

10:56:35 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON**

2 **WEDNESDAY 22ND SEPTEMBER 2004 AT 11 AM:**

3  
4 CHAIRMAN: Good morning.

11:07:08 5  
6 MR. O'NEILL: Good morning sir.

7  
8 The first application listed for hearing today is that of Mr. James Stafford  
9 who is represented here today by Mr. Ruairi Egan, his solicitor, and I will  
11:07:18 10 outline briefly to you sir, the background to the involvement of Mr. Stafford  
11 with the Tribunal, summarising the findings on the substantive issues reached  
12 in the Second Interim Report and refer also to the findings in relation to the  
13 issue of cooperation on Mr. Stafford's part.

14  
11:07:37 15 Mr. Stafford, with Mr. Oliver Barry and Mr. John Mulhern, was one of the  
16 original promoters of Century Communications Limited, the company which  
17 successfully obtained the license to the first independent national radio  
18 broadcasting service for a company, or a radio station rather, which was to be  
19 referred to as Century Radio.

11:08:02 20  
21 His involvement with the Tribunal commenced once the Tribunal had discovered  
22 that 35,000 pounds had been paid by his fellow promoter Mr. Oliver Barry to  
23 Mr. Ray Burke in May of 1989.

24  
11:08:15 25 Mr. Stafford was involved in both the private investigative stage and in the  
26 public hearings, connected with the Tribunal's investigations into this 35,000  
27 pounds payment made to Mr. Burke in May 1989.

28  
29 The substantive finding on this issue was that the payment to Mr. Burke was  
11:08:34 30 made as a bribe and not as a political contribution, as had been alleged by

11:08:38 1 Mr. Barry, and insofar as Mr. Stafford was concerned, the Tribunal concluded  
2 that the payment which was made, whilst not a payment made by him personally,  
3 was a payment of which Mr. Stafford was made aware in advance of the payment  
4 having been made by Mr. Barry, and that he had consented to the payment being  
11:09:02 5 made on behalf of Century Radio in the knowledge that it was a bribe to  
6 Mr. Burke.

7  
8 The Tribunal concluded that Mr. Stafford had at all times, since the payment  
9 was made public, endeavoured to distance himself from any association with the  
11:09:16 10 payment and that his reasons for doing so were that he knew that the payment to  
11 Mr. Burke was a corrupt payment. His endeavours to distance himself from the  
12 payment included providing information to the Tribunal at a private session,  
13 which was untrue.

14  
11:09:32 15 On the issues of cooperation with the Tribunal, the Tribunal concluded at  
16 paragraph 17.12 of the Second Interim Report, that Mr. Stafford had obstructed  
17 and hindered the Tribunal by:

18  
19 "A. Failing to give a truthful account of his knowledge of the payment of  
11:09:48 20 35,000 pounds made by Mr. Barry to Mr. Burke.

21  
22 B. Failing to give the Tribunal a truthful account as to why Mr. Barry had  
23 paid Mr. Burke 35,000 pounds.

24  
11:09:57 25 C. Failing to give a truthful account of the role played by him, Mr. Stafford,  
26 and by Mr. Barry in ensuring that Mr. Burke would introduce legislation to cap  
27 RTE's advertising income to re-distribute RTE's license fee income and to  
28 change the role of 2FM.

29  
11:10:16 30 D. Failing to provide a truthful account of the reimbursement to Mr. Barry of

11:10:20 1 the 35,000 pounds paid to Mr. Burke in May 1989.

2

3 And finally, failing, or rather giving a false account as to how the Century

4 Radio figures of 375,000 pounds for transmission charges were calculated."

11:10:37 5

6 These findings of non-cooperation covered the majority of the areas in which

7 Mr. Stafford had been involved as witness before the Tribunal, with the

8 exception of that part of the inquiry which concerned itself with the question

9 of whether or not there was a rumour extant at the time of the granting of the

11:10:54 10 broadcasting licenses that Mr. PJ Mara and Mr. Burke expected to be paid in

11 respect of the grant of such licenses, and the question of whether or not

12 demands for payments of 30,000 pounds were made of Century on behalf of

13 Mr. Mara.

14

11:11:11 15 On these issues the Tribunal was unable to reach any conclusion, either as to

16 the substantive issues themselves or on the issue of cooperation of the parties

17 who gave evidence on those issues, which included Mr. Stafford.

