

THE TRIBUNAL RESUMED ON THE 28TH MARCH, 2006 AS FOLLOWS:

MR. HEALY: Mr. Stephen Treacy, please.

STEPHEN TREACY, PREVIOUSLY SWORN, WAS EXAMINED BY MR. HEALY
AS FOLLOWS:

CHAIRMAN: You are of course already sworn from an earlier
hearing.

Q. MR. HEALY: Thank you, Mr. Treacy.

You have provided the Tribunal with a statement in
connection with this aspect of the Tribunal's inquiries in
which you describe yourself as the Principal Officer in the
Tribunal's Group Investigation and Prosecutions Division of
the Office of the Revenue Commissioners?

A. That's correct.

Q. I think am I right in thinking you were present during the
evidence given by Mr. McCabe last week?

A. No.

Q. You weren't. Well, are you familiar, in any case, with
Mr. McCabe's statement of evidence?

A. Yes.

Q. And needless to say, from working with Mr. McCabe, you are
familiar with the work he did in connection with the
collection of tax due arising out of funds referred to in
the evidence at this Tribunal?

A. Yes.

Q. And the McCracken Tribunal?

A. Yes.

Q. And I think in fact most of the matters that you were

dealing with have already been mentioned by Mr. McCabe?

A. Yes.

Q. And you are simply dealing with a number of perhaps what may appear to be slightly disjointed matters, but which I would hope to dispose of fairly quickly in any case.

A. Fine.

Q. And I don't think it will be necessary to go into the volume of detail that was involved in Mr. McCabe's evidence, which dealt with all of the period during which you and other Revenue officials who were working with him and with other sections in the Revenue on these issues; isn't that right?

A. Yes.

Q. You say that you are the Principal Officer in the Tribunal's Group Investigations Prosecution Division Office of the Revenue Commissioners. You commenced working in the Taxes Investigation Branch of the Revenue Commissioners in 1981. At the request of the Tribunal, you are submitting this statement relating to your investigations into the income tax affairs of Mr. Charles J Haughey.

Arising from the McCracken Tribunal, on the 21st July, 1997, a special projects group led by you was set up in Investigation Branch to deal with certain matters arising from that Tribunal; in particular the affairs of Mr. Charles J. Haughey.

You then refer to a number of, as I said, sort of separate items. Maybe if we try to put each one in context before

we refer to it.

The first one is a letter of the 4th May, 1999 to Mr. Paul Moore. Mr. Paul Moore was a tax agent acting for Mr. Haughey in connection with what I'll call his Tribunal tax affairs, if that's a fair way of putting it.

A. Yes.

Q. You were dealing with him. The Revenue were also dealing with Mr. Peelo?

A. That's right.

Q. Mr. Moore was dealing with strictly technical legal aspects of the tax due; would that be right?

A. I think his function was to put tax order on

Q. On information that Mr. Peelo was collecting; would that be it?

A. Yes.

Q. And in the course of your dealing with Mr. Moore, you wrote him a letter seeking a lot of information?

A. Yes.

Q. That letter was dated the 4th May, 1999. I'll read what you say about it first. You say: "Following my examination of the files and papers in the case, I requested certain additional information from Mr. Haughey, and some of this was supplied. However, I was advised by Mr. Haughey's tax agents that the legal advice to Mr. Haughey was that as his tax affairs and the Moriarty Tribunal was interconnected, and as Mr. Haughey would be a witness before the Moriarty Tribunal, that he should answer

to the Moriarty Tribunal first before replying to Revenue.

The substantive points were contained in my letter dated 4th May, 1999, to Mr. Paul Moore, which I referred to in my previous statement furnished to the Tribunal prior to my appearance as a witness on the 14th February, 2001, and were still outstanding at the time of the negotiation of the "€125 million settlement" that's in March 2003. "The letter dated 4th May, 1999, is referred to in the agreement dated 18th March, 2003, between Revenue and the taxpayer at Item 10(ii).

Now, the letter in question is contained in Folder 3, Leaf 3.5. You had been in correspondence with Mr. Moore, and on the 11th January, 1999, you'd referred to earlier correspondence from him enclosing a certain amount of documentation relating to ACC, Abbeville Farm and, I think, virtually nothing else; would that be right?

A. Well, if I may say, this correspondence started I think sometime back in 1998.

Q. That's right.

A. And it's usual in tax inquiries to commence correspondence, and correspondence usually continues in the way of trying to get in information, and then seeking elaboration or clarification, as the case may be.

Q. Yes.

A. So this letter of 4th May is the last letter in a sequence of correspondences to and fro.

Q. And are you saying it's where things came to a halt in

terms of the provision of information or substantive

A. Well, there was no reply to the letter of May 1999, except to the extent that it's included in the agreement and deemed, if you like, to be dealt with.

Q. Subject to certain qualifications; isn't that right?

A. Subject to the fact that the agreement provides that we can continue the inquiry. The inquiry didn't cease. In the event that new information came to light, then any further tax liabilities that arose out of that new information would have to be met by the taxpayer.

