'Cathain recording events which occurred in late February and early March of 1988, and it can be found behind Divider 48 of the Tribunal document book. And this document appears to be a record of the events which occurred on the 29th February 1988, the 1st of March 1988, the 2nd March 1988, and the 3rd March of 1988.

Now, the entry for the 29th February 1988 reads as follows:

"Received notification of days for appeal, 9th and 10th June 1988. Advised John Reid, Capital Taxes Branch, and Declan Sherlock, Revenue Solicitors he will advise."

The next entry is the entry for the 1st of March 1988, which reads as follows: "Call from Mr. Howard of Chairman's office. Chairman out till next week" underlined "Taoiseach directed today that Chairman meet him at 5.30 re BND" that's Ben Dunne and blank. Later agreed to wait till next week."

Then the entry for the 2nd March 1988 reads:

"Mr. Howard rang requesting brief explanatory note for Liam Reason and for Chairman. I suggested he contact

Cathal MacDomhnaill also."

Then on the 3rd March 1988, the entry is: "Briefing note sent. Copy to John Reid." And there appears to be another person named there, but I can't quite make out the name.

Then below that: "Maybe BD is looking for a change in recognition of Section 82 Finance Act 82 which would defer the charge on the disposal by the Trustees by reducing the cost forward by the amount of the chargeable gain.

"This could only apply from a current date. Seeking the amnesty relief, interest at 15% for 1st January 1987 on even  $\frac{1}{2}$ 100 million would be 17 and a half percent, which would equal 1.75 million."

The next document on the files relating to this matter is a formal note prepared by Mr. O'Cathain and headed "Note for An Cathaoirleach setting out the history and detail of the Capital Gains Tax appeal", and dated the 3rd March 1988.

The third document is a note prepared by Mr. John Reid of the Capital Taxes Branch, also dated the 3rd March, and again setting out the history of the dealings with the Dunnes Trustees in connection with the Discretionary Trust Tax. And that note was addressed to Dr. Thornhill, Mr. Liam Reason, who was then a Commissioner within the Revenue Commissioners, and the Chairman, Mr. Philip Curran.



Then the fourth document is a handwritten note prepared by Mr. O'Cathain of a telephone conversation which he had with Commissioner Reason on the 11th March 1988, when Commissioner Reason appears to have informed Mr. O'Cathain that the Chairman, Mr. Curran, had had a meeting with the Taoiseach in connection with Mr. Dunne.

And that document, which we can put on the overhead projector, can be found behind Divider 51 in the document book.

The date is the 11th March 1988. "Rang Liam Reason. Chairman saw An Taoiseach. Ben Dunne confused and under tremendous pressure. An Taoiseach will have him briefed of Revenue position, and he" Ben Dunne "will probably be advised to contact Revenue. He may do this by contacting the Chairman.

"I suggested that we should allow payment of CAT and CGT by installments in gift situations, say over five years, with interest running at 8% from Day 1, along the lines in Britain.

"I pointed out our 55% CAT versus 30% in Britain and our 30 to 60% CGT versus 30% in Britain, also that the allowing of the CGT as a credit against CAT with cost forward at market value was a very valuable relief.

Here better than the English holdover relief. He suggested I do some figures of liability on different assumptions."

The next document taken from the Revenue files is a handwritten note dated the 13th March, 1988, by Mr. O'Cathain which sets out the possible bases on which the Capital Gains Tax assessment might be compromised by the Revenue Commissioners.

The final document is a handwritten note, by Mr. O'Cathain, in relation to a telephone conversation which he had with Commissioner Reason on the 22nd March 1988, and a separate telephone conversation which he had with Mr. Fox on the 23rd March.

The note of 22nd March 1988 reads as follows:

"Per Liam Reason. Chairman met Ben Dunne and Fox yesterday.

1 year with review re reorganisation. Reply requested and now traced to VAT copy received by fax."

That appears to relate to a different matter.

"No progress at meeting. Had not come to grips with the problem they promised to do so. Chairman told them to let him have their proposals.

"I rang N. Fox's office. Message left.

letter now traced to VAT branch, see attached.

Rang Liam Reason and advised him. Agreed to go ahead with final preparation for appeal.

The note dated 23rd March 1988 reads as follows:

"Noel Fox rang I said I had to call and the letter in reply would issue.