18

19 Mr. Stafford was granted limited legal representation before the Tribunal on

11:11:31 20 the 18th of July 2000, he was represented by Senior Counsel, Junior Counsel and

21 his solicitor before the Tribunal and indicative estimate of the legal costs in

22 the sum of 310,515 euro has been submitted on behalf of Mr. Stafford, of which

23 169,400 pounds is, sorry euro, is claimed in respect of solicitors costs, the

24 balance in respect of counsel's fees. The brief fee charged for Senior Counsel

11:12:07 25 was 12,700 pounds with refreshers of 3,000 euro per day exclusive of VAT and

26 Junior Counsel's fees were two thirds of that amount.

27

28 As I say, Mr. Egan will present the application for costs on behalf of his

29 client, Mr. Stafford.

11:12:19 30

11:12:19 1 CHAIRMAN: Right, Mr. Egan.

2

3 MR. EGAN: Chairman a letter has been sent dated 15th of September to the

4 Tribunal which sets out the submissions, is that, is it necessary for me to

11:12:34 5 read that into the record or can we regard that as read?

6

7 CHAIRMAN: No if -- I have those submissions and there is no need to read them

8 into the record, unless you wish to add to them.

9

11:12:51 10 MR. EGAN: Thank you Chairman. On that basis I will make a few, on behalf of

11 the witness, a few general points on the nature of the alleged obstruction.

12

13 In effect, it is a conflict of interest in three areas:

14 Mr. Stafford's knowledge of the payment of 35,000, his role on the capping on

11:13:18 15 RTE and the calculation of the transmission charges.

16

17 The Chairman can have regard to Mr. Stafford's evidence as stated in the

18 letter, that he didn't know about the payment until March '91. He can have

19 regard to Mr. Stafford's evidence that he laid it on the line to the Minister

11:13:48 20 that Century, which was the first independent radio, could not continue without

21 a cap, and the evidence of others didn't disagree with him. He can have regard

22 to the fact that he based his negotiation on transmission charges on

23 independent advice.

24

11:14:13 25 I think that Mr. Stafford is entitled to lobby and take a tough negotiating

26 position, particularly when there is an unequal bargaining position between RTE

27 and a new independent radio and the Tribunal considered a lot of information in

28 relation to that.

29

11:14:37 30 RTE was in fact, too expensive, and did seek to over charge at the outset and

11:14:42 1 it is evident from the evidence given before the Tribunal, that RTE initially  
2 sought about 1.2 million, which it ultimately reduced down to about half of  
3 that, so it did make commercial sense to negotiate. It is accepted that the  
4 Minister did not have power to fix the level of those charges and that this was  
11:15:03 5 a lobbying exercise. You might say it was an exercise in brinkmanship,  
6 certainly it's clear that RTE seriously over estimated, initially, the cost of  
7 the transmission charges and likewise, it's clear that Century would not,  
8 indeed could not, have proceeded had it been obliged to pay the original amount  
9 sought.

11:15:25 10  
11 I think the general point in relation to Tribunals are that, is that, Tribunals  
12 are public inquiries requiring cooperation of witnesses, and once cooperating  
13 those witnesses should be awarded their costs. As to do otherwise would be  
14 unfair, and it could set an unfortunate precedent for the future. A conflict  
11:15:48 15 of evidence in court is not treated as hindrance and the same principle ought  
16 apply to the Tribunal.

17  
18 All those appearing before a Tribunal are essential to the workings of the  
19 Tribunal, without them there can be no inquiry. It's essential that they be  
11:16:06 20 enabled to recount events fully and as they recollect them. If their  
21 recollection differs from that of others, that difference ought not be  
22 categorised as hindrance. That could result in a distortion by the witness of  
23 the truth, in the mistaken belief that otherwise such witness could be  
24 penalised financially, that is not receive his costs.

11:16:32 25  
26 Mr. Stafford did not attempt to withhold information of any sort. In fact he  
27 explained in great detail the robust business approach taken by Century, which  
28 was a fledgling independent radio station in an environment dominated by a  
29 State enterprise and how Century tried, but failed. And in those circumstances  
11:16:53 30 even though his version of some events was contradicted by others, it would be

11:16:59 1 unfair to refuse on that account, his application for costs, as he cooperated  
2 throughout with the workings of the Tribunal. A conflict of evidence,  
3 Chairman, is not tantamount to hindrance, it is respectfully submitted.  
4