Q. Well, we'll try and quickly go through the letter of the 4th May, then.

You say: "I refer to your letter dated the 11th March, 1999, together with enclosures.

"Notwithstanding your comments at A, B and C, further queries in connection with these matters arise and are referred to under the relevant paragraph headings. I am retaining the original paragraph numbers used in previous letters for ease of reference.

"Expenditure incurred by or on behalf of Mr. Charles J. Haughey", and you were provided with certain information which you say you noted.

Same response in the next line in relation to item B(i).

Same response in relation to Item B(ii) and (iii), subject to a qualification.

Then you have a query under B(iv): "Please say on what information and on whose instructions your client presumed

Mr. JJ Stakelum was acting in connection with his affairs."

"Please ascertain from your client what his understanding was and how he came to that understanding concerning the amount of funds available to Mr. JJ Stakelum subsequent to the death of Mr. Desmond Traynor in 1994 to meet your client's expenditures.

"Please ascertain from your client what his understanding was, and how he came to that understanding, the sources of funds available to Mr. JJ Stakelum subsequent to the death of Mr. Desmond Traynor in 1994, to meet your client's future expenditures."

"Please confirm that the role of Deloitte & Touche to which your client refers was in relation to taxation services or advice".

Next you simply note a response from Mr. Moore at Item C.

The same at Item D.

At Item E, you say: "I am attempting to establish what tax liabilities may exist in relation to your client as his outgoings appear to exceed his known income in this period.

You have not provided me with any information or explanations which would lead me to a different conclusion.

Consequently, I have to rely on estimation in relation to your client's outgoings and known level of income. I am estimating expenditure in this period at .75 million. Do you agree with this figure? If you do not agree with my estimate, please provide me with your figures together with supporting documentation and information. In the event

that you have identified payments in this period to meet this expenditure, please give details of same to enable me to consider any tax implications in relation to these payments.

"I note your comments. Information available subsequent to the issue of my letter of the 11th January 1991 now shows:

"1. That the payment of Mr. Ben Dunne by 282,500 sterling in May 1987 was used to pay off the overdraft of 281,000 with Guinness & Mahon.

"2. That the payment of Mr. Ben Dunne of IR£80,000 in 1992 was used to fund the F8 Memorandum Account out of which account funds withdrawn are included in the expenditure figure of £3.4 million for the period 1985 to 1996.

"Please confirm that this is the double counting to which you refer or advise."

Then in relation to documents, you state: "I note your client's offer" that's in relation to the provision of documentation or information "However, I still require an authorisation from him to the Moriarty Tribunal instructing the Tribunal to let me have the records when available".

Again you have a number of other comments in relation to documents.

At paragraph 4 you refer to information you have been provided with and further queries you are raising in connection with accounts with financial institutions.

You refer to comments made by Mr. Moore, saying that you

note them, and then you go on to say: "Since my letter of the 11 January 1999 additional information has come to light through the Moriarty Tribunal. Accordingly, please let me know the sources of the following monies used to pay 750,000 to Allied Irish Banks".

You give the dates upon which various sums, I take it amounting to approximately that figure, appear in the accounts of Allied Irish Banks between December '79 and February 1980.

You raise queries, then, about a Guinness & Mahon account operated for the benefit of Mr. Haughey. Then you raise queries in connection with a sum of $\text{£}300,000$ received from by Mr. Haughey from the Gallagher Group.

You then go on to deal with an application in the High Court in connection with Section 908 of the Tax Consolidation Act 1997, and you refer to paragraph 5 of that affidavit, which refers to a Central Bank report which included reference to Mr. Haughey as follows: "There is a record of an application to the Central Bank dated 8th December 1982 by Mr. Charles J Haughey on behalf of Abbeville Stud for permission to borrow the sterling equivalent of $\text{£}400,000$ from Guinness Mahon Cayman Trust Limited for a period of three years. This application was approved on the 9 December, 1982.

"In January 1985 Mr. J.D. Traynor applied for an extension of this facility for a further two years. This application was approved on the 5th February 1985. In January 1987,

Mr. J.D. Traynor applied again to extend this facility for a further two years. This application was approved until the 23rd January 1987".

Then you ask for details of full circumstances of that application, and presumably of that loan.

I'm not going to go into the details of the various to'ings and fro'ings between yourself and Mr. Moore.

The next heading, under "Assets", you again note that certain information was provided, and you raise queries concerning the balances to the credit of accounts of Hamilton Ross Company Limited with Irish Intercontinental Bank, the largest being an Account S9 maintained for your client's benefit and showing a balance of 790,558 deutschemarks on the 4th December, 1997.

You say: "I find it difficult to understand why you did not consider it necessary to contact Mrs. Ingrid Furze and Mr. John Collins. Please let me have your client's comments. Also please say if you have been in contact with Mr. Padraig Collery".

Mr. Collery, as we know, gave evidence in connection with the operation of the Ansbacher accounts, and Ms. Ingrid Furze, who is the widow, presumably, of Mr. John Furze, who was central to the operation of those accounts both in Ireland and in the Caymans; isn't that right?

