

THE TRIBUNAL COMMENCED AS FOLLOWS ON THURSDAY, 28TH JANUARY 1998

AT 10:30AM:

CHAIRMAN: God morning, ladies and gentlemen. Before the formal business of our first plenary session commences, are there any matters of representation or applications that require to be attended to at this juncture? Mr. McGonigal?

MR. MCGONIGAL: Mr. Chairman, I am seeking representation on behalf of Mr. and Mrs. Charles J Haughey and I will be appearing with Mr. Paul Gardiner instructed by Ivor Fitzpatrick & Company and before you take up, after you have dealt with the representation, before you take up the full business, we will make an application which will be made by Mr. Gardiner in relation to matters affecting the Tribunal.

CHAIRMAN: Well, it's absolutely clear cut, Mr. McGonigal, in the context of the Terms of Reference that I must immediately accede to your application for representation for full representation on the basis of Mr. Gardiner and I take it Ivor Fitzpatrick & Company have been involved to some considerable degree already and I accede to that application naturally. Obviously there will be many phases of the Tribunal business that is unlikely to involve your clients and I would invite you to liaise with the Tribunal counsel as regards any portions that may not touch upon your client.

MR. MCGONIGAL: We will intend to do that.

CHAIRMAN: On that basis, I will grant full representation.

MR. McGONIGAL: We will be seeking to do that.

CHAIRMAN: Yes, very good. Any other matters?

MR. MURRAY: I appear on behalf of Mr. Bernard Dunne

MR. GORDON: I beg your pardon. Good morning, Mr. Chairman, I

appear on behalf of Oliver Freaney & Company and Mr. Noel Fox and

on their behalf I seek limited representation. I appear with Mr.

Maurice Collins, instructed by Orpen Franks, solicitors.

CHAIRMAN: Very good. Again, Mr. Gordon, I am satisfied from my

knowledge of the preliminary investigations that it is appropriate

that I accede to that application for limited representation and

again, I would invite you to liaise with the Tribunal's legal

advisors as regards such limited portions of the Tribunal evidence

as may realistically pertain to either of your clients. As I

think I stated on previous applications, and this applies to

everyone in the context of the granting of representation, it is,

of course, not to be interpreted as any guarantee of what may

transpire in due fruition in relation to any costs applications

and of course I merely make that observation as being applicable

to every representation order. Any other matters? Mr. Murray.

MR. MURRAY: I appear for Mr. Bernard Dunne, I am seeking limited

representation on his behalf. I am instructed by Noel Smyth and

I appear with Mr. Paul Gallagher.

CHAIRMAN: Thank you very much, Mr. Murray, again a similar order

in relation to that application. Mr. Hardiman?

MR. HARDIMAN: May it please Your Lordship, I appear with Mr. Richard Nesbitt for Dunnes Stores and their directors and as you know, Sir, the Tribunal has been in touch with my clients about a restricted number of matters and I seek representation strictly limited to the transactions which may be discussed before the Tribunal.

CHAIRMAN: Again, Mr. Hardiman, a similar order as regards limited representation and subject to the other aspects that I mentioned in the context of similar applications.

MR. HARDIMAN: Thanks. I am instructed by William Fry & Company.

MS. COSTELLO: My Lord, I seek limited representation on behalf of Celtic Helicopters Limited, Ciaran Haughey and John Barnacle, director of Celtic Helicopters. I am instructed by Gore Grimes and am seeking limited representation.

CHAIRMAN: Similar order.

MR. O'MOORE: I appear instructed by Beauchamps solicitors for Dr. O'Connell. Dr. O'Connell made a statement to the Tribunal and assisted the Tribunal in its earlier work. I seek limited representation in relation to Dr. O'Connell's evidence.

CHAIRMAN: Similar order, Mr. O'Moore and again the Tribunal legal team will seek to facilitate you as regards the portion of the hearing that may potentially pertain to your client.

MR. SHIPSEY: Sir, I appear on behalf of Carlisle Trust Limited and Mr. John Byrne instructed by Gore and Grimes, Solicitors, and

I seek limited representation on behalf of those two clients.

CHAIRMAN: Similar order again, Mr. Shipsey. Thank you very much. Mr. McCarthy?

MR. McCARTHY: May it please you, Sir, I appear on behalf of Mr. Patrick McCann, who has made a statement to the Tribunal, and I am seeking limited representation in respect of the memoranda he has furnished to the Tribunal. I appear with Mr. Tony Hunt instructed by Doyle & Company.

CHAIRMAN: Thank you, Mr. McCarthy. From my knowledge of the preliminary works, it appears appropriate that I accede to that application for limited representation and subject to the other observations I have made in relation to previous such applications. That appears then to conclude present applications for representation. Mr. McGonigal?

MR. McGONIGAL: Mr. Gardiner will make the application.

MR. GARDINER: Mr. Chairman, I have an application on behalf of Mr. Haughey and Mrs. Haughey to adjourn the sittings of the Tribunal until, as far as they touch upon Mr. Haughey, or Mrs. Haughey, but particularly Mr. Haughey, until the conclusion of the criminal charges he is facing at the moment. At the moment he is charged with obstructing the McCracken Tribunal in the performance of its functions on or around the 7th July, 1997 by asserting in a written statement on that date sent by him to the Tribunal that he had never received three banks drafts referred to in paragraph 9 of that statement knowing the assertion to be false. Those drafts are, I think, widely known as the Ben Dunne drafts.

The second charge is that he had obstructed the Tribunal on or about the 7th March, 1997 in the performance of its functions by asserting in a letter of that date and sent by him to the Tribunal that he had not received any payment in cash or in kind of the nature referred to in the terms of the reference of the Tribunal knowing the assertion to be false.

And the position in relation to those charges, Mr. Chairman, is that depositions were taken yesterday and have been adjourned for mention to the 17th February and the problem is there will be a further hearing on the 19th April. Those charges involve, as we apprehend it, witnesses who this Tribunal intends to call, perhaps today even, being Mr. Bernard Dunne, Mr. Noel Fox, and although this Tribunal doesn't intend to call Mr. Justice Brian McCracken, the contents of Mr. Justice McCracken's report into Dunnes payments will obviously be central to those charges.

I think you will be aware, Mr. Chairman, of the enormous media publicity that was attendant upon the publication of the McCracken Report that largely resulted probably in the establishment of this Tribunal, and the unremitting media attention that Mr. Haughey has received since August of 1996 becoming somewhat frenzied, in our submission, in or around Christmas of this year arising out of the tax decision in his favour.

We have a concern that the inevitable media comment that will arise out of this Tribunal and particularly arising out of matters which it appears to us are very similar to the ground, if not

identical to the ground covered by Mr. Justice McCracken, will prejudice and make impossible, if not already so, a fair trial for Mr. Haughey on those charges.

You will be aware, Mr. Chairman, of the decisions of the Supreme Court in recent cases relating to unfair media publicity which it has been alleged would prejudice a fair trial in the case of D -v- DPP which is 1994 1 IR, F & Z -v- DPP 1994, 2 IRM, 481 and in the latter case, which is regarded now as the authority on the topic, Mr. Justice Hamilton, who was President of the High Court at the time stated:

"While a Court must give some consideration to the community's right to have alleged crimes prosecuted in the usual way, the accused's right to fair procedure is superior to the community's right to prosecution. The right to a fair trial is one of the most fundamental constitutional rights. If there was a real risk a person would not have a fair trial, there would be no question of his right of a fair trial being balanced against the community's right to have crimes prosecuted."

And the President went on to say: "When an obstacle to a fair trial is encountered, the responsibility passed on the Trial Judge to avoid unfairness, particularly to the accused, is heavy and burdensome but the responsibility is not discharged by refusing to exercise the jurisdiction to hear and to determine the issues save where there's a real risk of the likelihood of an unfair trial.

The responsibility is discharged by controlling the procedures of the trial by adjournments or other interlocutory orders, by

rulings on the presumption of innocence, the onus of proof, the admissibility of evidence and especially by directions to the jury designed to counteract any prejudice which the accused might otherwise suffer. More than usual care, however, is called for in the empanelling of a jury and in the conduct of a trial in cases of this nature."

The Supreme Court unanimously, through Chief Justice Mr. Justice Finlay at the time, noted that in that case, it would be impossible to empanel a jury who would not have knowledge of the pre-trial publicity surrounding the matters which the accused was charged with and you will be aware, Mr. Chairman, that the Supreme Court didn't prohibit the trial and made the following point:

CHAIRMAN: I was going to say, Mr. Gardiner, without in any way wishing to interrupt you, is it not a substantial portion of the ratio of those decisions that the Supreme Court took the view that perhaps lower courts may, in the past, have tended to under-rate the resilience and capacity of jurors to try matters strictly on the facts before them.

MR. GARDINER: That is the part of the ratio of the case or indeed the ratio of the case. The position in this case, though, in my submission, is quite different. In the D case and in the Z case, the court, the trial court was faced with a de facto situation that adverse publicity had occurred and the trial either went on or it didn't go on. In this case, you, Mr. Chairman, in my submission, are sitting as an agent of the State, the DPP is an agent of the State. In this instance, there's a choice to be

made, in my submission, as to whether or not the State decides to conduct an inquiry which inevitably will lead to publicity surrounding Mr. Haughey so the State will, by conducting this inquiry, cause the situation which will result in a very real prospect that Mr. Haughey will not be in a position to receive a fair trial and Mr. Justice Hamilton, as President of the High Court in the said case, noted that, and indeed the Supreme Court in the D case and in the Z case, noted that the entitlement to a fair trial is superior to the right of the community to prosecute for a crime and in that instance, in my submission, the right to a fair trial is superior to the right of the community to inquire into an inquiry such as this. We take it that Mr. Haughey's constitutional right to a fair trial is paramount and that is undoubtedly, in my submission, part of the ratio also of those cases.

The State must be assiduous to ensure that the State does nothing to prejudice that trial. The State doesn't have control over the media but the State has control over its own procedures and in my submission, the State should be very careful to ensure that procedures which it has set into train and which are paralleling another set of procedures which it has set in train do not prejudice the paramount right of Mr. Haughey to a fair trial.

The matters that it appears the Tribunal is going to enquire into today, for instance, in this discrete sitting, I will talk about the decision of the Tribunal to have discrete sittings in due course, are matters intimately connected with the matters with

which Mr. Haughey is charged. As we apprehended, the matters that the Tribunal at this discrete sitting tends to inquire into are Carlisle Trust cheques, Tripleplan cheques, Dunnes Stores 1987 cheques, ACC payments, and Allied Irish Bank loans, all of which were considered by Mr. Justice McCracken sitting as Sole Member of the Dunnes Tribunal, save perhaps the AIB bank loans, which there can be no doubt about but the witnesses that the Tribunal, we apprehend, is going to call in the next number of days or certainly during the currency of the Tribunal, are common to the witnesses in the criminal trial and the matters that are going to be discussed appear to be common to the criminal trial. So this is a situation where the State, in our respectful submission, has a choice to make whether or not it wishes to ensure that Mr. Haughey has a fair trial in relation to the matters with which he is charged or the State decides that it doesn't particularly concern itself with that, that it is satisfied with the ratio that it can rely on, this is the State via a prosecuting authority, that it can rely on a decision in the Z Case and that jurors properly instructed will put all adverse publicity out of their mind but we invite the Tribunal to adjourn on the basis that the Tribunal can therefore ensure so far as matters adverse to Mr. Haughey and intimately connected with his criminal charges will be the subject of media comment, that the Tribunal adjourn until his criminal process is at an end.

That won't mean that the Tribunal has to adjourn altogether because Mr. Haughey is not the only subject of the Tribunal. We submit that the Tribunal should adjourn any consideration of any

matter which is liable to result in adverse media publicity pending Mr. Haughey's trial and that will be a matter for your discretion, Mr. Chairman. You know what evidence is going to be led in public or the Tribunal teams knows what evidence is going to be led in public and a judgment can be made by that team whether or not what is to be led in public is liable to prejudice Mr. Haughey's position in the criminal sphere. The Tribunal can inquire into any of the matters that are the subject of its remit which are very many.

In relation to the Dunnes payments situation, we would suggest that in fact the Tribunal does not have jurisdiction to inquire into those matters and we question whether or not the Tribunal is entitled to inquire into matters which already the subject of a report by Mr. Justice McCracken.

The reality is, in our submission, that the McCracken Tribunal found that, firstly, money had been applied for the benefit of Mr. Haughey and that the source of the money was Mr. Dunne. That Mr. Justice McCracken didn't believe Mr. Haughey didn't know about this, but the Tribunal went on to hold, and significantly, and we said this on many occasions in the court proceedings, significantly, Mr. Justice McCracken held that there was no evidence of any favours asked or given by Mr. Haughey arising out of monies applied for his benefit to proceed to Mr. Dunne.

We have a significant concern as to whether or not this Tribunal is entitled to seek to second guess or go over again the territory

covered by Mr. Justice McCracken and we are concerned to know and perhaps in the event that my application is refused, the Tribunal will tell us in its opening statement what the position of the Tribunal is in relation to payments made by Mr. Dunne, because as far as we can ascertain from statements which the Tribunal has furnished to us, the position is not greatly different from the position that obtained before Mr. Justice McCracken. There may be an inquiry into an additional payment or payments but as far as we can ascertain, this Tribunal is not seeking to go behind Mr. Justice McCracken's finding that there is no evidence of any impropriety by Mr. Haughey in relation to the application of funds received from Mr. Dunne and applied for his benefit.

So we are concerned and we submit that the Tribunal does not have jurisdiction to effectively reopen the McCracken Tribunal and to hear again or reinvestigate allegations which were fully investigated by Mr. Justice McCracken. Mr. Justice McCracken had private sittings just as this Tribunal has had and private investigations and the matters which it led in public were presumably matters which it considered relevant to its Terms of Reference and it made findings on those matters.

We submit that that cannot be the subject of a further tribunal of inquiry and that insofar as this Tribunal intends to sit and consider matters related to monies applied for the benefit of Mr. Haughey, the source of which appears to be Mr. Dunne, the Tribunal has no jurisdiction to do so.

The fact that the Tribunal is apparently going to inquire into

those payments is therefore objectionable on two bases; firstly, because of inevitable prejudicing of Mr. Haughey's right to a fair trial and secondly, in our submission, because the Tribunal has no jurisdiction to inquire into those matters.

A third concern that we have in relation to the proposed procedure of the Tribunal is that the Tribunal apparently and definitely, in fact, intends to sit on discrete occasions. Again, I am not certain that that is something and we submit it isn't, that is appropriate for a Tribunal of Inquiry. In the Supreme Court case of Haughey -v- Moriarty & Others, the Supreme Court identified the stages of the Tribunal as firstly, a preliminary investigation of the evidence available; secondly, the determination by the Tribunal of what it considers to be evidence relevant to the matters into which it is obliged to inquire; thirdly, the service of such evidence on persons likely to be affected thereby; fourthly, the public hearing of witnesses in regard to such evidence and cross-examination of such witnesses on behalf of such persons affected and fifthly, the preparation of a report.

In our submission, the procedure envisaged does not envisage that the Tribunal will have preliminary investigation of evidence available in relation to one discrete topic, determine what evidence it intends to call on that topic and then come into sittings on that topic, thereby necessitating the attendance of Mr. Haughey to give evidence on a number of different occasions on a number of different topics. That's not what's envisaged by the procedures identified by the Supreme Court.