11:17:14 5 Thank you Chairman.  
6

7 CHAIRMAN: Thank you Mr. Egan. Do you wish to --  
8

9 MR. O'NEILL: No, I have nothing further to add sir.  
10

11:17:22 10 CHAIRMAN: Thank you. I will endeavour to give a ruling sometime in October  
11 and you will be informed through the Tribunal's solicitor. Thank you very  
12 much.  
13  
14

11:17:29 15 MR. O'NEILL: The second application then sir is that of Mr. George Redmond,  
16 who is represented here today by his solicitor Mr. Anthony Harris and if I  
17 might briefly outline Mr. Redmond's role in the affairs of the Tribunal, which  
18 have been reported upon in the Third Interim Report of the Tribunal. You will  
19 recollect sir that the publication of this report was withheld due to the fact  
11:17:53 20 that Mr. Redmond was awaiting a criminal trial at the time of the completion of  
21 the report, and it was therefore deferred until the conclusion of those  
22 criminal proceedings.  
23

24 The findings of the Tribunal in respect of Mr. Redmond, found in the Third  
11:18:14 25 Interim Report, are adverse findings both in relation to the substantive issues  
26 and also in relation to the issue of cooperation with the Tribunal.  
27

28 Mr. Redmond's involvement with the Tribunal followed upon reference being made  
29 to him in an affidavit which was provided to the Tribunal by Mr. James Gogarty,  
11:18:33 30 where it was alleged that Mr. Redmond had been paid two sums of money by

11:18:39 1 companies connected with the Murphy family, they were JMSE companies.

2

3 The first of these payments was alleged to have been paid to Mr. Redmond in  
4 return for his assistance in endeavouring to secure that contributions payable

11:18:53 5 to Dublin County Council in respect of service charges and development levies,  
6 would be kept at a level which had been set a number of years earlier.

7

8 The second payment was alleged to have been paid to Mr. Redmond as compensation  
9 for his not being engaged as a consultant by the Murphy companies following

11:19:11 10 upon his retirement in June 1989 from the position of Dublin Assistant City and  
11 County Manager.

12

13 Initially Mr. Redmond denied he had received any monies from Murphy group in  
14 respect of either of these matters. The Murphy companies and Murphy

11:19:29 15 individuals had been granted planning permission by An Bord Pleanala in respect  
16 of lands which they owned at Forest Road in Swords on the 21st of June of 1983,  
17 as a condition of the permission, the developer was obliged to pay to Dublin  
18 County Council such contribution in respect of service charges and levies as  
19 would be fixed by Dublin County Council.

11:19:53 20

21 Dublin County Council fixed the amount of levies which were due should that  
22 development proceed at 122,460 pounds.

23

24 The permission granted in respect of these lands was due to expire by efflux of  
11:20:11 25 time on the 21st of June 1988, if substantial development had not progressed on  
26 the lands by that date. If a further planning application had been made,  
27 following expiry, and if that permission was granted, the level of  
28 contributions which would have been sought from the developer was likely to be  
29 in the region of twice that, which had been set in 1983.

11:20:36 30

11:20:36 1 The Murphy interests wished to dispose of their land holding with the benefit  
2 of the existing planning status and also with the levies being fixed at their  
3 1983 level.  
4

11:20:49 5 At a meeting with Mr. Redmond, then Dublin City and County Manager, such a  
6 meeting was arranged in May 1988. Mr. Gogarty stated that at that meeting  
7 Mr. Redmond informed him that he had already discussed the issue with Mr. Liam  
8 Conroy, who was the then Chief Executive of the Murphy companies. Mr. Redmond  
9 indicate that had he had a mechanism which could overcome the difficulties  
11:21:19 10 arising from the imminent expiry of the planning permission, which had been  
11 granted in 1983.  
12

13 He told Mr. Gogarty that he wished to speak to Mr. Joseph Murphy Senior  
14 directly on this issue. Some days later Mr. Gogarty was told by Mr. Murphy  
11:21:35 15 Senior to attend at a further meeting with Mr. Redmond and that he would be  
16 accompanied to that meeting by Mr. Joseph Murphy Junior. At that meeting  
17 Mr. Redmond outlined the strategy which he had devised for resolving the  
18 Murphy's difficulty in relation to the amount of the levies which would be  
19 involved in any subsequent planning application.