A. Yes.

Q. And Mr. Collins was connected with the operation of them in the Caymans as well?

A. Yes.

Q. You go on to refer to your request which had been ongoing for some considerable time in relation to a Statement of Affairs; isn't that right?

A. Yes.

Q. We can come back to that, because you mention it again in your own statement.

A. Yes.

Q. You referred to additional payments by Mr. Ben Dunne and further information provided by Mr. Moore. Then you raise queries concerning MCB Stockbrokers Limited, Amiens Investments, Rafadein Bank, National Westminster Bank, Larchfield Securities. And then you refer to other assets, including shares held in various companies, Tara, Wim Creek, Printer Press, interests in Simmonstown Stud, a property in Artane, expectations of money from a land deal in Baldoyle, and a bank account in Zurich".

Now the reason I have gone through that letter, even in that sort of summary way, is because of the role it played in the agreement that you ultimately reached in 2003. And very briefly, I think we might just look at the April agreement and the reference to that letter in the agreement. The agreement is contained in Book 72 at Item 28, Folder I think it should be Folder B, I think, Leaf 28 A28.

Now, if you go to the third page of that agreement, to paragraph 10, the agreement provides: "Subject to clauses

4, 11, 12 and 13 of this agreement, the taxpayer and

Revenue accept that this agreement:

"(1) is in full and final settlement of all tax, interest and penalties as arise under any tax head in respect of all outstanding matters relating to the payments deemed by this agreement to have been received by him."

Now, I think that's a reference to the schedules of payments that we have seen mentioned in evidence, and no doubt that you have seen in the course of your work in connection with Mr. Haughey's affairs; isn't that right?

A. Yes.

Q. "Including payments specifically identified by the Moriarty and McCracken Tribunals", and so on.

"Encompasses all matters as raised in the letter dated 4th May, 1999, relating to the financial affairs of the taxpayer."

Now, on the face of it, that seems to suggest that everything raised by you in your letter is dealt with and concluded in the agreement; isn't that right?

A. Yes, on the face of it.

Q. On the face of it, yes, subject to clauses 4, 11, 12 and 13?

A. Yes.

Q. 4 needn't concern us; that's to do with some other aspect of the tax. 11 states: "While the taxpayer does not accept that he owns or has access to certain bank account balances in Irish Intercontinental Bank Limited, the

taxpayer acknowledges and accepts that this agreement has no application to tax liabilities, if any, that may arise under any tax head in respect of such balances in the event that he gains access to or beneficial ownership of such balances in the future."

A. That's right.

Q. So they are excluded, if you like, in the event of you acquiring further information or in the event of the taxpayer himself acquiring access to those balances; isn't that right?

A. That's correct.

Q. 12: "The taxpayer accepts and agrees that this agreement is entered into by the Revenue on the basis of the Revenue's actual knowledge of the taxpayer's affairs as of the date of the signing of this agreement." Now, that seems to be a catch-all, doesn't it?

A. Yes.

Q. To my understanding, meaning that to the extent to which you were hampered by lack of information, including your responses, or including responses to the various queries raised in your letter, you can only be bound by the information you had at the time; isn't that right?

A. That's correct.

Q. 13: "The taxpayer accepts that Revenue reserves the right to examine any further information relating to issues in respect of which Revenue are on actual notice, or new issues which may come to the notice of Revenue at any time

in the future from whatever source, with a view to determining whether any additional tax liabilities arise."

And again that seems, to my mind, to suggest that the fact that you hadn't received responses to your very many queries wouldn't mean that you were closed off in relation to the issues raised by those queries; is that right?

A. That's correct.

Q. Now, the next item we'll deal with is the matter I mentioned a moment ago, the Statement of Affairs and the Section 909 of the Taxes Consolidation Act. You say: "An officer from Special Inquiry Branch called to Mr. Haughey's residence at Abbeville, Kinsealy, County, Dublin, on the 21st August, 2001, for the purpose of delivering letters containing Forms SA.1 for Mr. Charles J Haughey and his wife, Maureen".

Now, perhaps I should just ask you to confirm at this stage that my layman's understanding of this is correct, that a request for a Statement of Affairs has to be delivered personally. Is that right, or am I wrong in that?

A. I'm not certain that it has to be.

Q. Right.

A. But we felt that this was the best way to deal with it.

Q. I see. You had

A. Better than using the postal system.

Q. I see. But you had been in correspondence with the agents at this time; isn't that right?

A. I would have been, yes.

Q. And you were I mean, was there some reason why you simply didn't ask the agents: "Can you provide a Statement of Affairs from your client, or can you deliver this Statement of Affairs to your client, and please have them fill it out?"

A. I needn't have gone under Section 909 at all. I could have asked for a Statement of Affairs to be provided by his client on his own paper. But this is a relatively new section in the Taxes Act.