The procedure identified is that the Tribunal should assemble all of the evidence that it intends to lead relating to the matters within its Term of Reference.

But connected with that, Sir, we submit that the procedure that the Tribunal intends to adopt is a procedure which it ought not to adopt but connected with that and coming back then to the fact that an application is being made for adjournment on the basis of prejudice, prejudicial publicity, the fact that the Tribunal intends to sit in discrete sittings means that the Tribunal does not intend to complete its work at this sitting or, we don't know how many other sittings there are going to be so that there isn't, in our submission, a prejudice to the Tribunal in adjourning.

What will happen, as far as we can see it, will be that there will be a truncating of gaps between the discrete sittings and there will just be one sitting so that the Tribunal, in fact, by acceding to the application for adjournment will not be prejudiced in the carrying out of its work. Its work, we acknowledge, has been required to be carried out urgently but since it's not going to be completed in one sitting anyway, the application for adjournment doesn't prejudice the work of the Tribunal and even if it did prejudice the urgent sitting of the Tribunal, in our submission, that would not be a ground for the Tribunal to continue its hearings insofar as they are connected with any of the matters which were considered by Mr. Justice McCracken, because the matter of prejudice cannot be used against or in

balance with Mr. Haughey's right to a fair trial.

Mr. Haughey's right to a fair trial is paramount and the Tribunal must, in our submission, give it its paramouncy and in our submission, ought not embark on the hearings so far as they are connected with it, at all, insofar as they are connected with Mr. Haughey but particularly so far as they go back over ground that was considered by Mr. Justice McCracken.

That's my submission.

CHAIRMAN: Thank you, Mr. Gardiner. Before ruling on your submission, it seems to me I hear both from counsel for the Tribunal and also from counsel for the public interest. Miss Egan, you are here in that regard I think on behalf of the public interest. Have you any observations to make?

MR. COUGHLAN: Sorry, Sir, I beg your pardon, I apologize for cutting across My Friend, Miss Egan. The Tribunal, of course, is conducting an inquiry and this is not an adversarial process and the Tribunal makes no case and doesn't enter the fray at any stage to make a case, either on submissions or otherwise against Mr. Haughey or any other witness who may be affected by the Tribunal's work.

But before My Friend, Miss Egan, makes her submission to you, Sir, it does seem appropriate that certain facts should be made known in the public interest so that she can make her application appropriately. And it deals purely with the question of this application for an adjournment this morning.

The grounds on which this application are based were first announced by Mr. Gardiner this morning here. By letter dated the 6th January, 1999, Messrs. Ivor Fitzpatrick & Company I am only dealing with facts I respectfully submit should be in the public domain to allow Miss Egan to make her submissions. Messrs. Ivor Fitzpatrick wrote to the solicitors for the Tribunal as follows:

"Dear Sirs,

We refer to your previous correspondence and particularly your correspondence dated 23rd December, 1998 whereby an Order for Discovery was made against our client dated the 23rd December, 1998. In this regard, it is directed our client should produce documents in the Order of Discovery by Thursday, 7th January 1999.

It will not be possible for our clients to... and will not be returned..." sorry Sir, it's a letter dated 6th January, 1999

"We note from newspapers advertisements that you intend to hold a public sitting of the Tribunal on January next. You might please advise as to what if any evidence intends to be led and you might please furnish same to this office.

"We would also advise that insofar as evidence has been intended to be led which would affect our client, we would be seeking a short adjournment in light of the fact that the matter of the DPP -v- Charles J Haughey is before the District Court on the 27th and 28th January for the taking of deposition evidence and it will be oppressive to our client to have both matters running at the same time."

That was dated the 6th January 1999.

The Tribunal responded by letter dated the 7th January, 1999 in a letter to Miss Courtney from Mr. Davis.

Dear Miss Courtney,

We refer to your letter of the 6th inst and you indicated your client will be seeking a short adjournment... While you were, of course, entirely at liberty to take this course, I should point out at the moment the Tribunal does not see any reason to adjourn these sittings which will involve the leading of evidence which may affect your client. It will not be necessary for your client, should he be obliged to attend at the District Court... for the public sittings at the Tribunal and in those circumstances, it will be sufficient for your client to be present by his representation. The Tribunal... and it will be furnished to you as soon as possible."

That, Sir, is the factual background against which the application this morning is being made and as My Friend, Mr. Gardiner, has indicated the depositions in the District Court have been adjourned for a lengthy period of time so the practical difficulty indicated in the letter does not seem to exist at present.

CHAIRMAN: Thank you, Mr. Coughlan. Miss Egan?

MISS EGAN: I appear with Mr. Frank Clarke instructed by the Attorney General on behalf of the public interest. The position, it would appear to me, that the Tribunal has been established now for some 16 months, in a resolution establishing the Tribunal was passed on the 11th September, 1997 and on that date, the

resolution referred to the matters of serious public concern arising from the report of the Tribunal of Inquiry, the McCracken Report and the Tribunal was set up to inquire urgently into the report of the clerk of the Dail and to make such findings and recommendations as he sees fit in relation to the following definite matters of urgent public importance.

My Lord, I think in relation to that matter, the public interest does require that the matter be brought speedily to a conclusion and that the Tribunal be at least allowed to commence its business. I think, My Lord, that the authorities cited by Mr. Gardiner were both authorities which the Supreme Court found a jury properly directed and with the proper procedures would be able to conduct a fair trial and would be able to give the accused a fair trial in those two cases.

As far as I remember, My Lord, Costello J in the Z Case had actually referred to the accused in that case during the course of the X Case as being deprived as far as I remember and yet despite that comment, I think the Supreme Court found that a jury properly instructed with proper procedures could hear the trial and could determine the matters fairly. I think it is fair from what has been said by Mr. Gardiner that the separate issues in this case and in the criminal prosecution will take well into the month of April and I think in those circumstances, any adverse publicity that may arise in relation to Mr. Haughey during the course of those proceedings may have faded by the time that the criminal trial comes on and I think any consequent prejudice may also have

faded by the time the criminal trial comes on. Those are my submissions, My Lord.

MR. GARDINER: Yes, Mr. Chairman, firstly, in relation to the letter which Mr. Coughlan read on the 6th January. Of course, that is the factual position as pertained on the 6th January was that Mr. Haughey was facing depositions which had been listed for the 27th January and the Tribunal had decided to sit on the 28th January and we accept unreservedly that the Tribunal didn't know when it sat on the 28th January as its date of public sitting that Mr. Haughey was facing depositions in the District Court on the 27th January. If it had known perhaps, it wouldn't have sat on this day but that was a concern at that time. We didn't have, at that time, a list of witnesses or a list of the evidence that was to be dealt with at this sitting. Undoubtedly we had been told throughout correspondence with the Tribunal that matters were being inquired into relating to Dunnes and we have, in correspondence with the Tribunal, flagged that we didn't believe it was appropriate that the Tribunal would be inquiring into Dunnes.

We were furnished with the first book of witness statements that were collated. We had been given statements on the way but collated during the hearing of this sitting on the 20th January and we have been furnished with further documents since that date.

MR. COUGHLAN: Sorry to interrupt My Friend, but is My Friend

making a new application or responding to the submissions that have already been made? That is the normal procedure.

MR. GARDINER: Mr. Coughlan saw fit to put before you, Mr. Chairman, the letter of the 6th January and he put it into the public domain, as he said, for the purpose of for Miss Egan being in a position to respond to my submission. My submission is based on a paramount constitutional right. This is being implicitly suggested by Mr. Coughlan there was no concern on the 6th January about that paramount constitutional right. I am responding to that submission by pointing out that on the 6th January, we had not been furnished with a list of witnesses for this sitting of the Tribunal.

We had, throughout the months of August September, October November and December, been in correspondence with the Tribunal in relation to many matters and particularly in relation to the inquiry being conducted by the Tribunal into the Dunnes matters. And in that correspondence, we had considered it appropriate that the Tribunal be inquiring into Dunnes matters. In relation to this submission, we were given the list of witnesses and the statements of evidence and even this morning have been given further statements relating to what the Tribunal, at this discrete sitting, intends to inquire into and that is matters particularly pertaining to Dunnes.

And on the 13th January, 1999 the Tribunal wrote a long letter to Mr. Haughey's solicitors stating that an application for an adjournment should be made in public as there are other interests

who would have an opportunity of expressing a view in relation to the application. That's the background against which the application is made. It's being made in public so that the other interests, being the public interests and anybody else who has an interest, can respond to it. Even if weren't, if that weren't the factual background, it would, in my submission, be somewhat irrelevant because the kernel of the situation facing the Tribunal is that the State can decide that it wishes to permit a situation to occur which will likely lead to media comment concerning the very matters which Mr. Haughey is on trial for.

That is an unusual and probably unique situation where the State is being asked not to create adverse publicity, to allow a situation obtain where a fair trial can be assured insofar as given what has gone in the past has occurred, as it can be assured so this is not a situation akin to the D Case or the Z Case where, as I stated at the outset, the Court was faced with a de facto situation outside the control of the State. There had been massive publicity.

This is a situation where it is being flagged in advance and the State is being asked to ensure that there is not an engendering of adverse publicity pending the resolution of the criminal process and, in my submission, as the Supreme Court has identified, the paramount right to a fair trial overrides the urgent nature of this inquiry. And as I stated, we are not seeking an adjournment of the entire inquiry. The inquiry may proceed in relation to matters which won't engender adverse publicity and as I state in

my submission, that would be a matter for the discretion of the Tribunal team and for you, Mr. Chairman, in relation to the giving of evidence.

So in my submission, the submission of the public interest that it's urgent to get on does not override Mr. Haughey's right to a fair trial.

CHAIRMAN: Thank you, Mr. Gardiner. Whilst there may be applications that arise from time to time during the Tribunal hearings that necessitate my adjourning overnight to consider and rule on the matter, I am satisfied that it is incumbent upon me to rule here and now on Mr. Gardiner's substantive application.

Whilst I pay some regard to the correspondence exchanged between the parties as mentioned by Mr. Coughlan and to what is stated by Miss Egan in the context of the likely time, sequence and eventual date of any criminal trial that may occur against Mr. Haughey, I must of course rule on this matter on legal principles.

On that basis, even though of course I have been required by the Oireachtas to undertake this inquiry with as much efficiency and expedition as is consistent with the remit contained in the Terms of Reference, nonetheless, I accept from Mr. Gardiner's argument that those public concerns to expeditiously conclude the inquiry do come second to Mr. Haughey's constitutional right to a fair trial.

Accordingly, if I were to feel that by starting the inquiry today

on the basis proposed that I was doing something that was likely to jeopardize Mr. Haughey's legal entitlement to a fair trial, it would be incumbent on me to accede to the application.

I am not so satisfied, having regard to all these circumstances.

I bear in mind the essential tenure of the Supreme Court judgements in the D and Z cases in which it was stated unequivocally that jurors and a fortiori judges have to be entrusted with greater resilience against media comment and to be trusted to try cases in accordance with admissible evidence only and render a due verdict in accordance with law.

I also pay regard to the nature of the Tribunal's undertaking whereby it is not seeking to make a case against any person, Mr. Haughey or any other person who may be involved but is simply seeking to discharge its solemn remit to inquire into matters at issue and seek to find facts.

Of course it will require care on the part of the law officers in the due processing of Mr. Haughey's trial to see that his rights are acceded to and these are matters that obviously are not in my immediate control. I accept that care will have to be given to the dates upon which the trial is fixed, to the business of empanelment of jurors and to the other matters that will necessarily descend upon the prosecution authorities and any eventual Trial Judge who may have to try the matter in issue to ensure that the matter is tried entirely fairly.

What I am not persuaded, having regard to these matters, is that

by proceeding with the inquiry today, that that right to a fair trial is likely to be realistically jeopardised. I believe the safeguards that have been referred to by the Supreme Court will be unequivocally inbuilt in any eventual trial and it seems to me, having regard to the desirability of this inquiry proceeding to fruition, that significant things would be required to persuade me that there would be a real risk of jeopardy of a less than fair trial. I am not so persuaded. I accept that care will have to be taken as regards the further stages of criminal process against Mr. Haughey but I am not of the view that by proceeding on the lines that is proposed today, Mr. Haughey is likely to have his constitutional right to fair and just process jeopardised.

The only remaining matters in Mr. Gardiner's submission, I similarly do not find grounds that persuade me to accede to the application for an adjournment without giving a minute construction of the Tribunal's Terms of Reference. It does seem to me, from careful reading of those Terms of Reference and from several readings of the content of Mr. Justice McCracken's report, that the course proposed to be embarked upon today is one that is consistent with the Terms of Reference and does not contravene any basis of fairness, having regard to those Terms of Reference and to what was inquired into and reported upon by Mr. Justice McCracken.

Lastly, Mr. Gardiner takes exception to the view that has been taken by the Tribunal that the hearing should be conducted in a number of discrete sittings, the first of which is scheduled to

commence today. It seems to me that one has to have regard to the proliferation of factual issues that have been visited upon the Tribunal by the Terms of Reference and that one must also have considerable regard to the significant recommendatory task that has also been required to be undertaken by the Tribunal. In the context of the proliferation of issues relating to significantly separate aspects of activity, it seems to me realistic and proper that the Tribunal has taken the view that the fairest and most prudent way of proceeding with the delayed sittings in this case is to segment into discrete sittings proposed.

In making this ruling, I am certainly not indicating that I am not going to pay extremely significant regard to ensuring that as regards any concurrent proceedings or procedures that Mr. Haughey's rights are, as far as I can assure, they are safeguarded. I would accept not an ideal scenario that the criminal process is taking place at the same time as the commencement of the substantive sittings of the Tribunal but having made that observation and the other remarks that I have made, I am very far from being persuaded that embarking today will jeopardise Mr. Haughey's paramount right to due process.

Accordingly, I am of the view that the Tribunal must proceed.

Before calling upon Mr. Coughlan, as senior counsel for the Tribunal, to open the matters that may pertain to this initial sitting, I have some brief observations of a preliminary nature to make.

It will be useful to refer briefly to the nature of the inquiry that it is my duty to hold. The first point I should make and it cannot be over-stressed is this is an inquiry. It is not a piece of litigation. It does not involve the making of a case by the Tribunal or its legal team against any person or persons, whether named in the Terms of Reference or not. It will not, therefore, involve adversarial confrontations between the Tribunal or its legal team and any other person who may become involved with the Tribunal's inquiries.

Insofar as the Tribunal has any cause to promote the case it wishes and will wish to make is that this is an inquisitorial examination of persons and documents for the purpose of finding facts or establishing to what extent, if any, facts can be found.

The inquiry will be conducted by me. Whilst I will be substantially advised and guided by the legal team who have undertaken the vast preponderance of preliminary work and investigation in the ultimate, it is I alone who will decide what witnesses will be called and to what matters the evidence of those witnesses will be directed.

It is inevitable in the public inquiry that things said by witnesses in evidence may have an impact on other persons likely to be involved with the Tribunal or on persons having no involvement with the Tribunal. What is said may affect a person's good name or a person's other vital interests. The Tribunal will take every practicable step to ensure that a

person's good name or other vital interests are not needlessly affected by evidence given at the Tribunal. However, where a person's good name or other vital interests are affected or are likely to be affected, then any such person will be afforded an opportunity of protecting his or her good name or other interests. Any such person will, of course, be given an opportunity of being represented. In the defence of those interests and in the defence of reputation and good name, he or she will be given an opportunity, where this is necessary, to defend such interests or good name by cross-examining witnesses.