"He said the changes were for commercial reasons".

That seems to relate to a different matter on which they may have been having dealings.

"He" that would be Noel Fox "said that they had had a detailed and lengthy meeting with the Chairman.

They will be meeting again soon. I said I hoped they would settle the outstanding matter soon. I said that I thought that the 1985 move was a mistake. He said that they would have to talk more about it. It was a very brief exchange."

Now, from the material and information available to the Tribunal regarding the events in late February and early March of 1988, the following appears to have occurred.

Firstly, on the 28th February 1988, the Appeal Commissioners listed the Capital Gains Tax appeal for hearing.

Secondly, on the following day, the 1st March 1988, Mr. Charles Haughey directed Mr. Curran to meet him at 5.30 in connection with Mr. Dunne. It appears that Mr. Curran was not available that week and that Mr. Haughey agreed to wait until the following week. Following a request, Mr. O'Cathain, who was dealing with the Capital Gains Tax assessment, and Mr. Reid, who had dealt with the Discretionary Trust Tax assessment, both prepared briefing notes for the Chairman.

Fourthly, sometime on or before 11th March 1988, Mr. Curran met Mr. Haughey, and it appears from Mr. O'Cathain's note of that date that Mr. Haughey informed Mr. Curran that Mr. Dunne was confused and under tremendous pressure; that Mr. Haughey intended to have Mr. Dunne briefed regarding the Revenue position, and that Mr. Dunne would probably be advised to contact the Revenue and could do so by contacting Mr. Curran.

Fifthly, it appears from Mr. O'Cathain's note dated 22nd March, 1988, that the meeting between Mr. Curran and Mr. Dunne proceeded on the 21st March 1988, and that Mr. Noel Fox also attended. From that note it appears that it was agreed that Mr. Dunne would revert to the Chairman with proposals with a view to settlement or otherwise.

Sixthly, from Mr. O'Cathain's note of his telephone conversation with Mr. Fox on the 23rd March 1988, it appears that, as far as Mr. Fox was concerned, the meeting on the 21st March had been a detailed and lengthy meeting and that there would be a further meeting some short time later.

Mr. Philip Curran stated in his evidence to the McCracken Tribunal that Mr. Dunne and Mr. Fox did not revert to him; that there was no further meeting and there were no proposals made to him with a view to settlement. There is certainly nothing in the documents available to the Tribunal which would suggest

there was any further contact between the parties.

The hearing of the Capital Gains Tax appeal was deferred from June 1988 to September 1988. The Revenue Solicitors were instructed to represent the interests of the Revenue Commissioners with both senior counsel, who had already advised on the matter, and junior counsel, and both senior and junior counsel represented the Revenue Commissioners at the appeal hearing.

In the interim, in June 1988, Mr. O'Cathain was promoted and ceased to have any further involvement with the Capital Gains Tax appeal, and Mr. Joe Savage, an official within the Office of the Chief Inspector of Taxes who has since retired from the Revenue Commissioners, took over the running of the appeal.

The appeal proceeded on the 22nd and 23rd September 1988 and was decided in favour of the Trustees. The Revenue Commissioners, on the advice of senior counsel, decided not to appeal the determination of the Appeal Commissioners.

There is one further matter which the Tribunal intends to inquire into in the course of these public sittings.

Although this matter did not become apparent until some time later, it relates back to the events under consideration, and in particular, the settlement of the Discretionary Trust Tax appeal on the 16th March 1987.

In 1996, arising from a settlement concluded between the Trustees and Mr. Dunne in November 1994, the

Trustees made a tax return to the Revenue Commissioners for that year. The Tribunal is not concerned with the tax implications arising from the settlement between the Trustees and Mr. Dunne, but there was one aspect of the tax return made with the Trustees which is material to the Tribunal's inquiries.

On the 26th January 1996, Mr. Noel Fox forwarded a tax return to Mr. Michael O'Grady, who was then Assistant Secretary in the Capital Taxes Division. In that letter he stated as follows:

"To maintain the integrity of Form 1, we have included an amount of  $\text{€}2.2$  million, being the dividend paid by Dunnes Holding Company to the Trustees in June 1994 to enable the Trustees to discharge their liability for Discretionary Trust Tax. As part of the financial settlement of the Discretionary Trust Tax in 1988, it was agreed by the Revenue (Mr. Seamus Pairceir) that no additional liability to tax would arise in relation to this dividend."