11:21:55 20  
21 Mr. Redmond drafted a letter which was subsequently sent to Dublin County  
22 Council on Murphy's headed notepaper. The letter contained a proposal to  
23 Dublin County Council, which if accepted, would have resulted in the  
24 contribution charges set in 1983 remaining for a further two years. The  
11:22:17 25 proposal was that the Murphys would pay to Dublin County Council the 122,460  
26 contribution charges, prior to the expiry of the planning permission, provided  
27 the council would confirm that in the event that this payment was made no  
28 additional service charges or levies would be imposed when a fresh application  
29 for a similar residential development was made. The council accepted this  
11:22:48 30 proposal and the monies were paid by one of the Murphy companies.

11:22:48 1  
2 Mr. Gogarty told the Tribunal that he had been informed by Mr. Joseph Murphy  
3 Junior that he had paid Mr. Redmond ten per cent of the savings which had been  
4 achieved as a result of adopting Mr. Redmond's strategy.

11:23:00 5  
6 Mr. Redmond denied that he had been introduced to Mr. Gogarty by Mr. Michael  
7 Bailey, as Mr. Gogarty had alleged, and he also denied the substance of the  
8 advice that he had given in respect of the Murphy planning difficulties.

9  
11:23:15 10 Mr. Redmond was particularly concerned to state that did he not draft any  
11 letter for Mr. Gogarty or that he had handed over such a letter to be sent to  
12 Dublin County Council. He denied that he ever met Mr. Joseph Murphy Junior,  
13 either in respect of the Forest Road lands or otherwise.

14  
11:23:32 15 However the Tribunal concluded that the strategy devised was the brain child of  
16 Mr. Redmond and that he was aware that the Planning Department would be  
17 favourably disposed towards the offer of prepayment of levies.

18  
19 The Tribunal also found that Mr. Redmond performed a similar drafting exercise  
11:23:51 20 for Mr. Bailey in connection with the same lands immediately before his  
21 retirement in 1989.

22  
23 The Tribunal found that Mr. Redmond was serving the interests of persons who  
24 would gain financially from the decisions of the council whilst purporting to  
11:24:08 25 fulfil his duties on behalf of the council. The Tribunal held that it was  
26 satisfied that Mr. Redmond did give the advice which was attributed to him by  
27 Mr. Gogarty, and that the strategy was followed by the Murphys and that this  
28 resulted in a substance benefit being conferred upon them and also upon  
29 Mr. Michael Bailey.

11:24:28 30

11:24:28 1 The Tribunal held that Mr. Redmond provided his advices on foot of an agreement  
2 that he would be rewarded if there was a saving on the levies charged and that  
3 he was so paid.  
4

11:24:39 5 The Tribunal further held in devising this strategy Mr. Redmond was not serving  
6 the public interest but was acting to serve the private interests of land  
7 owning companies and his own selfish interests. The Tribunal was satisfied  
8 that the payment was a corrupt payment.  
9

11:24:55 10 In the course of his evidence Mr. Redmond gave testimony to the Tribunal  
11 impugning the character of Mr. Gogarty. The Tribunal held this evidence to be  
12 incredible, the evidence included an allegation by Mr. Redmond that Mr. Gogarty  
13 had paid him 25,000 pounds on behalf of the Murphy companies. The report held  
14 that this claim that he had received 25,000 pounds from Mr. Gogarty was a  
11:25:23 15 concoction on his part, made in an effort to explain away monies which he had  
16 in fact received from the Murphy companies.  
17

18 Prior to the resumption of his evidence on the 12th May 2000, Mr. Redmond  
19 furnished the Tribunal with a written memorandum indicating that he had  
11:25:40 20 received a gift in cash of between 8,000 and 10,000 pounds from Mr. Michael  
21 Bailey some short time prior to his retirement in June 1989. In his subsequent  
22 evidence to the Tribunal, Mr. Redmond claimed that there had been two or three  
23 payments to him from Mr. Michael Bailey totalling between 16 and 20,000 pounds  
24 made in 1988/1989. He also claimed that at the time of the payments he was  
11:26:05 25 advising Mr. Michael Bailey on property matters.  
26

27 The Tribunal held that it was satisfied that Mr. Redmond was providing  
28 information to Mr. Michael Bailey which was not available to him from other  
29 sources and that Mr. Michael Bailey was paying Mr. Redmond for this  
11:26:20 30 information.

11:26:20 1  
2 The Tribunal further held, that it believed that Mr. Redmond's decision in June  
3 1989 to authorise the acquisition by Dublin County Council from Mr. Michael  
4 Bailey's company, Princess Homes Limited of approximately 8 acres of land in  
11:26:36 5 the Ward River Valley was a decision taken by Mr. Redmond at the request of  
6 Mr. Michael Bailey.