That is not to say that other procedural safeguards will not also have to be deployed to ensure fairness to witnesses and other persons connected with the Tribunal sittings. For example, experience in other tribunals has shown that it may sometimes become necessary either to adjourn part of the Tribunal's public sittings or to postpone part of the evidence of a witness so as to enable a person likely to be criticised or who has been criticised to instruct counsel or to assemble documentation so as to either bring information to the attention of the Tribunal or to enable him or her to cross-examine on the material in question.

Where a cross-examination is permitted to be conducted otherwise than by counsel for the Tribunal, in the interests of defending the good name or other vital interests of another person, then it will be limited only to eliciting matters that may affect a person whose good name or other vital interests are involved.

In the ordinary way where a witness is called, he or she will

first be examined by counsel for the Tribunal from any statement given or from any memorandum of information given to Tribunal.

Where a witness has completed evidence in accordance with any statement made or any memorandum of information provided to the Tribunal, he or she may be further examined by counsel for the Tribunal with a view to eliciting further information relevant to the Tribunal's Terms of Reference.

Whilst I anticipate that certain procedural matters will be dealt with somewhat more fully in the opening remarks of counsel for the Tribunal, it would in general be my clear preference that any necessary matter of legal argument or application be made at the start or end of any sitting day. This is to facilitate reasonable and fair continuity in the evidence of witnesses and it would again be preferable if such matters could, where possible, be communicated in the first instance to the Tribunal's legal advisors.

At this point, the Tribunal has carried out an enormous amount of preliminary examination of material and conducted a significant number of informal interviews with persons likely to be able to assist it. It has reached a point where it has identified a number of topics and in relation to those topics, has so far as this has proved practicable, excluded any material irrelevant to its Terms of Reference.

It has now identified a number of areas in which its inquiry should be pursued in public. Where any person represented at the

Tribunal or any other person affected by evidence given at the Tribunal wishes to direct the attention of the Tribunal to any particular material for the purpose of having questions put to a witness, then the matter should be taken up with counsel for the Tribunal and, if necessary, a list of questions can be furnished to counsel for the Tribunal or statements furnished to counsel for the Tribunal.

Whether any such statements are put to a witness or whether any questions are put to a witness is a matter which will be determined by me in the circumstances of each instance and in exercising my judgment as to whether to allow any such question to be put or statements to be taken into consideration, I will concern myself solely with whether any such information is likely to advance the inquiry I have been directed to carry out.

In these sittings, the Tribunal will deal with a number of items to which reference will be made later on by counsel for the Tribunal. What the Tribunal has done is to group into a manageable section or series of sections a number of related items from the substantial volume of material that it has examined.

However, members of the public and the press should bear in mind the danger of drawing conclusions from any of the evidence given at these sittings until such time as all of the evidence of all of the sittings has been heard and the Tribunal has found any facts or reached any conclusions. And I pay particular emphasis to that injunction in the context of the matters that have been laid before me in Mr. Gardiner's application earlier this morning.

Ultimately, the drawing of conclusions and the finding of facts is a matter for me. In finding those facts, I will consider only the material introduced in evidence at the public sittings of the Tribunal. The weight to be afforded to the material produced in evidence is also a matter for me. In fulfilling that function, I am obliged to bear in mind, on the one hand, the duty of the Tribunal to find facts and, on the other hand, to ensure fairness to witnesses.

One of the features of the material to which reference will be made by counsel for the Tribunal in his opening is the involvement of certain persons who are now deceased. I intend to keep in mind that deceased persons will not be able to answer personally criticisms that may be made of them either explicitly or implicitly in the course of evidence given to Tribunal. Members of the press and the public should likewise bear in mind the particular vulnerability of deceased persons where the temptation to draw conclusions is concerned.

Lastly, I wish to emphasise that as this is a public hearing, then while, of course, it is important to bear in mind the warnings I have just given, nevertheless in my public hearing, the role of the press must be acknowledged as being a significant and valuable one. The dangers involved in certain types of press reporting have been alluded to in an editorial in one of the national newspapers in recent times but, on the whole, I should say that the reporting of the actual proceedings of the Tribunal to date

has been very responsible. In order to assist the press and other interested persons, the Tribunal has opened a web site. This web site will provide a certain, admittedly limited access to information, both from the point of view of the press and members of the public. At this stage, what is envisaged is that these opening remarks I have made and the opening remarks I propose to invite counsel for the Tribunal to make, will be recorded on the web site at some time later today. During the course of the inquiry, other rulings and any statements similar to the one I am now making or propose to invite counsel to make in a moment, will be put up on the web site.

This, I anticipate, will also apply to earlier interim rulings made by me in relation to the Tribunal's Terms of Reference. It would not be possible to devote the huge amount of time that would be required to put transcripts of the Tribunal's daily proceedings on the web site however, desirable this might be, because the transcript would have to be checked daily by counsel for the Tribunal, it would prove an unacceptable diversion of the Tribunal's very limited personal resources.

Lastly, by way of sitting arrangements, I would propose hours of 10:30 until 12:30, then 1:45 until 4 o'clock on each sitting day, which may be in ease of persons attending the Tribunal regularly, being able to avoid the worst of the lunch time rush hour. For this phase at least, we shall sit on Tuesdays to Fridays, inclusive from today, the exclusion of Mondays being to enable the Tribunal to continue and finalise the very considerable amount of

investigative work essential to further phases of the sittings.

At this stage, might I invite Mr. John Coughlan, senior counsel for the Tribunal, to please make any opening remarks he considers appropriate to this stage of the Tribunal's first public sitting.

THE OPENING STATEMENT TO THE TRIBUNAL WAS DELIVERED AS FOLLOWS BY
MR. COUGHLAN:

MR. COUGHLAN: May it please you, Sir. The first thing I would like to say is that you have invited me to make an opening statement and have asked me to bring to the attention of the public the basis upon which this is done. The Royal Commission on Tribunals of Inquiry commonly known as the Salmon Commission, reported in November, 1966 on The Tribunal of Inquiry (Evidence) Act 1921. It recommended retention of the Act and made many recommendations in respect of the Act and the procedures to be adopted under it.

The Salmon Report has been considered by courts and tribunals in Ireland and England since that date and its recommendations have been adopted with significant modification both here and there.

Nonetheless, the report is considered an authoritative and persuasive document by judges and lawyers in both jurisdictions.

The Salmon Commission considered that it should be left to the tribunal in every case to decide whether or not an opening statement should be made by counsel appearing for it. The Commission conceived of cases in which it would be most desirable

that such a statement should be made and others in which it should not.

The Salmon Commission specifically stated "In its discretion the Tribunal will direct whether or not counsel instructed on its behalf should make an opening statement indicating the progress which has been made in the investigation before the evidence is heard."

The commission also stated: "Provided a sufficient time has been given for the inquiry, an opening statement by counsel for the Tribunal is usually helpful as it is otherwise difficult for persons who have been granted representation and members of the public to understand the line of inquiry which is being followed. An opening statement will also assist the press in reporting the proceedings."

The Commission stated that the statement should be an impartial summary of the investigation and avoid any comment likely to make sensational headlines. It should be emphasized that until the evidence has been heard, it would be wrong to draw any conclusion.

And I again in making this opening statement, Sir, to the Tribunal, emphasise that once again as you have already done, that in exercising your discretion in the context of this Tribunal, have directed me as counsel instructed on your behalf to make an opening statement indicating the progress which has been made in the investigation before the evidence is heard. You have also,

Sir, directed me to state the following;

1: Because this Tribunal will sit in discrete phases to inquire into different matters, at the commencement of each and discrete public phase, an outline statement will be made by counsel instructed on your behalf indicating the progress which has been made in the investigation before the evidence is heard in each phase.

2: In each discrete public phase of the Tribunal's inquiry, it may be necessary for counsel instructed on your behalf to make a further outline statement and where practicable, this will be done. This is because the investigative work of the Tribunal will continue during the course of public hearings and because the inquiry may take a fresh turn at any moment. In every case the Tribunal will endeavour to indicate the direction its line of inquiry is taking.

I would now like to deal with the work which has been carried out by the Tribunal in private in general terms.

The work of the Tribunal in private commenced on the 21st October, 1997. The Tribunal held its first public sitting on the 31st October, 1997 to explain briefly the manner in which it intended to approach its work. It also sat to hear applications for representation by various persons. When the private phase of the Tribunal's work commenced, the information available to the Tribunal at that time was limited to the following:

Terms of Reference of the Tribunal itself; the report of the

Tribunal of Inquiry (Dunnes Payments) now commonly referred to as the McCracken Report; transcripts of evidence given in the course of the public sittings of the Tribunal of Inquiry (Dunnes Payments); documents admitted in evidence in the course of the public sittings of that Tribunal, and the report of the Dail debate regarding the Terms of Reference of your Tribunal.

The purpose of the work in private was twofold; firstly, it was to assemble material relevant to the Terms of Reference which was appropriate to be led in evidence in the public sittings.

Secondly, it was to exclude material not relevant to the Terms of Reference and which if led in public might be damaging to persons unconnected with the Terms of Reference. The following categories of inquiries were pursued:

Letters were sent to all persons who are members of the Oireachtas to request them to assist with any information, if available, relevant to the Terms of Reference.

Inquiries were made of all banks operating within the State to ascertain the existence of accounts material to the Terms of Reference, that is, accounts of persons mentioned in the Terms of Reference and of persons or companies connected to them within the meaning of the Ethics in Public Office Act and of persons who may have held accounts for their benefit.

Where appropriate, orders for discovery and/or production were made and some 29 orders were made prior to Christmas of 1997.

Inquiries were made of banks in which the Tribunal of inquiry (Dunnes Payments) found that amalgamated accounts were held by offshore institutions and recorded in memorandum accounts within the jurisdiction. Inquiries were also made of persons who were associated with the operation of those accounts. Orders were made for discovery and production of certain documents relating to those accounts to enable the Tribunal to conduct an examination of the manner in which the accounts were operated and to identify, if possible, the memorandum account holders with a view to ascertaining a) whether the funds were held on for the benefit of persons holding a ministerial office and b) whether the memorandum accounts holders were the source of persons holding ministerial offices.

Inquiries were made directly of government departments and state agencies and in certain instances where orders were made for discovery and production of documents. Inquiries were made on foot of information which was brought to the attention of the Tribunal as being information which might be material to its Terms of Reference. Much of this work was initiated in November and December, 1997 and documents began to be produced to the Tribunal at the end of November and throughout December, 1997.

Proceedings were issued against the Tribunal by Mr. Haughey and members of his family on the 18th December, 1997. There were the following court hearings:

On the 12th, 16th and 20th January, 1998, the plaintiff's Motion for Discovery in the High Court; on the 29th January 1998, hearing

of the plaintiff's appeal against the decision of the High Court in respect of that matter; between the 24th March, 1998 and the 1st April, 1998, the hearing of the action in the High Court; on the 28th April, 1998, the High Court judgment was delivered; between the 23rd June, 1998 and the 1st July of 1998, the hearing of the plaintiff's appeal in the Supreme Court; on the 28th July, 1998, the Supreme Court judgment was delivered and that judgment ordered that certain orders of the Tribunal should be quashed.

The work done by the Tribunal between the months of January and July 1998:

By the end of July, 1998, the following is an approximate indication of the volume of work undertaken by the Tribunal which was carried out in tandem with the proceedings. 41 orders were made. 375 leverarch files of bank related documents had been produced. They had all been scrutinized and analysed with a view to identifying material accounts and ascertaining the source of the funds to those accounts.

In excess of 250 persons have been identified as persons who might be of assistance to the Tribunal. Inquiries had been made and private meetings held with a large portion of those persons.

As a result of the judgment of the Supreme Court, the consequences for the Tribunal were threefold.

Firstly, all documents produced to the Tribunal on foot of the quashed orders were returned. All the documents were returned within two days and this exercise was completed by the close of

business on Thursday, 30th July, 1998.

Secondly, documents were also returned which were produced to the Tribunal on foot of orders which were not quashed. The Tribunal took the view that as the Supreme Court had held that all persons who might be affected by orders of the Tribunal should be put on notice, documents produced to the Tribunal on foot of other orders should be returned unless those persons consented to their retention.

The Tribunal wrote to upwards of 200 persons to ascertain whether they consented and in the absence of consent, the documents were returned. The third consequence was that all inquiries made by the Tribunal, information generated, information furnished and other documents produced to the Tribunal on foot of orders or voluntarily, by reference to documents returned on foot of quashed orders or where consent had not been furnished, were ignored by the Tribunal.

This necessitated a very considerable administrative task and included correspondence with all persons with whom the Tribunal had contact to advise them that the Tribunal's inquiries should be ignored. The information which was ignored included much of the tracing work which the Tribunal had undertaken in tandem with the litigation.

In total, the Tribunal returned 211 leverarch files of documents in whole and 21 leverarch files in part. In light of the Supreme Court judgment, the Tribunal set about its work as follows:

On the 24th September, 1998, the Tribunal held a public sitting for the following purposes. Firstly, to furnish its views as to its interpretation of the Terms of Reference. Secondly, to indicate the procedure which it intended to adopt in the preliminary investigative stage of its work and in particular in connection with the production of documents which it wished to examine. In accordance with that procedure, the Tribunal set about securing the documents which appeared to be material to its Terms of Reference. This was done by seeking the consent of the persons to whom the documents related. In the absence of consent, notice of the intention of the Tribunal to make an order was given to persons to whom the documents related, the persons who held the documents and persons who might be affected by such an order. Allowance was given to all persons in terms of time to enable them to make submissions or representations to the Tribunal, either in writing or orally in private. In the case of certain orders, notice had to be served on very many persons. In order to identify those persons, the Tribunal held two further public sittings from which the public were excluded and those were held on the 5th November, 1998 and the 9th December, 1998. In all, the Tribunal has made 54 orders since the 3rd November, 1998 and it has received a considerable number of consents from persons whose accounts were sought, authorising banks to produce documents voluntarily.

On the documents being assembled, the Tribunal commenced the work of analysing and inquiring into the accounts afresh. In all, the

Tribunal has assembled a further 144 leverarch files of documents. During this time, the work of the Tribunal in scrutinising documents, making inquiries and holding meetings with regard to information provided to it or described on foot of order continued.

Further inquiries were also made with government departments and government agencies regarding material which might be relevant to the Tribunal's Terms of Reference. This work included the making of one further order which resulted in the production of 132 files, the scrutiny of those files and the holding of further meetings.

That, Sir, is a broad outline of the work which the Tribunal has been doing since it commenced its private phase. I now turn to deal with matters which you have directed me to make an opening statement in relation to in this public phase.

At this public sitting, which will take some short time, the Tribunal intends to deal with a number of specific matters related to the first paragraph of its Terms of Reference. What this first paragraph requires the Tribunal to do is to inquire urgently into whether any substantial payments were made directly or indirectly to Mr. Charles Haughey during any period when he held public office, commencing on the 1st January, 1979 and thereafter up to the 31st October, 1996, where any such payment was made in circumstances giving rise to a reasonable inference that the motive for making the payment was connected with any public office

held by Mr. Charles Haughey or where the payment had the potential to influence the discharge of such office.

Payments in this context includes payments that are made directly or indirectly to Mr. Charles Haughey.