In other words, Mr. Fox, it appears, was asserting that Mr. Pairceir had agreed that apart from the payment of Discretionary Trust Tax, the Trustees would have no further liability to tax. To put this in context, it will be appreciated that in order to discharge their annual Discretionary Trust Tax liabilities, the Trustees had to be put in funds by the Dunnes Holding Company, and this was structured as a dividend payment

by the holding company to these Trustees. In the ordinary course, the Trustees would have been liable for income tax on those dividends at the standard rate of tax less a tax credit to which they would have been entitled. If the standard rate of tax was higher than the dividend tax credit, the Trustees would have had a net income tax liability in respect of this difference.

That was in fact the position from the year 1988.

However, what Mr. Fox contended, in the letter of the 22nd January 1996, and what was repeatedly contended by the Trustees in subsequent correspondence, was that an agreement had been concluded with the Revenue at the time of the settlement of the Discretionary Trust Tax appeal in March 1987, or that the Trustees had been assured at that time that irrespective of any difference between the two rates of tax, they would have no liability to income tax. If such an agreement had been concluded or assurance given, this would have constituted a significant saving to the Trustees and an indirect benefit to the beneficiaries, including Mr. Dunne.

Mr. Tadhg O'Connell, who was then an official in the Office of the Chief Inspector, was assigned to deal with matters arising in connection with the dealings between the Dunnes Trustees and the Revenue at that time. Mr. Michael O'Grady, Assistant Secretary in the Capital Taxes Branch, also had an involvement in this

matter.

It appears that regarding those matters, they both met with Mr. Noel Fox in November 1994, and it is Mr. O'Connell's recollection that Mr. Fox had mentioned the agreement contended for in the letter of 22nd January 1996 at one of the meetings which he attended in November 1994. He has further informed the Tribunal that from various conversations with Mr. Michael O'Grady in dealing with the meetings of November 1994, he formed the view that Mr. O'Grady accepted that what Mr. Fox said regarding that agreement was correct. He has indicated that it was on this basis that he, Mr. O'Connell, wrote to Ms. Eileen O'Sullivan of the Dublin Tax District on the 13th March 1996 advising her to raise an assessment in respect of Capital Gains Tax but not to raise an assessment in respect of the dividends shown on the return. Mr. O'Connell's note to Ms. O'Sullivan, dated the 13th March 1996, has been made available to the Tribunal. It's addressed to Ms. Eileen O'Sullivan, Dublin Tax District, re the Dunnes settlement.

"I refer to our recent telephone conversation.

"I attach 1994/95 tax return and agent's covering letter for the above trust. The return was received on the 30 January 1996 so there is no surcharge.

"I have confirmed with Michael O'Grady of Capital Taxes that the Revenue Commissioners have agreed that no



further liability arises in respect of distributions made for the purposes of meeting liability to Discretionary Trust Tax. There is therefore no need to issue an income tax assessment."

Mr. O'Connell has informed the Tribunal that when he spoke to Mr. O'Grady about this matter sometime later, he realised that he had misunderstood something

Mr. O'Grady had said to him and that he was incorrect in thinking that Mr. O'Grady accepted that the claim made by the Trustees was correct. He has informed the Tribunal that he then sought evidence within the

Revenue in relation to the alleged agreement. He examined papers in the Office of the Chief Inspector of Taxes. He contacted Dublin Audit Number 7 District, and he recollects contacting Capital Taxes Branch. On

the basis of his inquiries, he found no evidence supporting the contention that such an agreement was made. And following discussions with the then Chief

Inspector, Mr. Christopher Clayton, and the then Assistant Secretary, Ms. Maureen Moore, an income tax assessment for '94/'95 was issued on the 14th July 1997

in the sum of  $\text{€}264,533$ . This assessment was appealed by the Trustees to the Appeal Commissioners.

Assessments for the other years in question were raised in February 1998, and they were also appealed.

The appeals were heard and determined by the Appeal Commissioners 9th February 2000, and the assessments to

income tax were upheld. The Tribunal understands that the Appeal Commissioners did not consider that they had jurisdiction to determine whether such an agreement had or had not been concluded.