Q. Maybe you'd explain the section to me, then.

A. I don't know if I'd like to go that far.

Q. Right.

A. I don't know that this section has been tested in the courts. But it was our understanding that the procedure we followed was the best procedure in the event that a prosecution arose.

Q. Might prove necessary?

A. That it might prove necessary.

Q. I follow.

"The taxpayer and his wife were on holidays, and a woman who identified herself as Catherine Ward said she was one of Mr. Haughey's secretaries agreed to take both letters. I wrote to Mr. Paul Moore, taxation consultant, one of Mr. Haughey's agents, on the 21st August enclosing copies of the aforementioned letters together with a specimen form SA.1 for his information.

"Mr. Paul Moore replied to my letter date 21 August, 2001,

on the 18th September, 2001, stating inter alia that it was his understanding that further direct queries by Revenue to his client would be held over until the Moriarty Tribunal completed its investigations and issued its final report.

Mr. Moore's letter went on to describe the state of his client's health. Mr. Moore's reply letter did not refer to Mrs. Haughey. I responded in turn to Mr. Moore's letter dated 18th September, 2001, on the 2nd October rebutting his claims and in the event he replied by letter dated 1 November, 2001, to me stating inter alia: "Mr. Haughey, however, does not wish to make an issue of the matter of having the Statement of Affairs prepared and has instructed Mr. Peelo to proceed with the preparation of the statements as of the 31 July, 2001."

Now, again, in order to put this query in relation to Statement of Affairs in some context, if I refer you to Document 3.1. I'll let you do you have a book of those documents?

A. I have a book here.

Q. This is a letter of the 22 May, a copy the office copy of a letter of the 22 May, 1998, from you to Mr. Paul Moore. I'm not going to go into the whole letter, but it's it deals with some of the matters we mentioned earlier, your queries in relation to expenditure incurred on behalf of Mr. Charles Haughey and other sources other ways of ascertaining what the scale of his income might be.

But you go on to the seventh paragraph on the last page of

your letter to say: "I intend requesting the completion of Statements of Affairs by your client and his wife under the provisions of Section 909 of the Taxes Consolidation Act 1997. I will be writing to you under separate cover in this regard in due course."

Do you recall that letter?

A. Yes.

Q. Can you very briefly tell me what the purpose of requiring a taxpayer to provide a Statement of Affairs is?

A. It's to get the taxpayer to commit himself to what assets and liabilities he has at a particular date. And it's of assistance, or it may be of assistance, in appraising the income that has been reported for tax purposes.

Q. You received a response on the 23 November 1998 from Mr. Moore. This is the next document in the book you have it's at Reference 3.2. And the last item in that letter, following on the numbering system used in your letter, refers to the Statement of Affairs. It's at paragraph 7, again.

And it says: "The preparation of Statements of Affairs for Mr. Haughey and for Mrs. Maureen Haughey are in an advanced state of preparation and will be forwarded as soon as finalised."

Now, a few months later, on the 11 January, 1989 this is at Leaf 3.3, and Item No. 6 in your letter to Mr. Moore of that date where you say: "Please say when you expect to be in a position to supply the above, and give the dates at

which the Statements of Affairs are being prepared."

I take it you mean give the date up to which the Statements of Affairs were being prepared; is that right?

A. No. The Statement of Affairs is at a particular date.

Q. Yes. Is it as at the date at which it's signed off, or whatever? Perhaps you'd explain that to me.

A. Well, it would be in or near the date, I would expect, that it would be in or near the date at which it was signed off.

For example, if a taxpayer prepares a Statement of Affairs as at the 28th February, 2006, then one would expect that it would be furnished soon thereafter and signed soon thereafter before furnishing it to Revenue.

Q. So if you asked for one in early 1998 or mid-1998, and you got it in mid-1999, you'd expect it to relate to a date close to mid-1999?

A. Yes, yeah.

Q. Now, on the 11 March

A. Sorry, can I just make a correction to that.

Q. Do, yes, please.

A. Just to take your example of dates. If an accountant had applied himself to attempting to prepare a Statement of Affairs at some stage in 1998, it might well be that it would take time to gather in information.

Q. I follow that.

A. And it might not be at a date that close to the date submitted to Revenue.

Q. Of course. It could be a few months out?

A. There could be some time elapsing.

Q. We know that at this stage you'd been informed you'd been informed, I think in November '98, that the Statement of Affairs was at an advanced state of preparation; isn't that right?

A. Yes.

Q. So it wasn't unreasonable of you to be inquiring, in January 1999, to know when you were going to get it and what would be the, if you like, the date by reference to which it would have been prepared?

A. Yes.

Q. And in March, 1999 by letter of the 11 March 1999 from Mr. Paul Moore addressed to you this is at Leaf 3.4 you received a response. The response is contained at Item 6 on page 4 of the letter.

It says: "Estimated Statements of Affairs as at the 30 June 1998 from Mr. Charles Haughey and Mrs. Maureen Haughey are attached.

"Please note that the bank position has deteriorated since that date. You are also aware of a deposit account with IIB, the ownership of which has not as yet been ascertained."