7  
8 The Tribunal was satisfied that Mr. Redmond received payment from Mr. Michael  
9 Bailey for having made this decision. Apart from the decision to authorise the  
11:26:55 10 acquisition of land in the Ward River Valley by Dublin County Council from  
11 Mr. Michael Bailey's company, the Tribunal was unable to connect any particular  
12 payment to any particular decision or advice given by Mr. Redmond.

13  
14 However, the Tribunal was satisfied that Mr. Michael Bailey did pay Mr. Redmond  
11:27:12 15 between 16 and 20,000 pounds in 1988 and 1989, and that such payments were made  
16 in circumstances which gave rise to a reasonable inference that the payments  
17 were made in order to influence Mr. Redmond in the performance of his duties as  
18 Assistant City and County Manager for Dublin and that they were corrupt  
19 payments.

11:27:33 20  
21 The Tribunal undertook a substantial investigation into the financial affairs  
22 of Mr. Redmond, although it was not publicly known before the Tribunal was  
23 established, Mr. Redmond had been in receipt of regular and substantial  
24 payments from builders and developers in the Dublin area since the 1960s, and  
11:27:51 25 throughout the period when he was employed in the Planning Department of Dublin  
26 Corporation and later when he took up office as Assistant City and County  
27 Manager for Dublin.

28  
29 Mr. Redmond was lodging sums at that time to his various bank accounts which  
11:28:05 30 were multiples of his relatively modest salary, the Tribunal found that the

11:28:09 1 sums lodged by Mr. Redmond in the early 60s were the equivalent of receiving  
2 the price of one substantial house per annum.

3  
4 At the time of the commencement of the Tribunal Mr. Redmond had cashed deposits  
11:28:21 5 of over 350,000 pounds. The Tribunal held that it was satisfied that at all  
6 time Mr. Redmond intended to keep secret the fact that he was in receipt of  
7 these monies. Mr. Redmond subsequently admitted that he was in receipt of  
8 these funds for advices that he had given to builders and developers. He  
9 denied however that these advices which he gave, damaged his employers  
11:28:43 10 interests.

11  
12 On the 30th June 2004 you set out the principles which you indicated would  
13 apply in determining applications for costs and in addition to the matters  
14 specifically mentioned in section 6 of the Tribunal's of Inquiry Evidence  
11:28:59 15 Amendment Act, 1969 as amended you listed a number of matters which you would  
16 have regard to including the following :

17  
18 "The extent which the applicant for costs was responsible for incurring such  
19 costs.

11:29:10 20  
21 The extent to which the conduct of the applicant for costs was responsible for  
22 costs being incurred by the Tribunal.

23  
24 The nature and extent of any non-cooperation or failure to assist the Tribunal  
11:29:22 25 by the applicant for costs.

26  
27 The consequences which flowed from the non-cooperation or failure to assist on  
28 the part of the applicant.

29  
11:29:30 30 For the Tribunal or other parties appearing before the Tribunal.

11:29:34 1  
2 The conduct of the applicant for costs before the Tribunal, whether the  
3 applicant for costs knowingly made false allegations of wrongdoing on the part  
4 of others and the reasons if ascertained, why should persons either failed to  
11:29:50 5 assist or did not cooperate with the Tribunal or knowingly provided false  
6 information to the Tribunal"  
7

8 These principles will no doubt be central to the consideration of the present  
9 applicant.  
10

11:29:59 10  
11 In respect of matters of non-cooperation, the Tribunal held in the Third  
12 Interim Report that there was non-cooperation on the part of Mr. Redmond which  
13 amounted to hindering and obstructing the Tribunal in the following manners:  
14

11:30:17 15 "A. By failing to give the Tribunal a truthful account of the circumstances in  
16 which he devised the strategy whereby the service charges and levies payable on  
17 the development of the Forest Road lands were fixed at their 1983 level in  
18 respect of any similar development taking place within two years of the 21st  
19 June 1988.