The matter was then appealed by the Trustees to the Circuit Court, and in the course of the Circuit Court appeal, an application was made for discovery which was grounded on an affidavit of the Trustees' solicitors which was sworn on the 16th November, 2001, and in which she averred and swore to the existence of the agreement.

And at paragraph 16 of her affidavit, she stated as follows:

"As appears from the foregoing, the appellant and his fellow Trustees are in no doubt that they were acting in an appropriate way and that the payments from the Dunnes Stores Group for the benefit of the settlement that had been agreed with the respondent. No liability to income tax ever arose as a factor in the thinking of the Trustees or their advisers. Indeed, had there been any question as to the terms on which the settlement was reached, or had there been any subsequent reason for the appellant or his co-Trustees to believe that the respondents had altered their position, alternative steps would have undoubtedly been considered for example, the Trustees and their advisers would have examined the potential for utilising the provisions of

the waiver of certain interest and penalties at, 1993 or such other steps as would be necessary to confirm the terms of the settlement.

The Circuit Court directed that the Revenue Commissioners make discovery of all documents in their power, possession or procurement relating to the matter, and an affidavit of discovery was duly sworn by Mr. Patrick J O'Connor, Inspector of Taxes, on the 27th February 2002. The documents listed in the schedule to that affidavit did not include a copy of the written note from Mr. O'Connell to Ms. O'Sullivan which I have just referred to.

The Tribunal understands that the assessments raised by the Revenue Commissioners to income tax on the Trustees were settled. The Tribunal has requested both the Revenue Commissioners and the Trustees to furnish the Tribunal with a document relating to this aspect of the settlement and is awaiting the production of that documentation.

The Tribunal has been informed by both Mr. Frank Bowen and Mr. Noel Fox, who negotiated the settlement in March of 1987, that there was an agreement between the Revenue Commissioners and the Trustees, and that any distributions made to the trust for the sole purpose of discharging Discretionary Trust Tax liabilities would not be liable to any income tax. Mr. Seamus Pairceir has informed the Tribunal that he is astonished at the

suggestion that he agreed or decided that an income tax liability would not arise in respect of any distribution made to the trust to enable it to discharge its liabilities or that such liability would apparently never, in any circumstances, arise.

Mr. Pairceir has indicated that he had not heard of that contention by the Trustees until he received the Tribunal's letter of the 21<sup>st</sup> March, 2005.

In the course of the correspondence between the Trustees' representatives and the Revenue Commissioners regarding the income tax issue, a letter was written on the 4th March 1998, in which it was stated that Mr. Liam Horgan, a tax partner of the chartered accountants firm of Touche Ross, was in attendance at the appeal in 1987 when the settlement was concluded, and that it was his distinct recollection that it was agreed between the parties that no other tax would be imposed on the Trustees in relation to the dividends provided for the purposes of discharging their Discretionary Trust Tax liabilities.

In particular, it was stated as follows in that letter that is on headed notepaper of Deloitte & Touche and is dated the 4th March 1998, is addressed to the Inspector of Taxes, re "Bernard and Norah Dunne Settlement".

"Dear sir,

"Thank you for your letter of 20th February 1998.

"The standard rate of income tax and tax credit

attributable to dividends from Irish companies began to diverge from 6 April 1978. The standard rate of income tax at that time was 35%, and the tax credit was 30/70, which is the equivalent of 30%. The Finance Act 1988 introduced the new rate of 32%.

"The appeal in 1987 was attended by three Trustees:

Mr. Bernard Uniacke, Mr. Noel Fox, and Mr. Frank Bowen.

Also in attendance was Mr. Liam Horgan, a tax partner

(now retired) of the chartered accountants firm Touche

Ross. It is the distinct recollection of all of the

above that the settlement agreed at the appeal was

"The valuation was determined at  $\text{€}1/282$  million.

"1984 value for Discretionary Trust Tax purposes  $\text{€}1/241$

million at 3%.

"1986 value for Discretionary Trust Tax purposes  $\text{€}1/241$

million at 3%.