Can you explain to me what an Estimated Statement of Affairs is, as distinct to what the Revenue might regard or what the Statute requires by way of a Statement of Affairs?

A. Well, I don't know what he means by "Estimated Statement", but if I was preparing a Statement of Affairs and I didn't

have sufficient information about a particular item, then I would use my judgement as to what amount to put into the statement what amount to put into the statement, and I would put a note to the effect that it was estimated, and perhaps why.

Q. Indicating that this was the best

A. Yes.

Q. estimate you could come up with based on the information you had?

A. Yes.

Q. And that would satisfy Revenue, wouldn't it? Because after all, you are endeavouring to commit a taxpayer to something based on the information he has; isn't that right?

A. Well, it depends on the circumstances as to whether it might satisfy Revenue. I mean

Q. Well, were you satisfied that this was

A. If the information couldn't be other than estimated, then obviously there is nothing one can do about that. If it was a bank balance, one would expect that the bank would supply a certificate.

Q. I see.

A. But perhaps if one had asked for a Statement of Affairs many, many years ago, and there was just no way of corroborating the item by reference to a third-party document, then of necessity it would have to be estimated, and accepted if it looked reasonable.

Q. I think you appear to have accepted or at least noted that

you had received this Statement of Affairs. If you look at the next document, which is your letter of the 4 May 1999. It's in Leaf 3.5. Can you see your reference at Item 6 on the third page of your letter? Can you see that the fourth page?

A. Yes, I do.

Q. This is the letter that ultimately turned up in the settlement agreement?

A. Yes.

Q. You seem to have continued to pursue the question of Statements of Affairs. If you go to your next letter, which is contained in Leaf 3.6, a letter of the 21st August, 2001, addressed to Mr. Haughey himself, saying:

"Dear sir:

"Estimated Statement of Affairs as of the 30 June 1998 for both you and your wife was sent to me by your agent, Mr. Paul Moore, on the 11 March 1999.

"In accordance with the provisions of the Section 909 of the Taxes Consolidation Act 1997, I now require to you furnish me with a Statement of Affairs as at the 31 July 2001 on the prescribed form SA.1, which I enclose herewith for you to return to me within the time specified thereon".

That is to say, 60 days.

"I am sending a similar but separate requisition to your wife.

"I am informing Mr. Paul Moore of my requisitions, and I enclose for your information a copy of my letter to him."

Can you recall why this step was taken in 2001?

A. In or about 2001 there was a high-level meeting in Revenue, and this was one of the decisions that emanated from that meeting.

Q. And you were simply executing a decision that had been made elsewhere; is that right?

A. The use of any powers by me was decided at a higher level.

For example, I think the only previous powers I used were in '98 under Section 908, when I made applications to Guinness & Mahon and Irish Intercontinental Bank. I think you are aware of that already from my previous statement.

And so here was another power that we were now using.

Q. You received a response from Mr. Moore it's contained at Leaf 3.7 by letter of the 18 September, 2001, in which he referred to your letter to his client requesting his client to complete a Statement of Affairs.

In the second paragraph of his letter he says, "It is my understanding that when we agreed the C.A.T. settlement, further direct queries by Revenue to my client would be held over until the Moriarty Tribunal completes its investigations and issues a final report. This investigation, it is understood, will be completed over the coming months, and the report should be published shortly thereafter.

"My client is in very poor health, despite reports in the press to the contrary. During his recent vacation in Kerry he suffered a medical setback which was life threatening.

We would be extremely reluctant to approach him at this time and subject him to the stress of dealing with such a complex and serious matter. Medical certificates in support of his present condition can be supplied.

"In accordance with my understanding of how the Revenue inquiries will proceed, and to avoid a recurrence of my client's near fatal illness last March, I shall be obliged if you will agree to a postponement to the completion of the Statement of Affairs until the Report of the Tribunal is published."

You replied on the 2nd October, 2001 this is the next letter in the book; it's contained at 3.8 and you say in the second paragraph: "I have consulted with my colleagues who were directly involved in the Capital Acquisitions Tax settlement negotiations. While the matter was raised in the context of the first meeting relating to the settlement negotiations on the 4 January 2000, no such agreement or understanding was entered into or given as part of the settlement discussions or otherwise.

"I do not believe there are any grounds for linking the completion of the statutory form SA.1 with the publication of the Moriarty Tribunal's report, the timing of which is, in any event, uncertain at this stage. Revenue has to pursue the investigation of your client's tax affairs while of course taking account of the information disclosed and evidence given at the Moriarty Tribunal.

"I was sorry to read your report as to your client's

health. However, it should not be an obstacle to the completion the form SA.1, with the assistance of agents and advisers to identify the assets and liabilities at a recent date (July 2001). Accordingly I cannot accede to your request for a delay in filing the form on those grounds either.

"I look forward to the submission of the form SA.1 within the time allowed."