As a result of information made available to the Tribunal and the most exhaustive investigations carried out by the Tribunal, a number of payments have come to its notice. The question is whether these payments come within the ambit of subparagraph 1 of the Terms of Reference of the Tribunal. Whether they were substantial payments made directly or indirectly to Mr. Charles Haughey in the circumstances I have just mentioned.

The first matters the Tribunal proposes to examine at this public sitting under this heading relates to a number of cheque payments.

Firstly, a cheque for €282,500 sterling drawn on the account of Dunnes Stores (Bangor) in favour of a company known as Tripleplan.

Secondly, three cheques drawn on the account of Dunnes Stores in the following amounts; €49,620, €50,962, €79,418 which were subsequently converted into two cheques drawn on the account of Carlisle Trust for the sums of €100,000 and €80,000.

The three Dunnes Stores cheques which I have just referred to were made out to cash. The €100,000 Carlisle cheque was made out in favour of Celtic Helicopters and the €80,000 Carlisle cheque was

made out to cash but was lodged to a company known as Kentford.

Kentford was a company operated by the late Mr. Des Traynor and it held an account in 1992 with Bank of Ireland.

Thirdly, the Tribunal proposes to examine a number of cheque payments, six in all, drawn on various accounts of Dunnes Stores on the same day being the 28th January, 1987 in varying amounts between €4,600 and €6,600.

In total, these cheques amounted to the sum of €32,200.

Fourthly, the Tribunal proposes to examine whether three cheques

I beg your pardon, Sir, whether three bank drafts drawn on Guinness & Mahon in Dublin for €600,000, €100,000 and €50,000 respectively and lodged to an account of Mr. Charles Haughey come within the ambit of this subparagraph of the Tribunal's Terms of Reference.

You, Sir, as Sole Member, will have to decide whether in the first instance in their historical context, these payments were substantial.

For ease of reference, I will refer to the payments which I have just outlined as follows; the €282,500 sterling will be referred to as the Tripleplan cheque; the three sums amounting to €180,000 will be referred to as the Dunnes/Carlisle amounts and; the six cheques amounting to the sum of €32,200 will be referred to as the Dunnes January 1987 cheques.

I will refer to the payments of €600,000, €100,000 and €50,000

amounting in all to €750,000 as the AIB payment.

If I may first turn to Tripleplan. The Tribunal received information concerning this cheque both from Dunnes Stores and Mr. Noel Fox. The precise circumstance in which the matter first came to the attention of the Tribunal will be dealt with in detail in the evidence. For the moment, I merely wish to outline the facts surrounding the drawing of the cheque and the ultimate destination of the cheque.

The Tripleplan cheque is drawn on the account of Dunnes Stores (Bangor). The person most closely connected with the drawing of the cheque is Mr. Matt Price. Mr. Matt Price was an executive of Dunnes Stores Bangor. In 1987 he was a director of the company. He retired from that position on the 30th June, 1998. On the on the 20th May, 1987, he drew a cheque on the account of Dunnes Stores Bangor Limited at the Ulster Bank Newry in the sum of sterling €282,500.

From the documents made available to the Tribunal by Mr. Noel Fox and Dunnes Stores, it would seem that Mr. Matt Price sent the cheque to Dublin under cover of a compliment slip. From the compliment slip it seems that he sent the cheque to Mr. Noel Fox and that this was done by agreement with Mr. Bernard Dunne. Mr. Price has not been able to recall whether it was Mr. Dunne or Mr. Fox who instructed him to draw up the cheque.

Mr. Fox is an accountant and was at that time a close associate and advisor of Mr. Dunne and had daily and intimate involvement in

all of the affairs of Dunnes Stores operating in Dublin.

Although the cheque was transmitted to Dublin, it subsequently appears to have been retransmitted back to Newry to the branch of the bank upon which it was drawn. The cheque was then negotiated through that branch, in other words, value was given for the cheque. Tripleplan Limited was a company which did not have an account at that branch and the manner in which or the circumstances in which value was given for the cheque at that time are not entirely clear as it has not been possible to unearth all of the records regarding the cheque some twelve years later.

Tripleplan Limited was a shelf company formed by an English firm of company formation agents in London on 1st September, 1983.

Sometime shortly after its formation, it came under the control of certain Channel Island interests. In June, 1985, new interests took over the company. It came into the ownership of two companies known as Sovereign Management Limited and College Trustees. These are two companies which were associated with or had relationships with Guinness & Mahon. The directors of the company on its takeover by College Trustees and Sovereign Management were Mr. John Collins and the late Mr. John Furze. Both Mr. Collins and Mr. Furze had addresses in the Cayman Islands. As the public will know from the report of the McCracken Tribunal, Mr. Furze and Mr. Collins were intimately involved with the late Mr. Des Traynor in connection with the accounts now known as the Ansbacher Accounts. Mr. Furze is also one of the individuals through whom monies were routed to Mr.

Charles Haughey from Mr. Bernard Dunne.

As the report of the McCracken Tribunal showed in July 1988, the second payment to Mr. Haughey in the sum of sterling €471,000 was routed through an account in the name of Mr. Furze in London. In November, 1987, the first Dunnes payment of sterling €182,630 to Mr. Haughey was by cheque payable to Mr. Furze.

To return to the Tripleplan cheque, all but €15 of the proceeds of the cheque was credited to an account in Guinness Mahon & Company in London. The London bank with a name similar to Guinness & Mahon in Dublin was, in fact, the parent bank of the Dublin bank. This account to which the cheque was credited is known as the Dublin bank, and I refer to Guinness & Mahon Dublin for the remainder as the Dublin bank, nostro account. It was through this account that sterling is paid for crediting to accounts in the Dublin bank.

The account into which the proceeds of the cheque were lodged in London was, in fact, the Dublin's bank account in London. The €15 which was not credited to the nostro account was a charge for the special clearance of the cheque which was negotiated in Newry and credited in London on the very same day, it was negotiated in Newry, that is on the 28th May, 1987.

The proceeds of the cheque having been credited in London then passed through the banking system from London to Dublin and through a series of Ansbacher accounts in Dublin. Eventually it was converted to Irish pounds. The Irish pound equivalent,

€309,220.29 was then credited in the Dublin bank to an account in the name of Amiens. Amiens was one of a series of accounts operated by the late Mr. Des Traynor in connection with the Ansbacher accounts. One of these accounts was referred to in the report of the McCracken Tribunal in connection with the receipt and application of the first Dunnes payment of sterling €182,630.

As I have said, the amount of the cheque after conversion to Irish pounds was €309,220.29. Of that €309,220.29, €285,000 was then transferred to Mr. Charles Haughey's current account at Guinness & Mahon. This account at the time was overdrawn. The overdrawn balance was cleared by the €285,000, leaving a small credit which was subsequently transferred back to the same Amiens account. The balance of the €309,220.29 was then withdrawn in cash from Amiens.

As I have already indicated, the attention of the Tribunal was drawn to this cheque by representatives of Dunnes Stores and representatives of Mr. Noel Fox who, having ascertained the ownership and identity of the directors of Tripleplan, were of the view that this cheque might be material to this Tribunal's Terms of Reference.

The Tribunal's inquiries over a considerable period of time have enabled it to obtain information which appears to suggest that the proceeds of this cheque were paid into Mr. Charles Haughey's current account in Guinness & Mahon and thereby clearing the debit

balance of €282,880.73. From the information available to the Tribunal, it would appear that some of the people who seemed to be centrally involved with this cheque have no recollection of the cheque or of the circumstances in which it was drawn. Mr. Bernard Dunne has no recollection of giving any instructions in relation to the payment of Tripleplan. Dunnes Stores itself had no trading relationship with Tripleplan. Dunnes Stores (Bangor) had no invoice against which this payment was made. It would seem that in other words, Mr. Price had no reason, that is no commercial reason, to make the payment other than, of course, by being instructed to so do. The payment was, in fact, being made by Mr. Price at the request of Dunnes Stores in Dublin

As far as Mr. Price's own accounts at Dunnes Stores in Bangor were concerned, this was a sum due from the account of Dunnes Stores in Dublin to Dunnes Stores in Bangor. However, there was no commercial justification for the payment by Dunnes Stores in Dublin. Dunnes Stores in Dublin had no relationship, commercial or otherwise, with Tripleplan and indeed no knowledge of the company.

Mr. Bernard Dunne has informed the Tribunal that he did not authorise the giving of any instruction in relation to the payment. It was not his intention that any such payment should be made and he never gave instructions that Mr. Charles Haughey was to receive this amount, either by this payment or in any other way.

Mr. Noel Fox has made a statement, and I should pause here and say

that statements furnished to the Tribunal are not in the form or by way of police statement, in which he indicates that he had no recollection of the cheque and that it was not until investigations were carried out both in Dunnes Stores and in his own firm that a connection was made between the cheque and Mr. John Furze with an address in the Cayman Islands. Those investigations also showed that Mr. John Collins, with an address in the Cayman Islands, was also involved.

It was as a result of this information that he was prompted to assume that the cheque was one which might have been made with Mr. Bernard Dunne's direction and probably through him sent to the late Mr. Des Traynor. He has informed the Tribunal, however, that he has no recollection of either being asked by Mr. Traynor to request Mr. Dunne for this, nor does he recall how the cheque was transmitted through him to Mr. Traynor.

The cheque was drawn in 1987. In the following year, it would appear somewhat late in that year, Messrs. Oliver Freaney, accountants, were carrying out an audit on the accounts of Dunnes Stores. In the course of that audit, the Tripleplan cheque came to the attention of the auditors. The auditors were unable to find any invoice to which the cheque corresponded and raised queries. It appears that the matter was not resolved and remained a matter requiring clarification on the books of Dunnes Stores until February of 1997. From information available to the Tribunal, it would appear that the matter was taken up by one of the company's executives with Mr. Bernard Dunne and that Mr.

Bernard Dunne had informed the executive that the matters should be referred to Mr. Noel Fox.

The circumstances in which this cheque was paid will now be further pursued by the Tribunal at its public sittings. The Tribunal envisages that evidence will be given from the various persons involved with the drawing of the cheque, the negotiation of the cheque through the Newry branch of the Ulster Bank, the ultimate crediting of the cheque to accounts of Guinness & Mahon in Dublin and the manner in which the cheque was substantially dealt with by accountants carrying out an audit of Dunnes Stores. Consideration will also be given to manner in which the cheque ultimately came to the attention of the Tribunal through Dunnes Stores and Mr. Noel Fox.

It would appear that without being exhaustive about what now has to be done, the Tribunal will have to pursue the question as to who prompted or who was involved in inducing or persuading or otherwise causing instructions to be given to Mr. Matt Price to draw the cheque. When on the basis of the information available to the Tribunal, there was no intention of the part of Dunnes Stores or Mr. Bernard Dunne that the cheque should go to Mr. Haughey, how is it that it ended up to the credit of his account.

I move now to what I have described as the Dunnes January/February '87 cheques. Six cheques were drawn on accounts of Dunnes Stores at the end of January, 1987. Each of the cheques was

dated the 28th January, 1987 and each was payable to bearer.

Each of the cheques was signed by Mr. Bernard Dunne. The cheques were for the sums of €4,600, €5,400, €5,400, €5,600, €6,600, and €4,600. The total of these cheques amounts to €32,200. They all appear to have been drawn on different bank branches.

The cheques came to the attention of the Tribunal in the course of its private work when examining lodgements to the account of Amiens into which the Tripleplan cheque was paid. The records of Guinness & Mahon show that these six cheques were paid into the Amiens account by two separate lodgements. I should, of course, state that these cheques were also brought to the attention of the Tribunal by Dunnes Stores. On the 2nd February, 1987, there was a lodgement of €15,400 made up of €4,600, €5,400 and €5,400. On the 4th February, 1987, there was a lodgement of €16,800 comprising, €5,600, €6,600 and €4,600.

An examination of the account statement shows that there were drawings from this account in favour of Haughey Boland & Company Limited, both immediately prior to these lodgements and in subsequent months. Haughey Boland were a firm of chartered accountants which are now incorporated into the accountancy practice of Deloitte and Touche.

The report of the McCracken Tribunal found that for many years prior to 1991, Mr. Charles Haughey's day-to-day financial affairs were dealt with by Haughey Boland who paid his personal and household expenses. Deloitte and Touche have confirmed to the Tribunal that payments made by Haughey Boland on behalf of Mr.

Haughey were drawn from the Haughey Boland No. 3 Account and that all funds to meet those payments were lodged to that account. It appears that certain of the debits from the Amiens account match credits to the Haughey Boland No. 3 Account.

The information and documents available to the Tribunal therefore suggest that the proceeds of these six cheque payments may have been applied for the benefit of Mr. Charles Haughey.

Mr. Noel Fox has informed the Tribunal that the handwriting on the six cheques, including the dates, are his handwriting but that the figures and signatures are in those of Mr. Bernard Dunne. Mr. Fox cannot recall filling in these cheques nor can he recall anything further in relation to them. Mr. Bernard Dunne has confirmed that the signatures on each of the cheques are his signature. Mr. Dunne has no recollection of what the cheques were used for. He did not give instructions to any person to hand or to give the cheques to any politician or for them to be used for the benefit of any politician. Mr. Dunne has no recollection of lodging or instructing any cheque to be lodged to an account in Guinness & Mahon. He has indicated that on occasions he would have given bearer cheques to employees or other persons and that such cheques might have been lodged to accounts in Guinness & Mahon.

The Tribunal envisages that evidence will be given by all persons involved in the drawing of these cheques with a view to ascertaining on whose instruction, in what circumstances and for

what purpose the six bearer cheques were drawn on six separate Dunnes Stores accounts and how they were lodged to an account of Amiens in Guinness & Mahon which was controlled by the late Mr. Des Traynor and out of which payments may have been made for the benefit of Mr. Charles Haughey.

I now intend, Sir, to move on to what I have described as the Dunnes Carlisle cheques and it will take some little time and if you were going to break at your stated time of 12:30, it would interrupt the opening in respect of that, Sir.

CHAIRMAN: In the circumstances, Mr. Coughlan, I think we will take the lunch adjournment a few minutes early today and we will resume at quarter to two.

MR. COUGHLAN: May it please You, Sir.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:45:

MR. COUGHLAN: May it please you, Sir. Before lunch, I indicated I would be moving on to what I described this morning as the Dunnes/Carlisle cheques.

Early in 1998, the solicitors for Carlisle Trust drew certain cheque payments on the account of Carlisle Trust at the Rotunda branch of the Bank of Ireland to the attention of the Tribunal.

The background to these cheque payments is as follows:

Carlisle Trust is a property company controlled by a Mr. John Byrne. The late Mr. Des Traynor was a director of that company

and played a significant role in the financial administration and appears to have played a significant role in the financial control function of the company.

The day-to-day financial administration of the company was carried out by Management Information Services. Management Information Services is a company controlled by a Mr. Sam Field-Corbett. His partner in the company, Mr. Patrick McCann, was responsible for much of the day-to-day financial administration of the affairs of Carlisle Trust Limited. This involved, to a significant degree, merely the recording of receipts for rent and perhaps expenses related to the operation of a company mainly engaged in the business of leasehold office property.

Disbursements in most cases would be controlled by Mr. McCann on the basis that any cheque written on the account of the company in respect of a disbursement would correspond with an invoice from an appropriate supplier.