"Valuation of  $\text{€}1/282$  million used for valuation dates

5 April 1987, 5 April 1988 and 5 April 1989.

"Provided the only receipts of the Trustees of the

trust were dividends from the group used solely for

the purposes of discharging the Discretionary Trust

Tax, no other tax would be imposed on the Trustees

in relation to the dividends.

"During the settlement discussions, contact was made

with the Chairman of the Revenue Commissioners

(Mr. Pairceir) to confirm that the agreement was in

order. To the best of our knowledge the Revenue

Commissioners concurred with the settlement in all respects.

"The Trustees and Mr. Horgan are all willing to testify that this is their understanding of the settlement at the appeal hearing. Considering that Mr. Horgan was a tax partner, his interpretation of the settlement would have been very clear as to what was meant by no other tax (other than Discretionary Trust Tax) would be payable by the Trustees.

"Based on the agreement at the 1987 appeal, the Trustees have taken great care to ensure that the terms of the agreement have at all times been adhered to. No income has been received by the trust for the benefit of any of the beneficiaries or for other purposes.

"With regard to the surcharge, it is our understanding that if all of the receipts of a trust are comprised of funds to discharge Discretionary Trust Tax, no surcharge would arise under Section 13 Finance Act 1976, because there is no distributable funds out of which distributions may be made. As this is generally known to be the view taken when interpreting this section, there would be no need to seek an assurance that a surcharge would not apply.

"In the circumstances, we would request that the assessments raised are withdrawn."

Signed, "Yours faithfully, Deloitte & Touche."

Now, the Tribunal raised this matter with Mr. Horgan,

who has informed the Tribunal that he was not in attendance at the hearing before the Appeal Commissioners and was not present for the settlement negotiations. Mr. Horgan recalls that he discussed the matter with Mr. Bowen sometime after March 1998 and confirmed to Mr. Bowen that he had not been present at the settlement negotiations on 16th March 1987.

Mr. Horgan has further informed the Tribunal that Mr. Bowen and Mr. Fox were genuinely convinced at the correctness of their position in relation to the settlement, but in his view, they had misunderstood the position of the Revenue when the deal had been struck.

It is his belief that Mr. Bowen and Mr. Fox were wrong, and that he so indicated to them when he discussed the entire matter with them some four or five years ago.

It is Mr. Horgan's view that the Revenue Commissioners would not have concluded an open-ended agreement to forgive income tax forever, notwithstanding a divergence in the standard rate of tax and the dividend tax credit.

In conclusion, therefore, the Tribunal, in the course of these public sittings, will wish to inquire into the following:

Firstly, all of the circumstances surrounding the request made by Mr. Charles Haughey to Mr. Seamus Pairceir to meet Mr. Ben Dunne in April 1987, bearing in mind that Mr. Bowen had been in regular contact and

had had frequent meetings with Mr. Pairceir over the previous two years and must be taken to have been in a position to arrange such a meeting if considered desirable, and further having regard to the temporal proximity of such request to the receipt of payments by Mr. Dunne for the benefit of Mr. Haughey and to the agreement by Mr. Dunne to provide financial assistance in the region of  $\text{€}1$  million for the benefit of Mr. Haughey.

Secondly, the facts surrounding the agreement by Mr. Pairceir to waive the payment of interest by the Trustees in the sum of  $\text{€}62,450$  on 25th May 1987. This agreement, which appears to have been concluded at a meeting between Mr. Pairceir and Mr. Fox on that date, constituted a direct saving to the Trustees and an indirect benefit to Mr. Ben Dunne and his siblings. In particular, the Tribunal will wish to inquire into whether Mr. Pairceir's agreement in this regard was prompted or influenced, directly or indirectly, by the earlier request made by Mr. Haughey or by any other intervention that may have been made by Mr. Haughey.

Thirdly, the facts surrounding negotiations between Mr. Pairceir on the one hand, and Mr. Ben Dunne and Mr. Noel Fox on the other hand, and which led to Mr. Pairceir's agreement to accept a sum of  $\text{€}16$  million in full and final settlement of the assessment for  $\text{€}38.8$  million. In particular, the Tribunal will wish



to inquire into whether the settlement proposed by Mr. Pairceir on behalf of the Revenue Commissioners and which, from the Revenue Commissioners' viewpoint, involved a loss of  $\text{€}22.2$  million in tax was prompted or influenced, directly or indirectly, by the earlier request made by Mr. Haughey or by any other intervention that may have been made by Mr. Haughey.