You received a response on the 1 November, 2001, which you have already mentioned, where in the second paragraph, Mr. Moore says this is at 3.9 "Mr. Haughey, however, does not wish to make an issue of the matter of having the Statement of Affairs prepared and has instructed Mr. Peelo to proceed with the Statement of Affairs as at 31 July 2001."

You responded on the 5th December, 2001, effectively noting this commitment and indicating that a failure to deliver a Statement of Affairs by a particular date you were allowing up to the 18th January, 2002 can render Mr. Haughey liable to penalties.

On the 16th January, 2002 and this is a document contained at Leaf 3.12 Mr. Moore wrote to you stating that the that he wouldn't be able to provide the Statement of Affairs within the time allowed.

He says at the second paragraph: "I informed you the telephone that my client will not be in a position to file the Statement of Affairs by the 18 January, 2002. As

explained in my letter dated 18 September 2001 and acknowledged in your letter October 2001, my client is ill and under medical supervision and cannot undertake the onerous task of completing the Statement of Affairs without the assistance of his accountant.

"The amount and scope of detail required on the form is very precise, and in the context of this case, its completion is a huge assignment. Mr. Peelo has been unable to commence this task in any meaningful way due to the time-committed nature of his practice, often involving court appearances as an expert witness. At the moment he is out of the country and will not return until the end of month. The preparation of the estimated Statement of Affairs by Mr. Peelo in conjunction with the client and previously sent to you proved a huge task because of the absence of information. To get another accountant to commence work on the statement in these circumstances is simply not practical.

"Mr. Peelo and I would welcome an opportunity to call to your office to discuss the particular difficulties in this case, and on his return, perhaps we could telephone you to make an appointment.

"My client wishes to assure you that neither he nor any of his advisors intend any discourtesy to the Revenue Commissioners in the matter of the Statement of Affairs, and it is his intention to submit the completed form when the matter of timing has been resolved. I trust you will

not find it necessary to impose the penalties provided for in the section."

Now, am I right in thinking that no Statement of Affairs was in fact produced until around the time of the eventual settlement in March, 2003?

A. I think it was furnished on the day of the agreement, or rather, a Statement of Affairs was furnished on the date of the agreement.

Q. On the date?

A. Yes. Sorry, I don't want to be pedantic. Statements of Affairs were furnished on the date of the agreement.

Q. But the penalties that you mentioned were never pursued; is that right? Was that by agreement or because the Revenue, of its own motion, decided not to pursue them?

A. He was originally given an extension, and then that extension was out of time, and any consideration of prosecution for non-filing was overtaken by events, because in or about that time there were contacts between Revenue and the agent to put negotiations in train. So, where negotiations were going to be continuing, in my view, there wasn't any point in commencing a prosecution.

Q. That's the next point you deal with in your statement, which I'll now go back to.

In paragraph 2(c) of your statement, you say under "The prosecution considerations office of the Revenue solicitor.

"I discussed Mr. Moore's letter of the 16th January, 2002" the one I have just mentioned "with an Assistant

Revenue Solicitor on the 29th January, 2001. There were contacts between Revenue and the taxpayer's agents through 2002, and on the 6 September, 2002 the agents made an offer of 2 million to settle the taxpayer's indebtedness."

At subparagraph (d), you say: "In the event, Statement of Affairs, each dated 8 March 2003, in respect of Mr. Charles J Haughey and his wife, Maureen, were delivered to Mr. Brian McCabe, Principal Officer, Capital Acquisitions Tax Section, in or about 18th March 2003."

At subparagraph (e), you say: "My examination of the Statements of Affairs did not disclose any information which would have required an adjustment to the previously agreed undercharge of $\frac{1}{2}$ million."

The Statement of Affairs, in fact, consisted of very little by way of concrete information but more in the nature of an excuse in the absence of concrete information; would that be right?

A. I don't think I'd go that far.

Q. Did it contain a lot of information?

A. It purports to contain what he owned and what he owes. I think in one particular respect, it wasn't particularly detailed for reasons stated; but that, in my view, is a relatively small asset compared to other assets in the Statement of Affairs.

Q. But by that stage the negotiations and the exchanges in the course of negotiations between Revenue and Mr. Peelo and Mr. Moore had, as you say, overtaken to some extent the

approach you had adopted by, you know, warnings about penalties and so forth; isn't that right?

A. Yes, there would have been a conflict in trying to negotiate a settlement if one was at the same time trying to prosecute the taxpayer.

Q. But the settlement was eventually negotiated, as we know from evidence given by other witnesses, on the basis of information obtained through Tribunals or obtained by the Revenue themselves; isn't that right? Very little information came directly from Mr. Haughey?

A. That's correct, yes.

Q. In fact, you never met Mr. Haughey; isn't that right?

A. We never met him, no.

Q. And you never sought to meet him, did you, at any time in the course of

A. Oh, we did, yes.

Q. Did you?

A. Yes.

Q. Did you seek to meet him in 1998? I know that you sought to meet him late on in the process go ahead, sorry

A. I'd just like to be specific on that. I think it's referred to in one of my letters where we requested a meeting sorry, not a letter; I think it was at a meeting with the agents, it specifically recorded in the note of that meeting.