In November, 1992, Mr. McCann was approached by the late Mr. Des Traynor who informed him that he had three cheques which he wished to lodge to the account of Carlisle Trust. Two of these cheques were actually handed to Mr. Patrick McCann and he arranged for them to be lodged to the account of Carlisle Trust. The third cheque was lodged to the account some time shortly afterwards.

These cheques, three in number, were for the following amounts: £49,620 and it was dated the 20th November, 1992; £50,962, and that was dated the 23rd November, 1992; and a third cheque in the

sum of €79,418, and this was dated the 27th November, 1992. The cheques were drawn on the account of Dunnes Stores Grocery No. 6 account, College Green, and were each payable to cash. The cheques were signed by Mr. Dunne and they were dated on the dates which I have just mentioned.

After the lodging of the three cheques to the account of Carlisle Trust, two cheques were then drawn on Carlisle Trust account with the Bank of Ireland Rotunda branch. One was in the sum of €100,000 in favour of Celtic Helicopters and one in the sum of €80,000, payable to cash. The cheque payable to cash was lodged to an account of Kentford with Bank of Ireland.

The documents and statements available to the Tribunal suggest that there was no commercial justification for the drawing of any of these cheques on the account of Dunnes Stores, nor was there any commercial justification for the drawing of these cheques on the account of Carlisle Trust. In other words, Dunnes Stores did not have any indebtedness to Carlisle Trust, nor did Carlisle Trust have any indebtedness to Celtic Helicopters or to Kentford. There were no commercial relationships of any kind between any of these companies. Nor were there any commercial relationships between Dunnes Stores or Mr. Bernard Dunne with either Kentford or Celtic Helicopters in relation to these payments.

The treatment of the payments in the account of Carlisle Trust is something the Tribunal will wish to investigate further. Mr.

McCann was given instructions by Mr. Traynor that this payment into the account of Carlisle Trust was to be contraed against the "€180,000 payment out," that in other words would be no reference to this transaction in the accounts; that is, the figures would remain in the bank statement only and would not be reflected in the accounts of Carlisle Trust.

The €100,000 cheque was paid into the account of Celtic Helicopters. The directors of Celtic Helicopters admit that this payment was received. They have indicated that they knew nothing of this payment and that they were informed by Mr. Traynor that it was in the nature of some form of loan or investment, the precise nature of which is not clear. It appears that the late Mr. Traynor may have suggested that this sum was intended to be an investment in the name of a Mr. Murphy.

The Tribunal has, to date, failed to obtain from Celtic Helicopters a more precise description of the aforementioned gentleman or his name and address. The directors of the company are Mr. Ciaran Haughey and Mr. John Barnacle. They appear to know very little about this investment or loan, notwithstanding what may appear to be a large amount of money and they seem to suggest that the matter was entirely left in the hands of the late Mr. Traynor.

The €80,000 paid to Kentford came under the control of the late Mr. Traynor and it would appear that this sum of money was ultimately applied for the benefit of Mr. Charles Haughey. It appears that this was achieved by a method sometimes used by the

late Mr. Traynor, of carrying out transactions on two separate and apparently unconnected bank accounts, one, the Kentford account, an onshore or resident account, and the other an offshore Ansbacher account.

Mr. Haughey's interest in the Ansbacher account, specifically the S8 sterling account, was increased by crediting it with a sum of STG €84,400, being the sterling equivalent of €80,000 at or around the time of the payment. This was achieved by crediting the holdings of individual Ansbacher account holders while at the same time making available onshore, that is in a resident account, Irish pounds for disbursement to other Ansbacher account holders.

The effect of this was the avoidance of the direct transfer of funds from an offshore account to an onshore beneficiary. In other words, it would appear that the Kentford €80,000 punt payment ultimately benefited Mr. Haughey by a resultant credit in his favour in his Ansbacher account to the tune of €84,400 sterling. I may have inadvertently, Sir, said that the €80,000 was paid to Kentford. It was in fact made out to cash but paid into Kentford.

The Tribunal's investigations to date have brought this matter to the point where, as a result of information made available by Carlisle Trust and as a result of investigations carried out in relation to various bank accounts and inquiries made of various people, it would seem that Mr. Bernard Dunne recognised that these

cheques had been written by him on an account in Dunnes Stores.

He, however, has no recollection nor is it a recollection that it was his intention that these monies should be transmitted to Mr. Charles Haughey, either to the extent of €80,000 paid into the Kentford account or in respect of any part of these monies.

Mr. Dunne is also of the view that it is his recollection that it was never his intention that Mr. Traynor should receive any of these monies. In other words, it is his recollection that he never gave these monies or any part of them to Mr. Traynor or Mr. Charles Haughey, nor did he authorise the giving of these monies or any part of them to Mr. Traynor or to Mr. Charles Haughey.

Mr. John Byrne, the principal of Carlisle Trust, also asserts that it was never his intention that any part of this money should be transmitted to Mr. Charles Haughey. He also asserts that he was not aware that Mr. Traynor had paid the money into his firm's account and subsequently arranged for the writing of two cheques on the account of the company. He has expressed his dismay that this should have been done.

It has to be remembered that all of this material in documentary form and in statement form has yet to be scrutinised in public.

It does not yet constitute evidence. However, the Tribunal has now reached the point where, assuming that the statements are correct, certain questions will require to be pursued and they will be pursued in the course of the next phase of the Tribunal's investigations at its public sittings.

The Tribunal will have to endeavour to establish as much as possible concerning the circumstances surrounding the making of these payments, specifically with a view to ascertaining what other persons were involved in the transmission of this money from Dunnes Stores to the late Mr. Traynor, and how, if this money was not intended for Mr. Charles Haughey, a portion of it nevertheless appears to have been directed for his benefit. As far as Mr. Dunne and Mr. Byrne are concerned, it was unintended and unauthorized.

A related question is whether the payment of €100,000 to Celtic Helicopters was an indirect payment to Mr. Charles Haughey or whether it was a payment to a connected person.

I now turn, Sir, to what I referred to earlier this morning as the AIB payments.

The Tribunal's interest in Allied Irish Banks stems from the fact that inquiries carried out by the Tribunal have shown that in 1980, substantial sums of money amounting in total to €750,000 were lodged to Mr. Haughey's account in the bank to clear up a longstanding indebtedness.

The manner in which this indebtedness was treated by the bank warrants investigation in public. Mr. Haughey's relationship with the bank goes back many years prior to the three substantial payments I have just mentioned. Mr. Haughey had a number of accounts with the bank. Throughout the 1970s, these accounts were essentially debit accounts. Mr. Haughey owed substantial

sums of money to the bank throughout the seventies and his indebtedness steadily grew. Mr. Haughey was regularly interviewed by the bank and the issues arising on those interviews will be dealt with.

By August of 1979, Mr. Haughey owed the bank well over one million pounds. During 1979, discussions between Mr. Haughey and the bank with a view to settle his indebtedness reached what appears to have been a critical stage. Various proposals and counter proposals were discussed from time to time during that year. The relationship between these various proposals is not yet clear and will require further investigation.

At one point, it seems from documents provided from the bank, on the 20th June of that year, Mr. Haughey offered the bank €400,000 in full and final settlement to be paid before the end of 1979 and in conjunction with this, Mr. Haughey mentioned to the bank the possibility of the bank being offered a €10 million Middle Eastern deposit at a rate of interest below the market rate. The source of this deposit is not clear but in the bank documents, there are references to a Middle Eastern bank. Allied Irish Bank did not show any enthusiasm for this proposal.

Mr. Haughey also indicated that there was a prospect of sourcing the money needed to discharge his indebtedness from certain land deals. At one time, Mr. Haughey indicated that he might be able to provide €200,000 in reductions of debt from a land deal in Baldoyle. This, I should stress, Sir, all appears from the bank documents.

What was meant precisely by a land deal in Baldoyle was not made clear to the bank and it is not as yet clear from any other documents made available to the Tribunal or from any other information made available to the Tribunal.

The late Mr. Traynor seems to have become very actively involved in endeavouring to settle Mr. Haughey's indebtedness around December 1979. Again from bank documents, it would appear that at that time, a scheme was being proposed to enable realisation of part of Mr. Haughey's lands at Abbeville under an arrangement involving a disposition of part of his lands to a Mr. Patrick Gallagher or his group.

By October 1979, it would seem, however, that what was envisaged by Mr. Traynor was a different scheme whereby part of the money to clear Mr. Haughey's debt at an agreed settlement figure would be put up by Mr. Patrick Gallagher and at least two other people who Mr. Traynor had in mind who would make contributions. The type of involvement these other people were likely to have is unclear. It is not clear whether they were going to be involved either as investors or in some other unspecified way.

At that point, that is, in the latter part of 1979, the bank indicated to Mr. Traynor that they might be prepared to forego €150,000 on the amount outstanding in Mr. Haughey's account. From information made available to the Tribunal by the bank, Mr. Kennedy, the regional manager, met with Mr. Traynor on the 17th December 1979 with a view to progressing the settlement. At that

meeting, Mr. Traynor made it clear that for political reasons, the proposals which he had been pursuing up to that time were now out of the question for the reason that the parties concerned could not be involved because they did not want their names being dragged into the political arena or into Dail Eireann. At this point, Mr. Haughey was involved in a leadership battle, one from which he subsequently emerged victorious.

At that meeting on the 17th December 1979, the full and final debt, according to Mr. Kennedy's note, was 1.143 million. Mr. Traynor had a new proposal. Mr. Traynor's new proposal was on the basis that Guinness & Mahon would loan Mr. Haughey the sum of €600,000, provided that Allied Irish Banks would accept this in total discharge of his indebtedness. Mr. Traynor was informed that this was unacceptable to the bank and that the continuing situation was a source of embarrassment to the bank. Mr. Traynor indicated that as far as he saw the situation, the bank's option was either to take the €600,000 or to leave the debt outstanding indefinitely.

Mr. Kennedy, the regional manager, left Mr. Traynor with the understanding that the most the bank would go to discount the indebtedness was to write off €200,000 and that was as far as they would go, bearing in mind the questions that would be asked by their auditors.

Again, from the bank documents, it would appear that sometime between this meeting and the 24th January 1980, there were high level contacts between Mr. Traynor and the chairman of the bank,

Mr. Neil Proby. It seems by the end of the first week of January 1980, a settlement had been reached. Mr. Patrick O'Keefe, the then chief executive of the bank, also seems to have been involved in bringing the matter to a conclusion.

Between the initiation of Mr. Traynor's first proposal in December, 1979, and the conclusion of the settlement in January, 1980, Mr. Haughey had become Taoiseach. The settlement terms were contained in a document, a letter sent by Mr. Patrick O'Keefe, the deputy chief executive, to Mr. Haughey. And they were in this form:

"Dear Mr. Haughey,

I refer to the discussions recently had here with Mr. Traynor from which certain proposals have emerged for the discharge of the indebtedness on all your accounts with the bank. The proposals, briefly stated, are;

1: The debit balance on the accounts was agreed at €860,000.17 to be permanently reduced to €110,000 by mid-February 1980.

2: The remaining balance of the indebtedness, namely €110,000, is to be liquidated within a reasonable period of time by the introduction of funds arising from the disposal of any part of the property and lands known as Abbeville. (It being understood that not less than 10 percent of the proceeds of such disposal will be so introduced.)

3: As soon as the indebtedness has been permanently reduced to IR

€110,000 as set out at 1 above, the bank will release its charges on the residence and 248 acres known as Abbeville and hand the title documents relating thereto to Mr. J. D. Traynor. At the same time, the associated letter of guarantee for IR €350,000 will be cancelled. The remaining items of security comprising in the main the deeds of Inishvickillaun, the deeds of a house on 13 acres

County Sligo, and a life policy for €1,000 will be held by the bank as security pending liquidation of the remaining indebtedness of €110,000.

It is to be further understood that as part of the arrangements, the remaining debit balance of €110,000 will outstanding free of interest, in the Head Office Ledger of the Bank at Bank Centre, Ballsbridge, Dublin, with no transactions save for reductions in clearance.

You will appreciate that the implementation of arrangements of this nature would, in the normal course, give rise to certain legal requirements. However, since the fulfillment of the agreement outlined is a matter of honour, I am dispensing with such formalities, confident in the knowledge that you will ensure beyond any doubt that the IR €110,000 would be cleared within a reasonable time.

As part of the arrangement referred to at 1 above, a lodgement of IR €600,000 was received by me on the 21st January 1980 and is hereby formally acknowledged. I am sending this letter to you in duplicate and I shall be obliged if you would kindly initial one

copy and return it to me in the enclosed addressed envelope.

This will signify your acceptance of the agreement set out in this letter and it will also be taken as specific authority to release security as appropriate.

Yours sincerely, Patrick O'Keefe, deputy chief executive" and then it is signed, "Accepted: Charles J Haughey."

From information available to the Tribunal, it would appear that the settlement terms were at least in part complied with. The $\text{€}750,000$ was paid to Allied Irish Banks in January and February of 1980 by way of three bank drafts. These bank drafts were drawn on Guinness & Mahon. It would appear that the first draft for $\text{€}600,000$ was sent to Allied Irish Banks some time in or around the 21st January 1980.

It would seem that on the 31st January 1980, a further draft in the sum of $\text{€}100,000$ was sent by Mr. Traynor to Mr. Patrick O'Keefe, deputy chief executive of the bank. A further draft for $\text{€}50,000$ was sent by Mr. Traynor to Mr. O'Keefe in or around the 14th February, 1980.

Under the terms of the settlement, this cleared a significant proportion of Mr. Haughey's indebtedness to Allied Irish Banks after allowing for what might appear to be a very substantial discount. This left a debit balance of $\text{€}110,000$ which the bank agreed to leave outstanding but free of interest. From the information available to the Tribunal, it does not appear that

this was ever cleared although the bank did comply with its terms of the settlement in releasing security documents to Mr. Haughey.

From inquiries carried out by the Tribunal with Guinness & Mahon, it would appear that these bank drafts were funded by debits to an account held with Guinness & Mahon in the name of the late Mr. Des Traynor. Whether Mr. Gallagher or any of the two other unnamed persons mentioned by Mr. Traynor to the bank were involved in making lodgements to this account or whether the lodgements were solely from Mr. Traynor's resources or from other resources of Mr. Haughey or somebody else, it is not known.

Allied Irish Banks have furnished statements from former members of staff familiar with some of the events surrounding the settlement of Mr. Haughey's indebtedness.

From these statements, it would seem that the bank did not regard the settlement as one which was in any way commercially unjustified.

The Tribunal, will, nonetheless, wish to scrutinize the circumstances in which this indebtedness was settled with a significant or what might seem to be a significant discount when the bank had securities in excess of the amount of the indebtedness.

It would also appear from judgement made available by the bank that, at some time in or around 1983, the bank issued a statement to the press.

The statement was part of the bank's files relating to Mr. Haughey and appears to relate to newspaper articles suggesting that Mr. Haughey was heavily indebted to the bank. The bank's statement asserts that "Any suggestion that Mr. Haughey was heavily indebted to the bank in the previous year was outlandishly inaccurate." Of course it was correct to say that Mr. Haughey's indebtedness for the year prior to the publication of the press article was inaccurately stated in the article but was not inaccurate so far as his historical indebtedness to the bank was concerned.

The Tribunal has endeavoured to establish what or who prompted the issuing of the statement from the bank, but is yet to obtain a statement. This, of course, may be due in part to the fact that relevant personnel may now be deceased.