Fourthly, whether an agreement relieving the Trustees from liability from income tax on distributions made to them by the Dunnes Holding Company for the purposes of discharging Discretionary Trust Tax and which would have constituted a direct saving to the Trustees and an indirect financial saving to the beneficiaries, including Mr. Ben Dunne, was made or whether any such assurance was given by the Revenue Commissioners to the Trustees. If such an agreement was made or assurance given, the Tribunal will, in particular, wish to inquire into whether Mr. Pairceir's agreement in this regard was prompted or influenced directly or indirectly by the earlier request made by Mr. Haughey or by any other intervention that may have been made by Mr. Haughey.

In pursuing the inquiries which I have just mentioned, the Tribunal will, in particular, wish to examine the circumstances in which the material which this Tribunal has obtained relating to the dealings between Mr. Pairceir and Mr. Haughey and between Mr. Dunne and

Mr. Pairceir were not brought to the attention of the McCracken Tribunal.

That, sir, concludes the Opening Statement, save for one matter. As is the Tribunal's practice, the Tribunal invited persons who were likely to be mentioned in the Opening Statement to indicate if there were any matters that they wished the Tribunal to consider for incorporation in the Opening Statement.

And Messrs Matheson Ormsby Prentice, solicitors for the Dunnes Trustees, notified the Tribunal of a number of matters that they wished the Tribunal to consider for the purposes of incorporation in the Opening Statement and you, sir, have determined that reference should be made to those matters.

Those matters are as follows:

Messrs Matheson Ormsby Prentice have indicated that their clients respectively make the following request in relation to your Opening Statement.

"1. The statement should reflect our client's opinion that the tax affairs of Dunnes Settlement Trust have at all times been dealt with in an appropriate way.

"2. The statement should reflect that there is nothing unusual in principle with Ministers facilitating meetings between public servants and citizens.

"3. To the extent that the statement deals with the amount of  $\text{€}62,450$ , the statement should reflect the Trustees' view that there was nothing unusual or

untoward in such a decision. The payment which was enclosed with the letter of 25th May 1987 included a payment in respect of Discretionary Trust Tax for the valuation date 5 April 1987, which the Trustees were not required by law or by contract to make until 5 July 1987. While Mr. Fox does not recall the negotiations which led to the amount which was paid on the 25 May 1987, it appears from this that there was benefit to the Revenue in the departure from the original payment arrangements.

And then the final point that they wish to make is: "To the extent that the statement deals with the  $\text{£}16$  million which is referred to in the Tribunal books as having been the subject of discussion between Mr. Bernard Dunne and Mr. Pairceir, the Trustees would like to point out that the materials which are included demonstrate that the amount which appears to have been proposed by the Revenue by way of payment to the Revenue was based on the law and practice consistently applied by the Revenue in relation to discounts for minority holdings or lack of control. It appears to have involved extensive discussions with the relevant senior personnel within Revenue. In no sense could this, had it been accepted, be seen as a benefit to the trust or its objects. Our client submits that that the standard practice should be referred to in the statement. As we have explained, the Trustees were

confident that no Capital Gains Tax was payable on the appointment, but that even if it were, the Trustees' view was that the value of the trust was considerably less for Capital Gains Tax purposes than the value agreed for Discretionary Trust Tax purposes.

And it concludes: "As far as our clients can determine from the Revenue terms, it appears that the approach taken to the dealings with these matters within the Revenue was open and transparent."

That concludes the matter, sir.

CHAIRMAN: And of course as on previous occasions, Ms. O'Brien, the opening that you have just given in very considerable detail is not evidence in itself, and conclusions should not be drawn; but it is to be hoped that the putting before today's hearing and the public of what must realistically be a considerable volume of agreed documentation will very substantially truncate the length of evidence that may be required. And I think it is considered that it should be realistically possible to deal with this particular matter in the course of two weeks of sittings, with perhaps an allowance for one day.

MS. O'BRIEN: Indeed.

CHAIRMAN: Very good. Evidence will commence tomorrow, and if I say eleven o'clock?

MS. O'BRIEN: Yes, sir.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY,  
WEDNESDAY, 15TH JUNE 2005, AT 11 A.M.