Q. Yes.

A. If

Q. I think that's after Mr. Haughey had become ill; is that right?

A. I can't remember when he became ill.

Q. But it wasn't in 1998? In any case, when you

A. I have a recollection, even though I don't think I have a note of it, I have a recollection of raising the matter of an interview at the first meeting we had in Mr. Peelo's office.

Q. That would have been way back in 1998?

A. Oh, yes, that have been early '98.

Q. Right.

A. But there is specific reference to a request for a meeting with the taxpayer at a subsequent date.

Q. In relation to your initial request in 1998, that didn't result in a meeting?

A. No.

Q. And you didn't pursue it?

A. It was pursued, as I have said to you a moment ago, at a later meeting.

Q. But that would have been, I think, well into 2000, or 2000 and odd; is that right?

A. Quite possibly, yes.

CHAIRMAN: Well, Mr. Gillanders told us last week that in general terms, both regards procedures and the substance of Revenue action, a tougher line would have been taken, only that Revenue was conscious of weaknesses in its possible approach to the case, and that it was decided that the

negotiated approach should be given a particular focus, and there was an anxiety that Mr. Moore and Mr. Peelo would not, in effect, walk away from the table. Would the instructions that you were given through these various dealings appear to bear out that summary of Mr. Gillanders' view?

A. Oh, yes, yes. And if I might just say as well that, in my experience, it is not usual to interview the taxpayer until a later stage in the negotiations, a later stage in one's inquiry. That is the way I have operated in my inquiries. Now, different officers deal with different cases in different ways.

MR. HEALY: In any case, in the heel of the hunt, Revenue effectively had to convert the information it obtained through Tribunals, I suppose mainly, and from banks, into collectible tax without the benefit of direct responses from the taxpayer; is that right?

A. Yes. This case is unusual in that respect, that our queries weren't answered fully and we didn't get to meet the taxpayer.

Q. And you are still, to some extent, depending on what information may come to hand from other sources?

A. That's correct.

Q. Because there are outstanding issues?

A. That's correct.

Q. Copper-fastened, if you like, a route for pursuing outstanding issues is copper-fastened into your agreement;

is that right?

A. That's correct, yes.

Q. This is the last item I think mentioned in your statement.

You refer to financial institutions, and Form 62.BD/62.BSD, and the High Court order in 2005, and you say: "The Forms 62.BD are used by Revenue to facilitate the provision of certain financial information to Revenue in relation to taxpayers. The procedure is that the taxpayer/taxpayer's agent is requested to arrange for their completion by the financial institutions concerned for return to Revenue by the taxpayer/taxpayer's agents. It is not a statutory form".

You say that you wrote to Mr. Paul Moore on the 11 January 1999 enclosing forms in respect of a number of institutions, and I'll go through them quickly:

ACC, AIB, Guinness & Mahon, National Irish Bank, Bank of Ireland, Educational Building Society, Irish Nationwide Building Society.

On the 3rd January, you wrote to Mr. Paul Moore enclosing a Form 62.BD in respect of National Irish Investment Bank.

You received a telephone request from Mr. Paul Moore, and you wrote to him on the 22 May, 2002 in response, enclosing Replacement Form 62.BD and 62.BSD in respect of ACC bank, AIB, Guinness & Mahon, National Irish Bank, Bank of Ireland, National Irish Investment Bank, Irish Nationwide Building Society, Educational Building Society. And in addition, you enclosed a Form 62.BD for Bank of Ireland,

The Mall, Malahide, County Dublin.

On the 19th December, 2002, Mr. Moore sent you correspondence Form 62.BD and 62.BSD in respect of ACC; Guinness & Mahon; National Irish Bank; Bank of Ireland, Raheny Branch; Bank of Ireland, The Mall, Malahide; National Irish Investment Bank; Irish Nationwide Building Society; Educational Building Society.

And on the 14th February, 2002 he sent you statements in respect of ACC Bank; Bank of Ireland, Raheny Branch; Educational Building Society, stating that reminders a reminder had been sent to AIB Bank which had been acknowledged, and saying: "As soon as the form 62.BD comes to hand, I will forward it to you".

You say that on the 22nd February 2003, you faxed details of certain financial institutions to Mr. Desmond Peelo.

And on the 20 May, 2003 Mr. Paul Moore sent you statements in respect of the following financial institutions:

Educational Building Society, The Diamond, Main Street, Malahide; National Irish Bank Ltd, Main Street, Malahide, and Irish Nationwide Building Society.

On the 30th June, 2003, Mr. Paul Moore sent you copy correspondence and statements in respect of Bank of Ireland, Raheny Branch.

On the 2nd October 2003, Mr. Paul Moore wrote you stating, inter alia: "Mr. Haughey has withdrawn my instructions in relation to outstanding matters on the legal agreements and as tax compliance agent".

On the 19 November, 2003, Peelo & Partners sent you copy bank statements in respect of Bank of Ireland Raheny branch.