11:30:38 20  
21 B. Falsely denying that he had received monies from Mr. Joseph Murphy Junior  
22 as a payment for having devised the strategy which resulted in the fixing of  
23 the Forest Road service charges and levies at their 1983 level.  
24

11:30:53 25 C. Falsely claiming to have received 25,000 pounds from Mr. James Gogarty as a  
26 fee for introducing Mr. Michael Bailey as the purchaser of the Forest Road  
27 lands.  
28

29 D. Falsely denying that he had received 15,000 pounds from Mr. Joseph Murphy  
11:31:09 30 Junior as compensation for the loss of promised consultancy of the Murphy land

11:31:14 1 owning companies upon his retirement in Dublin County Council. And E. Failing  
2 to give a truthful account of the services which he performed for Michael  
3 Bailey, in return for payments made by Mr. Michael Bailey to him."  
4

11:31:26 5 Mr. Redmond was granted legal representation that was limited legal  
6 representation before the Tribunal on the 4th of November 1988. He was  
7 attended before the Tribunal by his solicitor and also by Senior and Junior  
8 Counsel on occasion. As I say Mr. Harris appears today to advance his claim  
9 for costs.

11:31:56 10  
11 CHAIRMAN: All right.

12  
13 MR. O'NEILL: I should say that no estimate of the level of costs which has  
14 been sought by Mr. Redmond has been furnished to the Tribunal.

11:32:00 15  
16 CHAIRMAN: All right. Mr. Harris, do you wish to add to the written  
17 submissions?  
18

19 MR. HARRIS: I -- no I think the Tribunal indicated in correspondence that it  
11:32:11 20 didn't require written submissions -- I should say just in response to  
21 Mr. O'Neill's last comment, I haven't been asked by the Tribunal to submit any  
22 estimate of costs.  
23

24 CHAIRMAN: Well you are not required to.

11:32:24 25  
26 MR. HARRIS: Okay well just to - now Mr. Chairman I am in a slightly difficult  
27 position, I just want to say something and then you can perhaps give me some  
28 direction on it and then I will tell you another difficulty that I am in.  
29

11:32:40 30 When I was here in June last I was making submissions in relation to the report

11:32:45 1 and this was prior to you giving your ruling as to the matters that you will  
2 take into consideration, I was concerned at the time that you felt that the  
3 section of the new act prevented you from looking at other things other than  
4 the report, and I see and I am glad to see from the ruling that you gave that  
11:33:01 5 you will be not only looking at that, but for instance the relevant sections of  
6 the evidence that gave rise to the report.

7  
8 Now I am not, you might tell me what that means whether it's the entire of the  
9 evidence or because the report itself doesn't, it doesn't say like -- somebody  
11:33:19 10 gave evidence on this date or -- it doesn't go into evidence really before the  
11 Tribunal at all. So it gives no guidance in that regard.

12  
13 But other than that, I had raised the issue about fairness, constitutional  
14 fairness and I said that you couldn't divorce the making of an order for costs  
11:33:39 15 from, if you were to rely on the findings of the report, you couldn't divorce  
16 it from the procedure which had given rise to the report and I had made  
17 submissions about unfairness, which as I recall Mr. O'Neill was slightly  
18 sensitive about. And I think we left that by saying that upon my application  
19 for costs I can go into the factual basis.

11:33:59 20  
21 Now I think it is the case, Mr. Chairman, that you are not really entertaining  
22 such submissions, I am not quite sure about that. It was sort of put up to me  
23 by Mr. O'Neill I have some instances that I think I can draw to the Tribunal's  
24 attention. I certainly want to say some things about evidence that Mr. Redmond  
11:34:20 25 wanted called and assumed would be called and access to documents that he  
26 wanted and he didn't get.

27  
28 But you may wish to just say that you are going to really look at the report  
29 and no further.

11:34:39 30

11:34:39 1 CHAIRMAN: Well all right the principles are the principles, that I will be  
2 applying in considering your application for costs are those set out in the  
3 ruling. What I won't be considering and can't consider is the validity of the  
4 findings of -- of Judge Flood, nor can I consider whether or not your client  
11:35:05 5 was, whether the conduct of the Tribunal as far as your client was concerned  
6 was fair and reasonable, I assume that it was. I have to assume that it was.  
7 And that the findings in the reports, in the two reports were, are valid  
8 findings and were properly arrived at by the Tribunal, so that's the basis on  
9 which I approach the application for costs.

11:35:30 10  
11 In other words, I don't review the evidence with a view to seeing --  
12  
13 MR. HARRIS -- to seeing would you agree with the findings, that's exactly the  
14 right approach I say you have to look at the reports and the act says you have  
11:35:44 15 to have regard to it.