The date on which the statement was issued by Allied Irish Bank and carried in the Evening Press was on the 1st February 1983.

The Tribunal, for the purpose of dealing with the opening statement which you directed I should make, asked interested parties if they wished to send anything to the Tribunal for incorporation in my opening statement on the basis of the documents which had been sent to them.

Allied Irish Banks have requested that their comments in relation to the indebtedness of Mr. Haughey and the settlement with Mr. Haughey should be included in the Tribunal's opening statement.

Their comments are as follows:

1: Allied Irish Bank sought no advantage or favour arising out of the indebtedness to it on these accounts and indeed exerted considerable pressure on the debtor to compel him to deal with his affairs when it could be said that he had reached the apex of his career, having just become Taoiseach.

2: Allied Irish Bank believed the compromise was commercially justified, having regard to the protracted and difficult history of the accounts, to the fact that it was extricating itself from them and was to have no further dealings with the affairs of Mr. Haughey."

That, Sir, is the opening statement which I make at this discrete phase of the Tribunal's work and as I have already indicated, during this phase, it may be necessary, depending on where the inquiry may go, for me to make further outline statements and in those circumstances, if any of the legal representatives of any person appearing before the Tribunal wishes anything to be incorporated in any further outline statement, I will be only too happy to do so.

CHAIRMAN: Thank you, Mr. Coughlan.

MR. COUGHLAN: I wonder, Sir, we will now be going into evidence and if you would rise for a short moment so that we can just ascertain the witnesses who may be available. Perhaps fifteen minutes.

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

MR. HEALY: Mr. Chairman, Sir, subject to your direction, what is now proposed is that two witnesses will be called to deal with the Tripleplan payment for what is being called the Tripleplan payment. The first will be Mr. Matthew Price. Mr. Price.

MR. MATTHEW PRICE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY
MR. HEALY:

MR. HEALY: Thank you, Mr. Price. Now, Mr. Price, you had already been in touch with the Tribunal and you have in fact provided a statement to the Tribunal dealing with your knowledge or at least your recollection of your knowledge of the, what's been called the Tripleplan cheque, isn't that right?

A. That's correct, yes.

Q. Now I think you are a former director of Dunnes Stores (Bangor) Limited, is that right?

A. That's correct.

Q. And when did you retire from that position?

A. 30th June, 1998.

Q. And are you now working as an accountant, is that right or in the financial services field?

A. Yes.

Q. And can you tell the Tribunal what your responsibilities and your duties were as a director of Bangor, what were your day to day executive duties?

A. I think you could say I ran the show. I was in charge of Dunnes Stores (Bangor) and also Dunnes Stores (UK) at that time.

Q. The last thing you said there was Dunnes Stores

A. UK.

Q. UK. Now, Dunnes Stores (Bangor) and Dunnes Stores (UK) were operated by Dunnes Stores but to some extent separately from Dunnes Stores (Republic of Ireland), is that right?

A. Yes.

Q. From an accountancy and filing of company's registration point of view?

A. Yes.

Q. Now you have described your duties as the person who ran the show in Northern Ireland, where the financial affairs of company were concerned, can you explain what your authority and your responsibilities were?

A. Yes, well I dealt with all the financial information and requirements, the production of accounts and was also a joint signatory on the cheques.

Q. That is the cheques issued by Dunnes Stores (Bangor)?

A. Yes, Dunnes Stores (Bangor), yes.

Q. Now, the cheque that I want to talk to you about, I am going to have it produced and I am going to ask you to... (Cheque handed to witness.) Now I think I have, in fact, handed you the original returned cheque, isn't that right?

A. That's correct.

Q. And I am sure you can identify it.

A. I do, I know it well.

Q. It's not always been possible to get returned cheques. If you could just, if I could just draw your attention to one or two things on the cheque. Can you tell me, do you recognise your own

signature on the cheque?

A. Yes, that's my signature.

Q. Is there any other handwriting on the cheque that's yours?

A. It's actually all mine, with the exception of stamped signature of Sean Ferron.

Q. And who is Mr. Ferron?

A. He was another director and a joint signatory.

Q. From the fact that all the handwriting is on the cheque, I take it that you were the person who first went about the drawing of this cheque?

A. Yes.

Q. Can you tell the Tribunal what account, specifically what account the cheque is drawn on?

A. It was drawn on the No. 4 account.

Q. And what distinguished that account from at least the three accounts that preceded it in number?

A. It was primarily for the payment of salaries for the senior executives and other payments I transferred through banks, from bank and bank.

Q. Other payments?

A. Payments of VAT, payment of corporation tax, large amounts like that.

Q. As distinct from what other kind of payments would you be making on behalf of the company?

A. Well all the other payments would be done through all the various accounts, creditors where invoices were produced but in this case it was an intercompany payment and I wouldn't have had a

document. I would have simply paid it out on behalf of Dunnes Stores in the south of Ireland and debited the company account with it.

Q. So this is an account that was paid, am I right in saying, it was not an account it's not a cheque that was paid from which you would normally pay trade creditors?

A. No, that's correct.

Q. And I'd be right in saying therefore that presumably you weren't writing large numbers of cheques on this account compared to your trading account?

A. Oh not at all, no, no. Salaries and the salaries probably make up the bulk of the checks that were written through that No. 4 account.

Q. And in fact if you take items like salaries out of the equation, the other items such as the one you mentioned a moment ago, intercompany items between the north of Ireland

A. Interbank transactions.

Q. Interbank transactions. They wouldn't be many of those, would they?

A. Over the years?

Q. Yes.

A. Well there wouldn't be, but over the years it could be quite a number.

Q. How would you come to draw cheques of this kind? In what way or what experience did you have as regards the instructions you got to draw cheques of this kind on what you call interbank matters or interbank accounts?

A. In this particular case?

Q. Well take this particular case to begin with.

A. Well in this particular case it would be extremely simple.

Either Mr. Dunne or Mr. Fox rang me and said to me, get a cheque to Tripleplan, a payment on behalf of the south of Ireland and if it was Mr. Fox, I wouldn't have accepted the instructions. I would positively have contacted Mr. Dunne and on doing that, having spoken to the two people, there would not have been a conversation, it would have been a specific instruction following something like, make out a cheque to Tripleplan and send it down to Mr. Fox or whatever, but it would be as simple as that.

Q. Now in this particular case, with this cheque, you not only drew the cheque but in your next dealing with it, you also generated a note, is that right?

A. That's correct.

Q. On a compliment slip.

A. Yes, I always do that.

Q. Do you have a copy of that or we will get a copy? (Document handed to witness.) That's a copy of what I take it you recognise as your compliment slip.

A. Yes, I wrote that.

Q. Maybe you will just read it out for the benefit

A. "Dear Mr. Fox, I enclose herewith a cheque paid for Tripleplan Limited for 282,500 as agreed with Mr. Bernard Dunne, dated 20/5/1987" and signed "M. Price."

Q. And that was the same day as the day you drew the cheque?

A. That's correct.

Q. And what does that mean? What does the compliment slip mean?

What does it tell you now?

A. It's just a would he note to Mr. Fox that I was sending down, and that it was agreed to Mr. Bernard Dunne to do so.

Q. Agreed between you and Mr. Bernard Dunne?

A. I would have rang Mr. Dunne even if Mr. Fox rang me and said to make a cheque out, I would have rang Mr. Dunne for confirmation and got the agreement to send that cheque or simply I wouldn't write it.

Q. You never sent a cheque like that except on Mr. Dunne's say so?

A. Never.

Q. Now you sent the cheque to Dublin to Mr. Fox?

A. That's correct.

Q. Did you hear from Mr. Fox about it?

A. I heard nothing more about that cheque ever. Then it came into the main.

Q. Until it came

A. Until I heard about it recently that it was a problem cheque.

There was nothing wrong with the cheque or issuing the cheque at that particular time.

Q. As far as you were concerned, you were doing your job and following your instructions?

A. That's right. I didn't have an invoice for that. The point is since it was an intercompany transaction and Mr. Fox had nothing to do with Dunnes Stores, it was simply sent out and made to Dublin and posted to the intercompany account.

Q. That's what I want to come to. In your own accounts of course

you had to show that you had written a cheque for this amount of money?

A. It was simply debited to the intercompany and the cash came out of the bank. It was the balance sheet had no effect on the trading in Northern Ireland whatsoever.

Q. So that on the intercompany account, there was that amount of money owed by Dublin to you, is that right?

A. That's correct.

Q. Now you say that you never heard of the cheque again. Is it possible that you were asked about the cheque in the course of any audits carried out?

A. Oh yes. Within a few weeks of issuing that cheque, both it and the John Furze one, the intercompany

Q. Could you go a little more slowly, Mr. Price. We are not all

A. All intercompany transactions would have been sent to the accountants in Dublin and I would have expected that they would have followed that up and housed it properly to the nature of the expense. Within also a few weeks, the details were given to the accountants on the intercompany account, together with all documentary information in the performance of their audit.

Q. Could I take that slightly bit slowly and go over it. You said within a few weeks the details would be sent to the company, to the accountants, is that the accountants in Dublin?

A. The accountants within Dunnes Stores in Dublin.

Q. That's the in-house accountants?

A. The in-house accountants, yes.

Q. And do you know who those individuals are?

A. Well it would have been Mr. Michael Irwin at that time.

Q. Right. And when you say the details were sent to him, what do you mean by that?

A. When they their accounts in Dublin should exactly mirror my intercompany account in the north of Ireland. If I had a debit, they would have a credit. They had all basic information concerning that matter with them. The accountants then can I go ahead

Q. Yes.

A. would come within a few weeks, approximately when the accountants were drafted, they would come to audit it which would be in the region of March, to Patrick's Day, say, for example, 1988 and they would have been given all details concerning all payments and they spent approximately eight or nine weeks going through the whole procedure in audits.

Q. Correct me if I am wrong, I am not an expert on accounts, but when the accountants would come to look at those items, that they would find an item in respect of Tripleplan with a large sum of money, 282,500 sterling, and as far as you were concerned, there would be nothing to accompany it other than your compliment slip, there would be no other information about it?

A. That's correct. They would then take it within their audit files and take it to Dublin and we would expect to get answers on housing it properly.

Q. And to do that, did the people connected with the cheque, either from your compliment slip or from questions they had asked you or asked Mr. Dunne or anyone else

A. They'd have to get satisfactory explanations if they were to sign the accounts at a later date.

Q. Did anyone ask you at that point about the cheque?

A. Mr. Kevin who was the audit manager at the time, would almost certainly have asked. He would have asked and I would have told him it was intercompany, that the details should be available in Dublin. That it had nothing to do with the north of Ireland.

Q. And Mr. Drumgoole in fairness to him has made a statement to the Tribunal in which he says that he did take the matter up with you. He thinks you may have told him about the compliment slip. Would that be possible?

A. Oh yes. The auditors would get all the documentation.

Q. And was that the only time it was raised with you then in relation to the 1987 audit conducted in around March of 1988?

A. Yes. At that stage, because I would have my hands were washed of it then. It had nothing to do with me.

Q. Did you retain a copy of the compliment slip yourself?

A. Oh yes.

Q. Do you remember sending that or whether you sent that down to Mr. Kevin Drumgoole?

A. Yes. It should be available on the auditor's files.

Q. Now, you mentioned that I think you mentioned did I understand you to mention the Furze cheque a moment ago?

A. Yes.

Q. Why did you link this cheque with the Furze cheque and I think I should say that for the benefit of people, members of the public, the Furze cheque you were referring to was a cheque referred to in

the Buchanan Tribunal and made out in favour of Mr. John Furze for a substantial sum of money.

A. I never heard the name Furze until I read it in the national newspapers. The Dunnes in Dublin, never discussed anything with me. Either then or now.

Q. Did you ever write any other cheques to either Furze or Tripleplan or any other companies that you were, how shall I put it, that you didn't recognise or which appeared to you to have no trading connection with Dunnes Stores?

A. Yes. There was a few very, very few incidentally, and I was asked if, about December, before the Buchanan Tribunal, to make a list of anything I thought that would be of relevance. And I made that list out and sent it down to Pat O'Donoghue because the board in Dublin informed me that they wanted to give the Buchanan Tribunal all the cooperation possible. So I was asked for payments of that nature which was, I did say, should be available in the Dublin accounts in any event and also the accountants would have the details, nevertheless they sent it down on the 13th December, four or five months before I appeared in the Buchanan Tribunal, but while I did send it down, I had no reason whatsoever to believe that there was anything incorrect in the transaction at any time and it was sent down simply because it had nothing to do the purchase of goods and services in respect of the north of Ireland, but effectively it was something I was asked to do by Mr. Bernard or Mr. Fox at the time. I can't be clear which one of them did ring, but I am satisfied that I confirmed the transaction. So effectively the list went down, I think it was

the 13th December, if my memory is right and I have a pretty good memory, 1996, which was before the Tribunal. I think when we got it down there, I don't think they at that time would have any reason to believe there was anything incorrect.

Q. I am not suggesting that Mr. Price and no doubt we will hear from Mr. O' Donoghue or some other executive in Dunnes Stores about it.

I am not suggesting there was anything at all incorrect about it. Just one other thing, just to clarify one matter, Mr. Price, you say you sent the cheque to Dublin, the Tripleplan cheque to Dublin?

A. Specifically to Oliver Freaney and Co. to Mr. Fox.

Q. That's just what I wanted to clarify. You sent to Oliver Freaney's office, not to Dunnes Stores themselves?

A. Yeah.

Q. To Mr. Fox?

A. Yes.

Q. Have you any reason or, can I ask you this, why did you send to Oliver Freaney and not to Dunnes Stores themselves? Why did you address it to Mr. Fox at Freaney's and not at Dunnes Stores?

A. Well, I said I enclose here with a cheque payable to Tripleplan to Mr. Fox 28 2,000, it's agreeable with Mr. Dunne." So clearly I had been informed by Mr. Fox and Mr. Dunne to do that and I did that.

Q. So you must have been informed to send it to Mr. Fox at Freaney's?

A. Yes.

Q. And do you remember, would that be the address to which you sent other similar cheques of the kind you mention add moment ago or

was that the address to which you sent only this cheque and the Furze cheque?

A. I got very few instructions like that.

Q. Can you remember?

A. So, if there were a few on it, I could have been given an address to send them to.

Q. What I am asking you to try to remember is whether, when you were sending cheques like that to Dublin on Mr. Fox's instruction, would have sent them to Oliver Freaney's or to Dunnes Stores?

A. It would depend on where I was instructed to send them. So I really can't answer that specifically but I can answer specifically that this cheque here went to Oliver Freaney and Co.

Q. You would send other cheques. Do you remember sending cheques to Dunnes Stores offices themselves?

A. No, very few. Very few.

Q. Thanks very much, Mr. Price. There may be other questions, Sir.

CHAIRMAN: Thanks, Mr. Healy. I suppose if there are some other questions, the most logical legal practice is to go first with the people who appear for persons who were in, what I might call, the greater Dunnes aegis at the time, so perhaps it would be Mr. Gallagher and Mr. Hardiman.

MR. HARDIMAN: I am okay.

MR. GALLAGHER: I have certain questions if I may, Mr.

Chairman. Mr. Price, I appear on behalf of Mr. Bernard Dunne and

I have just a few questions if I may to ask you, concerning your evidence.

THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. GALLAGHER:

Q. This particular cheque, Mr. Price, you have made clear was drawn on the Bangor No. 4 account, I believe?

A. That's correct.

Q. And that would suggest and I take it to be the case that there would have been a number of different accounts for Bangor Dunnes Stores, of which this was one?

A. Yes.

Q. And would it be the case that from time to time requests would be made to make payments from Dunnes Stores in the south to make payments from one or other of the Bangor accounts, not just the No. 4 account?

A. Well if there was a major building going on and it was for maybe, these figures seem big but in Dunnes Stores, they can be relatively small comparatively speaking to there could be an instruction to pay a million pounds for deposit for building or whatever and that would be paid. In those cases, I would expect an audit tax certificate to back up the invoice and that the books would be done to the degree necessary and the cheque would have been written but it would have been written primarily through the creditor's account.

Q. Am I correct, for example, when Dunnes Stores was building a number of stores in England, that payments would have come from one or other of the Bangor accounts?

A. That's correct.

Q. And from time to time, you would have conversations with Mr. Dunne or Mr. Fox with regard to payments from one or other of the Bangor accounts?

A. The particular accounts in relation to building, Mr. Fox would have very little to do with it.

Q. It would be Mr. Dunne mostly in relation to those?

A. Yes.

Q. And would he talk to you in relation to those accounts?

A. Yes.

Q. I take it in relation to the No. 4 account, it would be very rare that you'd get a request for a payment out of that account?

A. Very rare.

Q. And that account was used

A. In fact, sorry, I just want to correct that. I wouldn't have been told to write anything out of the No. 4 account. I would have been told to pay, instructed without conversation, to make a payment to I would write it out of the No. 4 and there were very, very few of those.

Q. Mr. Dunne himself would never have identified any particular account out of which you were to write a cheque?

A. No, absolutely not.

Q. And if you wrote this particular cheque out of the No. 4 account, does that suggest that it might have been Mr. Fox that instructed you in relation to that?

A. There is a possibility of that but, as I said earlier, I really don't know which of the people rang me up.

Q. But certainly as far as Mr. Dunne goes, he would never have identified the account out of which the cheque was to be paid?

A. Oh no, no.

Q. Now, can I ask you in relation to the there was no invoice for this particular cheque, isn't that correct?

A. No, no invoice.

Q. And in cases where there was no invoice, the cheque would be posted to one or other of the intercompany accounts, is that correct?

A. If it was an expense on behalf of the south of Ireland, payment would be made on behalf of south of Ireland, then that would be the case. I wouldn't actually acquire an invoice but I would send the intercompany's account down to get the full details and I would expect they would have documentation to back up the entry in our books because they would have needed that to house the entry properly.

Q. You wouldn't expect to get the documents, you would post it to the intercompany account?

A. Just a payment on behalf of. Bank transfer, that was it.

Q. And when the auditors or the accountants were looking at it later, you would assume they would have the relevant documentation in relation to that payment?

A. I wouldn't only have assumed that, I would have made positive that they got any documentation that was available.

Q. There would be other substantial payments, I take it, over that period of time that would be posted to the intercompany accounts?

A. In normal trading activity?

Q. Yes.

A. Yes, because I mean, the central accounts department was in Dublin and there would be colossal amounts of money involved.

Q. And in addition to normal trading activity, cheques of a less regular nature such as for building or whatever would also be posted to the intercompany account, is that correct?

A. If it was building and it was on behalf of stores in the north of Ireland, I would expect it and positively have required invoices and tax certificates but if it was on behalf of the south, I would have expected the documentation to be held and retained in the south of Ireland.

Q. And when it would be posted to the intercompany account, the fact of that payment should be apparent to anybody whose duty it was to examine those intercompany accounts?

A. Absolutely.

Q. And they would, in the normal course, you would expect them to satisfy themselves that they understood what that payment was for?

A. Absolutely.

Q. And to make the necessary inquiries, if they didn't know what the payment was for?

A. Well I didn't know and the ante was billed to Dublin so it was up to them to do it.

Q. And did anybody ever come back to you and ask you for documentation in relation to that payment?

A. In relation to that one?

Q. Yes.

A. They had all the documentation that I had available, which was the

two things I have just confirmed me. And that's it.

Q. But the auditors later or Mr. Fox or nobody came back to you and said do you have any other documentation in relation to that payment?

A. No.

Q. The first time I think you specifically dealt with that payment after having it made, was in December or in or about December of 1996, is that correct, before the Buchanan or at the time of the Buchanan inquiry?

A. Yes, when I was asked 13th December, 1996, I was asked and I sent a copy of the list down to both Kevin Drumgoole and Pat O'Donoghue.

Q. And you were asked at that stage on behalf of the Dunnes Stores companies, Mr. O' Donoghue is a senior man in the Dunnes Stores companies?

A. That's correct. He told me that it was the board's intention to give full corporation to the Buchanan Tribunal and to send a list of payments down which I did and I also, on the same day, faxed a copy to Mr. Kevin Drumgoole.

Q. What is Mr. O' Donoghue's position in the Dunnes Stores company?

A. Well he was a senior accountant at that time and I think he is now official secretary or whatever. I am not too sure of his current position. I am not there any more.

Q. And did you send this payment down as being what you described as a not normal payment?

A. It was a payment a short list of payments for which I would have had documentation which were intercompany specifically and

which would have been requested by either Mr. Frank Dunne or Mr. Bernard Dunne and it was a very short list.

Q. So there would be payments might be requested by Mr. Frank Dunne or by Mr. Bernard Dunne and you mightn't have the documentation, is that correct?

A. I think in the case of Mr. Frank Dunne I almost always had a faxed documentation, yes.

Q. But there would be these not normal payments that might be requested either by him or by Mr. Dunne, Mr. Bernard Dunne?

A. Sorry, would you repeat that please?

Q. Sorry, in relation to the not normal payments, those might be requested by either Mr. Frank Dunne or Mr. Bernard Dunne?

A. Yes.

MR. COUGHLAN: I am sorry, Sir, just if My Friend at this stage is getting into a position where he may be suggesting something which would be critical to somebody who hasn't got notice of that, there will be no question of stopping the cross-examination of the witness but we don't seem to have any notice if there is a criticism now going to be made of Mr. Frank Dunne in that respect.

CHAIRMAN: Yes.

MR. GALLAGHER: I have no intention, Chairman, at all. I think the witness brought up Mr. Frank Dunne and I was clarifying what was the position in relation to not normal payments and I don't need to pursue that any further. But what I do want to clarify with you and I think what everybody is on notice is that the

details of a number of what you have described as not normal payments of which this was one was supplied in December of 1996 to the Dunnes Stores company and, in particular, to Mr. Pat O'Donoghue.

A. That's correct.

Q. And between then and the summer of 1998, did anybody from the Dunnes Stores company contact you to ask you for any further information in relation to this particular payment or any of those other not normal payments?

A. No, I heard nothing more about them.

Q. And in the summer of 1998, did somebody make a further request to you for information in relation to those payments?

A. For the Tribunal?

Q. Yes.

A. Yes. Mr. Boyce Shubotham asked me to send down any documentation that was available at this late stage and I did all of that.

Q. Had Mr. Pat O'Donoghue, to whom you gave the information in December of 1996, asked you to send down any documentation?

A. No, I heard nothing more about it from him. But when it did come up later on, I was asked for the best possible copies of the cheque but, apart from that, that was it.

Q. But after sending, just to be clear on this

A. This, incidentally, this is after the Buchanan Tribunal was finished, yes.

Q. But in December of 1996, before the Buchanan Tribunal was finished, you sent the list of payments and no request was made to inquire whether you had any further documentation?

A. No, there wasn't well that would be right.

Q. Now, am I correct that prior to March of 1997, Mr. Bernard Dunne made no contact with you prior to giving evidence in the McCracken Tribunal, do you recollect that?

A. No contact was made was for this Tribunal until about mid-November.

Q. But apart from the contact made for this Tribunal, do you remember

A. Oh yes, yes, yes, that's the Furze one you are speaking about?

Q. Yes.

A. Yes.

Q. And at that stage it was sometime in March of 1997 or perhaps February, Mr. Bernard Dunne made contact with you

A. That's correct.

Q. And am I correct in saying the purpose of that contact was to ask you questions and for assistance in relation to identifying certain payments?

A. That's correct.

Q. And as

A. Sorry, one payment only.

Q. The John Furze payment?

A. That's correct.

Q. And I think you provided him with assistance in relation to that?

A. That's correct, yes.

Q. And I think you made no mention in that conversation of any Tripleplan payment?

A. I didn't think there was anything wrong with Tripleplan.

Q. I make no criticism of you but merely the fact you made no mention to Mr. Dunne about the Tripleplan payment. And I think am I correct that Mr. Dunne, as you have already mentioned, contacted you again prior to this Tribunal in, I think, November of last year to ask you questions in relation to the Tripleplan payment?

A. Yes.

Q. And I think he asked you for assistance to help him to see whether he could recollect that payment and its circumstances?

A. That's correct.

Q. And you gave to him, in essence, the information which you have given to the Tribunal now?

A. By telephone. I didn't send any documentation.

Q. I fully appreciate that. But in terms of information you gave to him the information, in essence, which you have given to the Tribunal now?

A. Yes, I told Mr. Dunne that I sent the information down to Pat O'Donoghue on the 13th December and a copy to Kevin Drumgoole.

Q. And apart from that and the information you have given to the Tribunal, you weren't able to provide him with any other assistance in relation to the circumstances of the payment or the purpose of the payment?

A. No, other than exactly what's there, the cheque and the compliment slip.

Q. Do you know anything about the subsequent accounting treatment in the Dunnes Stores account of this particular payment apart from the fact that it was posted to the intercompany accounts?

A. Absolutely not.

Q. You do, however, recollect and I think you gave evidence of your discussions with Mr. Drumgoole and I think that would have been in 19 in the course of the 1987 audit, some time around 1988.

A. Shortly maybe, around St. Patrick's Day 1988. It would have been his people were doing the auditing would have got that. The interview with Kevin would have come towards the end of audit which probably would have been late May, early June, whatever.

Q. Mr. Drumgoole is an auditor with Oliver Freaney & Company?

A. That's right.

Q. The same firm from which Mr. Fox

A. That's correct.

Q. I think he had available to him the compliment slip, is that correct?

A. Yes.

Q. And you would have told him that you had sent the cheque to Mr. Fox?

A. Oh yes.

Q. And did you get any further inquiries from Mr. Drumgoole in relation to the cheque?

A. No.

Q. The fact that Mr. Drumgoole made an inquiry about the cheque would confirm, I take it from what you have already said, namely, that the existence of the cheque would have been apparent to the auditors and would have been apparent to anybody examining the intercompany account?

A. Oh yes.

Q. And the first or the only further information that you ever

received in relation to that cheque was subsequently when firstly Mr. O' Donoghue asked you for information in 1996 and then there was further information sought in relation to this Tribunal, would that be fair to say?

A. Would you repeat that question please?

Q. I am sorry, the question was perhaps a bit long and unclear. Apart from these queries by Mr. Drumgoole in or about March of 1988, no further queries were raised or information requested of you in relation to this cheque until Mr. O' Donoghue requested it in December of 1996 and subsequently various people requested it in relation to the Tribunal.

A. No. As far as I was concerned, once it went into the company, any queries Mr. Kevin Drumgoole would have had, should have been with the accountants in the south of Ireland, not me.

Q. And no further queries were raised with you?

A. No, I couldn't have answered any more queries, because I didn't know.

CHAIRMAN: On behalf of Mr. Fox?

MR. GORDON: Yes, Chairman, if I could just.

THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. GORDON:

Q. My name is John Gordon. I act for Mr. Oliver Freaney & Company and Mr. Noel Fox. I just want to clarify something which I think you have already dealt with, certainly in your statement. I think probably in your evidence-in-chief already, Mr. Price, and that is, you will have no recollection personally as I understand

it of who requested that you draw this cheque?

A. I can't be a thousand percent sure, no, I don't. But both people, I spoke to both people.

Q. I understand.

A. I just can't place which was which.

Q. I think what you have said is you would not have drawn such a cheque without the express instruction of Mr. Bernard Dunne?

A. No possibility.

Q. And I think the compliment slip that you sent with the cheque makes that quite clear?

A. Yes.

Q. I think when you were talking to Mr. Drumgoole, the audit manager, he would have been asking you in the course of doing the audit in May or June of 1988 for back up documentation in relation to this cheque?

A. Well the only back up documentation available was the compliment slip and the cheque and yes, he got that.

Q. I understand, but what I want to say to you, Mr. Price, and I think you probably would agree with me, the reason Mr. Drumgoole would have addressed the query to you was because of the absence of additional back up documentation.

A. I am sorry?

Q. The reason Mr. Drumgoole would have addressed the query to you is because of the apparent absence of additional back up documentation. All he had was the compliment slip.

A. But when he left me with the information for his audit files, all the questions he had would have had to be directed to the auditors

or the accountants, the internal accountants in Dunnes in Dublin and whoever else he had to query in Dublin.

Q. I understand. He would have had to go and ask other people about this?

A. Yes. Because it would have to be cleared by Dublin and it would have to be a double entry.

MR. HEALY: I have just one matter I want to clarify, Chairman. I am just slightly concerned about one matter. It's important that the, in the light of what you said this morning. I certainly don't want to cut off the Revenue from asking any questions, but I am just anxious that at this stage, the questions should be directed to eliciting information that's of value in relation to what the Tribunal is seeking to find out by payments. I am just concerned about the question from the Revenue in that context and I will just be anxious, subject to what your ruling would be, Mr. Chairman, that the Revenue should establish a basis for asking questions of this witness. I am anxious it shouldn't go all over the place.

CHAIRMAN: Well there is a need for caution Mr. Healy but I don't see signs of people of trying to run out of ground certainly.

MR. HEALY: I am not suggesting that.

CHAIRMAN: If Mr. Connolly is suggesting

MR. CONNOLLY: Yes, Chairman. In fact I only got the documentation today and I would normally intend to put questions

through the members of the legal team for the Tribunal. In fact what I was going to ask this witness I had committed to writing over lunch time. So I am not going to trespass on the functions of the Tribunal but there are at times the odd matters that might require clarification. So I beg your pardon, Mr. Price. I want to ask you one or two questions on behalf of Revenue.

THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. I just want to understand the manner in which transactions which affected both accounts were recorded in the intercompany accounts which you have told us were kept in Dublin. Am I right in understanding that if there was some payment which couldn't be identified or the purpose of it could be identified, that was put in something called the suspense account, that was the way it was treated?

A. I didn't have any suspense accounts. I knew exactly everything in the north of Ireland and was properly housed.

Q. But in Dublin, the manner which it was treated through the books is that it was records in what was called a suspense account.

A. I'm sorry, I can't comment on Dublin. I was never an accountant in Dublin and I had no control over their books nor had I any authority to involve myself in their procedures.

Q. Well then does it follow from that that if it was treated in the books if Dublin in a certain way, because there was some query over the purpose of a particular transaction, that's outside your knowledge?

A. Nothing to do with me.

Q. Thanks very much, Mr. Price.

CHAIRMAN: Nothing arises, Mr. Healy?

MR. HEALY: Just one or

CHAIRMAN: I am just asking Mr. McGonigal.

MR. HEALY: Mr. McGonigal has already drawn some matters to my attention.

MR. MCGONIGAL: I am sure Mr. Healy can ask the questions.