Does it follow from this that you are now dependent on contact, insofar as you have contact with an agent, with Mr. Peelo? Is that right?

A. Sorry, does it

Q. Does it follow from those last two statements you mention the fact that Mr. Paul Moore informed that you his instructions had been withdrawn. Then you refer to a communication you had with Mr. Peelo on the 19th November enclosing bank statements in respect of Bank of Ireland, Raheny Branch. Does it follow from that that Mr. Peelo is now your only point of contact?

A. Yes, yes.

Q. In relation to Irish Intercontinental Bank, you say that in July 2005, your colleague, Denis Holligan, Principal Officer, who was dealing with matters in connection with the Ansbacher inquiry, obtained a High Court Order under Section of the Taxes Consolidation Act 1997 requiring Bank of Ireland to provide him with, inter alia, details relating to certain cheques drawn on the Irish Intercontinental Bank Limited account with Bank of Ireland. The Order disclosed, inter alia, that a cheque drawn by Irish Intercontinental Bank in April 1992 in the sum of 11,000 and debited to Ansbacher Limited Account No. 020108781 was lodged to the account of a connected person.

Bank of Ireland furnished certain bank statements in connection with the aforementioned bank account to Revenue under the terms of the High Court Order.

On the 7th March, 2006, you faxed Mr. Desmond Peelo in connection with the matter of the outstanding Allied Irish Banks form, 62.BD, and you also drew his attention to the matter of the €1,000 debited to the Ansbacher Limited account with IIB.

I take it you have received no response to that yet, have you?

A. Now, to be fair to Mr. Peelo, if I hadn't been coming here today, I wouldn't have raised this issue at all with him until I had made further inquiries, because the matter that has come to light is relatively small, or appears to be relatively small in the context of the taxpayer's affairs.

However, notwithstanding that, I have had to make further inquiries, and they are taking time, and I expect that they will take time. But I didn't want to be adverting to something here today I felt that it would have been discourteous to the taxpayer if I hadn't contacted his agent and mentioned that a matter had come to light that I would be pursuing with him.

Q. So that matter is live, is all you are saying?

A. It's live, yes.

Q. You are not are you suggesting that you are not pointing any finger of criticism at Mr. Peelo or the taxpayer for not having responded so far?

A. None whatever.

Q. You go on to say: "Any adjustment to the previously agreed undercharge of $\text{€}1\frac{1}{2}$ million with Mr. Charles J Haughey is dependent on the outcome of your inquiries into the matters outstanding in connection with Allied Irish Banks plc and Ansbacher Limited, Account Number" the one we have just mentioned. Basically just confirming that those matters are alive and you are still pursuing them?

A. Yes.

Q. You say in relation to the payment of the settlement sum that on the 1 September, 2003, a cheque in the sum of $\text{€}4,932,852.71$ was paid over to Revenue. This cheque, when added to the balance of a tax refund due to the taxpayer in the amount of $\text{€}67,147.09$ in respect of an earlier Gift Tax payment, which, under the terms of the agreement, was treated as a payment on account, represented full and final settlement of the taxpayer's Revenue debt due under the agreement. On the same date, the Revenue Solicitor discharged the charge in the sum of $\text{€}1\frac{1}{2}$ million on the Kinsealy lands.

A. Sorry, are you attributing that comment to me? I have lost track

Q. I have it as part of your statement. Maybe it isn't.

A. I don't think so, no. My statement stops at the examination of the documentation received from financial institutions.

Q. Lest there be any doubt about it, we know that in any case

that the money was paid over and the charge was discharged, so the lands are now freed of them. But that does mean that you were to pursue the matter of any further tax due and owing; you wouldn't have the benefits that you had built in for yourself in relation to the 5 million. Isn't that right? You were going to start all over again if you found

A. Oh, yes, yes.

Q. Just one last matter. You mentioned in your statement, or at least I think in one of the letters to which I referred, the question of the borrowing of 400,000 in respect to which exchange control approval was obtained; do you remember that?

A. The Guinness & Mahon Cayman Trust business, yes.

Q. Were you ever able to establish whether that loan was repaid?

A. No.

Q. Thank you very much.

MR. BURKE: I don't have any questions, Chairman. I think everything has been clarified.

CHAIRMAN: Very good. Thank you very much for your assistance, Mr. Treacy.

That's the witness list for today, Mr. Healy. And am I right in thinking that the Chairman of the Commissioners, Mr. Frank Daly, has forwarded a comparatively brief statement dealing with this and another matter, but that it has been felt that it is more convenient that that be

included in Mr. Daly's evidence next week, when it is intended that on Tuesday, at 11 o'clock, the relevant evidence analogous to this relating to Paragraph (j) of the Tribunal's Terms of Reference, in the context of Revenue's undertakings in recovering tax from Mr. Lowry and/or Garuda Limited, will be taken up then?

MR. HEALY: That's correct.

CHAIRMAN: Very good. We'll adjourn till then.

Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE 4TH APRIL, 2006.