CHAIRMAN: Perhaps before Mr. Healy concludes Mr. Price's examination, is there anybody else who wishes to query Mr. Price?

Continue Mr. Healy.

THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. HEALY:

Q. Yes, sir. Just one or two things, Mr. Price, just to clarify one or two things. I think you say that you don't recall whether it was Mr. Fox or Mr. Dunne who contacted you but that you would certainly have got on to Mr. Dunne before writing any cheque regardless?

A. That's correct.

Q. Then you say that, I think you sent the cheque to Mr. Oliver, to Messrs Oliver Freaney's and I think in answering Mr. Gallagher a moment ago for Mr. Dunne, you distinguish between two types of broadly, two types of payments that you dealt with. You describe payments for buildings and I think what you call normal matters and this type of payment, would that be right? You didn't have

an invoice or you didn't have the type of information you had which you might have if you were drawing a cheque for a building?

A. Well I think as the Revenue Inspector, I am assuming he is an inspector

Q. Not quite. I'd be loath to say whether he is or not

A. If it was my jurisdiction. I had audit tax certificates and invoices and everything that was necessary to enable me to process the double entry properly and to claim capital allowances and whatever and for proper presentation necessary to the Revenue authorities in the case of this payment. It had absolutely nothing to do with Dunnes Stores (Northern Ireland) and it became somebody else's problem in the south of Ireland if it was a payment on our behalf. I didn't ask and I don't know.

Q. I fully accept that, but if you were sending a payment of the kind you mentioned a moment ago for a building or something like that with all of the documentation you have mentioned, would you send that to Dunnes Stores in Dublin or would you send it Oliver Freaney's?

A. No, if it was David Patton was doing it, I would get Barry Patterson to attach the certificate that work was done up to roof level or ground level or whatever level and it was passed in his opinion and due for payment.

Q. Now, just to clarify one or two other matters that Mr. McGonigal wishes to have clarified and I think perhaps legitimately. I think you may have touched on this in your evidence. You have notified am I correct in thinking that you notified the Buchanan Tribunal of this cheque?

A. The Buchanan Tribunal?

Q. The Buchanan Inquiry?

A. Of the 282,500 before sorry, what I am going to say is that Pat O'Donoghue informed me that the board in Dublin wanted to be seen to be giving every cooperation possible to the Tribunal and I was asked to send the payments down. I sent it down to him.

Q. You sent it

A. Whether the Tribunal saw it or not, I really don't know.

Q. Can I take that a little more slowly. You sent it down to Dublin. Is it to the board you sent it in Dublin?

A. To Pat O'Donoghue specifically.

Q. To Pat O'Donoghue specifically?

A. Yes.

Q. And that was information concerning this cheque?

A. That's correct.

Q. And can you just give me the earliest date on which you would have done that subsequent to giving your response to Mr. Drumgoole in 1988?

A. That was the 13th December, 19 hundred and past, just past 1996.

Q. 1996?

A. About four or five months before I appeared at the Buchanan Tribunal.

Q. Now, did you notify were you asked about that cheque by any other Tribunal?

A. I think yourselves. That's about it.

Q. Can I take it from that that you didn't notify the McCracken Tribunal about this cheque?

A. Well I was under the impression that they were, in fact, when the list went to Pat O'Donoghue, that in fact it was at their request to specifically inquire into payments.

Q. Just repeat that again please. That?

A. When I sent the list to Pat O'Donoghue on the 13th December 1996, I assumed that that was for presentation or follow-up to aid the Tribunal in discovery of particular information documents.

Q. Thanks very much, Mr. Price. And unless something else arises out of that. I'd like to thank Mr. Price, Mr. Chairman, for coming down here.

CHAIRMAN: Just that I am clear about the critical distinction, Mr. Price. It wasn't that payments were necessarily less important if they related to the south, but if it related to some building works, either in Northern Ireland or in Britain, because it was in your geographical area of responsibility, you wanted to see chapter and verse without the need for payment, whereas if it was geared to the south, it wasn't less important but it wasn't in your area and it was for the managers or auditors in the south

A. It was really none of my business.

CHAIRMAN: I merely repeat Mr. Healy's words, Mr. Price. I appreciate as somebody resident north of the border, you didn't have to come here and it's much appreciated that you have taken the trouble to do so. Thank you very much.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Chairman, Sir, a witness whom I hope will not

prove to take too much time, at least on this occasion, Mr. Samuel Field-Corbett.

MR. SAMUEL FIELD-CORBETT, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you, Mr. Field-Corbett.

MR. HEALY: Mr. Field-Corbett, I think that you are a company director, is that right?

A. That's right.

Q. You, with another gentleman, I think you run your own company, Management Investment Services, is that right?

A. That's correct, yes.

Q. Is that your name, is that your main job, is that right?

A. Well, it would be, yes.

Q. Well describe what you do for a living and how you carry out your work.

A. We provide financial services really in accounting and keeping books and records of people.

Q. Financial services

A. Not in the broader terms of financial services, in terms of bookkeeping and accountancy.

Q. Do you provide a book keeping service? Could you speak up, Mr. Sam Field-Corbett, so the stenographer can hear you. Do you provide a secretarial service as well?

A. We do indeed, yes.

Q. Does that mean that you form companies and you also administer the secretarial and registration end of a company's affairs?

A. That's correct, yes.

Q. How long has your company been doing this kind of work?

A. 20-odd years.

Q. Could you speak up?

A. 20-odd years.

Q. Now, I think that you are aware of the existence of a company known as Tripleplan Limited, is that right?

A. I am, yes.

Q. And I think the Tribunal has brought some documents to your attention concerning this company, is that right?

A. It has, yes.

Q. Now, do you have a set of those documents in front of you?

A. I actually left them.

Q. I am sure your solicitor can arrange to bring the set you had up or get a set for you. Do you have those documents in front of you?

A. I don't think I have the ones that you mean.

Q. I will get you a set and speed matters up. (Documents handed to witness.) This is Fold 5, Sir, in the book No. 1, the book with which we are dealing at this stage. Book 2. I think I am corrected that it's Fold 4.

I think what you have got in front of you is a set of documents from the English company's office, is that right?

A. That's correct, yes.

Q. And those documents are in respect of a company known as Tripleplan Limited registration number 1749324, is that right?

A. Correct, yes.

Q. And that's I think, the principal objects of that are of a finance and investment company?

A. That's correct, yes.

Q. I think you did not form this company and your involvement with the company occurred some time after its incorporation?

A. That's quite right.

Q. But from your experience of this type of documentation, I want just to take you through it and I think you recognise this type of documentation from your dealings with company's offices in Ireland and England?

A. That's right.

Q. I think that the first document that you have in front of you is the Form 41, declaration of compliance with the requirements on an application for registration of a company, is that right?

A. That's correct.

Q. I am going to try and have these put up on the screen. This Form 41 was presented in the English company's office by an English company formation service, D & D Law Agency Service, is that right?

A. That's right.

Q. Presumably running a company something like yours?

A. Yes, a formation company.

Q. If you look at the next form, which is form P 1, do you recognise that form, that type of form?

A. It's another formation

Q. That's another form which is presented to the company's office on the formation of a company.

A. That's correct.

Q. Now, in relation to, just one moment, I should have referred you to the last form, well both forms in fact show that the company was formed sometime in July of 1983, is that right?

A. That's correct, yes.

Q. And what date is it in July of 1983?

A. We will get that in the memorandum.

Q. I think it's the 25th July of 1983.

A. It must be in around that time.

Q. The next form is a copy of the memorandum and articles of the company.

A. That is correct.

Q. We need only put up the first page, just to draw attention to the type of document. The next form I want to take you to is Form No. 1 which is a statement of the first directors and secretaries of a company, is that right?

A. Yes, correct.

Q. And the first directors and secretaries are in fact the persons, clearly persons associated with the company formation agency, is that right?

A. That's right.

Q. I think you can pass on from that document. The next document then is the certificate of incorporation of the company, is that right?

A. That is correct, yes.

Q. Dated 1st December 1983 to the date of actual registration.

A. Correct.

Q. Now, the next form is Form 9B?

A. Yes.

Q. Now, this is a form I think notifying changes in the directors or secretaries of a company, isn't that right?

A. That is correct, yes.

Q. Now, this is after the company was clearly purchased by somebody from the company formation agency, is that right?

A. That's probably right, yes.

Q. And we go to the next page of this document, I think this shows the directors, the new directors of the company with addresses in the Channel Islands. I don't think we are

A. That's correct, yes.

Q. I don't think we are terribly concerned with the individuals at this stage. The next document, I'd be right in saying, is an amended copy of the company's memorandum and articles of association.

A. That's correct, yes.

Q. And the amendment which is on the first page changes the articles, the objects of the company to enable it to carry on the business of a finance and investment company, is that right?

A. That's correct, yes.

Q. Now the next document is a notice of change in the situation of the registered office of the company.

A. Correct.

Q. Document 4A, that's dated December 1983 again. The next document is a notice of change of directors to it's a Form 9B, isn't that right?

A. That's right, yes.

Q. And the new directors of the company as of the date of presentation of this document, which I think is around June of 1985, is that right?

A. Correct, yes.

Q. And the directors are, Mr. John A. Furze, is that right?

A. That's right, yes.

Q. And Mr. John A. Collins, is that right?

A. Yes.

Q. And the addresses of the directors are, a PO box number in Grand Cayman, is that right?

A. That is right.

Q. PO Box 887, Grand Cayman, Bridget, West Indies.

A. Yes, that's correct.

Q. And could I draw your attention to the other directorships of the directors as stated in this form and in each case the other directorships are given as Nord State Limited, is that right?

A. That's right.

Q. Next form, is this a PUC 2 or a PUC 2 form, return of allotments?

A. That's correct.

Q. This is a form which contains your name?

A. Pardon?

Q. This is a form which contains your name, the name of your company?

A. Oh the name of the company, yes.

Q. In the bottom left-hand corner under the in the box for the presenter's name and address, the name is Management and Investment Services Limited, 3 Trinity Street, Dublin 2?

A. That is correct.

Q. Was that then the address of your company?

A. Yes, at the time.

Q. And what was your involvement in Tripleplan at that stage?

A. Well, we would have been secretaries at that stage.

Q. You would have taken over the secretaryship of the company?

A. Yes.

Q. And if you turn to the next page of that document, it shows the names, descriptions and addresses of the LOTs of shares?

A. That's right.

Q. Does that therefore show the new shareholders of the company?

A. Well, there would have been two other shares as well. That's an allotment of 48 shares.

Q. Correct.

A. There would have been two originally which would have been they would have been transferred across, presumably, at the same time.

Q. And at this point, 48 shares are shown as having been allotted to College Trustees.

A. That's right.

Q. In the Channel Islands?

A. That's right.

Q. Now, can you tell me what the next document in your bundle is?

A. I think it is a strike off notice.

Q. Yes. Well could I just ask you to put that document aside for the moment because it's sort of out of sync. I am sure you'd agree with me.

A. And the next document.

Q. Is the next document after that Form 6 A, is that right?

A. Yes.

Q. And is that

A. That's an annual return.

Q. And what does that show at that stage?

A. At February '85, the people who obviously bought the company were directors and secretaries and shareholders.

Q. Right, and we have dealt with those already so we can pass on to them to the next annual return which is Form 363 and it's dated the 30th July of 1986.

A. Yes, that shows John Furze and John Collins as directors and the shareholders as College Trustees and Sovereign Management.

Q. And College Trustees and Sovereign Management, do they both have the same address?

A. Yes, they do.

Q. If we could have the next page up, I don't know if you can see that, what's on the screen, Mr. Corbett, but that just shows the directors, if we could have the next page up after that. I think this is the document I described a moment ago, it shows the shareholders as being Batman Beta Limited, Batman Alpha Limited and then College Trustees and Sovereign Management. Now is this a document that you would have presented?

A. One of

Q. Well I mean, not you but your company?

A. Not me personally. The secretarial partner at the time would have presented it, yes.

Q. And does that mean that you would have received instructions from, that your company would have received instructions from company

A. Correct.

Q. To

A. Yes

Q. Include these details in the form?

A. Yes.

Q. And would you have received instructions from College Trustees itself and from Sovereign Management?

A. No, extremely unlikely.

Q. Who would you have received instructions from?

A. We would have received from Mr. Traynor.

Q. The late Mr. Des Traynor?

A. The late Mr. Des Traynor.

Q. And I think then you handled the company, as it were, for a year or two, is that right?

A. My secretarial department, yes.

Q. We will come back to the document you mentioned a moment ago which was a record of the dissolution of the company.

A. Yes.

Q. And what does that document show?

A. It's just a notification that at the expiration of three months, that the name would be struck off.

Q. So therefore it was dissolved ultimately for non returns, is that right?

A. It doesn't actually say that but that is a possibility.

Q. Are you looking at the same document that I have here?

A. Yes.

Q. I think we may be looking at slightly different documents. You are looking at the notice of dissolution, is that right?

A. That's the notice of dissolution, there.

Q. If could you read out what the document you have says?

A. Pursuant to Section 652 of the Companies Act, '85 ... Gives notice that the expiration of three months from the date of this notice, the name of your company will, unless cause is shown to the contrary, be struck off the register and the company dissolved."

Q. So that's a notice of dissolution, is that right?

A. That's right.

Q. That presumably would have been sent to you, is that right, to your firm in Dublin?

A. I can't actually it's actually addressed to the registered office in England.

Q. In London.

A. I can only assume that they would have sent it on. But...

Q. And when it was sent on to you, what would you have done with it? What would your company have done with it?

A. If the company was I am only speculating, that if the company was of no further use, that it would be struck off.

Q. That it would be struck off. And the last document you have got shows that it was struck off, isn't that right?

A. Yes.

Q. That is in fact the document showing that the company was dissolved for failure to make annual returns and it gives the date on which notice of dissolution was sent to the registered office

of the company, isn't that right?

A. Yes.

Q. And when you say that the company, that you wouldn't have bothered keeping the company alive because you had no further use for it, I take it you mean

A. Our client.

Q. Your client

A. We wouldn't make that decision on our own.

Q. Yes, so who would have given you those instructions?

A. It would be Mr. Traynor.

Q. Did you ever have any other instructions from any of the companies named as being the owners of shares in Tripleplan, College Trustees and Sovereign Management?

A. The instructions from them involved Des would have channelled to us. I hate to be definitive, but it's not likely that we would deal direct with Sovereign and College. We would be getting if we did anything with College and Sovereign, it would come through Des.

Q. You do believe that you would have done other work for College Trustees and Sovereign Management?

A. Would have been other companies somewhere down the years.

Q. Through Mr. Traynor?

A. Yes.

Q. Thanks, Mr. Field-Corbett.

CHAIRMAN: Any matters arising having regard

MR. GALLAGHER: Just very briefly, if I may, Mr. Chairman.

THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. GALLAGHER:

Q. Am I correct, Mr. Field-Corbett, that Mr. Bernard Dunne had nothing at all to do with the company Tripleplan?

A. From my knowledge, no.

Q. And you had no dealings of any type with Mr. Bernard Dunne?

A. Ever?

Q. Ever.

A. Well I had a dealing once but it had nothing to do with this.

Q. Nothing to do with this. Thank you.

CHAIRMAN: Thanks very much indeed, Mr. Field-Corbett, for your attendance. It's just come four o'clock, we will adjourn now, ladies and gentlemen, until half past ten tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, 29TH JANUARY 1999, AT 10:30AM.