16  
17 No, what I am saying is that I was, not that the findings, the findings are the  
18 findings, but I understood Mr. O'Neill said, look there was no unfairness in  
19 relation to the procedure and tell us where the unfairness was. Now, if your  
11:36:02 20 position is, look I must take the findings and I must assume that what went  
21 before the findings, you can't hear submissions in relation to it whether the  
22 procedures were correct, then that's fine. I just felt that I needed to flag  
23 it because I had said to the Tribunal and written to the Tribunal that is  
24 correct Mr. Redmond may consider proceedings in relation to the report. I  
11:36:23 25 should say Mr. Chairman it's the last thing Mr. Redmond or myself would like to  
26 do, it's a fact that there were four sets of proceedings I understand in  
27 existence in any case and I make the application in the context that we might  
28 find ourselves back here on another occasion in the future, so I just felt I  
29 had to flag it.

11:36:40 30

11:36:40 1 I know Mr. O'Neill used to represent the Tribunal in the courts and I think  
2 Mr. Clarke now does, he might take the view, if Mr. Harris didn't raise it at  
3 the application then I am going to advise the Tribunal to take a position in  
4 relation to that.

11:36:54 5  
6 Now I think, I am happy enough that you say you can't really entertain it.  
7 That's fine. Just that, that I have the issues.

8  
9 I will say that there was also the issue, I think Mr. O'Callaghan's decision  
11:37:08 10 was decided in the meantime and that's under appeal to the Supreme Court, so we  
11 may get guidance in relation to fairness in the future.

12  
13 Okay, my second problem Mr. Chairman, is that, from when, when I learned it, I  
14 suppose advocacy school if there is such a thing, when my client is convicted  
11:37:34 15 of an offence I shouldn't make applications for leniency on the basis that he  
16 was innocent or something, my difficulty is that the findings are there, but I  
17 have instructions, I had instructions at the beginning, my instructions didn't  
18 change in relation to what Mr. Redmond's evidence was and I just have to say  
19 that my instructions continue to be the same, that when he came and gave  
11:37:55 20 evidence and his detailed evidence that he was telling the truth, I just want  
21 to say that and I don't want to annoy the Tribunal.

22  
23 CHAIRMAN: There is no suggestion anywhere in any of the reports that you, as  
24 his solicitor, acted in anyway improperly, the findings were, as far as there  
11:38:12 25 were adverse findings, were made against Mr. Redmond.

26  
27 MR. HARRIS: Yes, I am starting from that basis.

28  
29 As far as the findings in the report are concerned Mr. Chairman, there is, the  
11:38:27 30 report itself finds, certainly that certain payments were made to my client

11:38:33 1 which he had denied, that other payments which he had claimed were not paid,  
2 but that another payment still from Mr. Bailey which my client claimed to have  
3 received and Mr. Bailey had denied paying was actually made, so in respect of  
4 certain of my client's evidence about payments received by him, they were  
11:38:52 5 actually and I think chapter 8 of the report -- sorry no, chapter 6 of the  
6 report finds that my client was telling the truth when he gave that evidence.

7  
8 And the chapter which relates to Mr. Redmond's financial history and that's  
9 chapter 3 of the report and that says that the Tribunal found that back in the  
11:39:20 10 1960s and 1970s he was receiving a lot of money. Now in fact the only evidence  
11 before the Tribunal that that was the case, was Mr. Redmond's own evidence.  
12 There wasn't records going back that far, Mr. Redmond got into the witness box  
13 and he admitted and Mr, I think it was Mr. O'Neill in May 2000, Mr. Redmond  
14 passed up many notes to Mr. O'Neill, where he was asked to write the names of  
11:39:45 15 particular persons who had given him money and he did that and that was  
16 accepted and I think that has found it's way into the report. I should say  
17 that that particular exercise in May 2000 was not part of the Gogarty Module  
18 proper, it was part of Mr. Redmond's speaking statement, which he came to the  
19 Tribunal to make.

11:40:10 20  
21 Initially, following discussions with the lawyers for the Tribunal and an order  
22 that was made by the former Sole Member, I think in January of 1999,  
23 Mr. O'Neill might correct me, the 25th January, Mr. Redmond came and had many  
24 interviews with Counsel to the Tribunal. That was an order which directed him  
11:40:31 25 to come and give truthful answers to counsel and it was an order that was  
26 invited by Mr. Redmond because of his legal advice, because of a decision that  
27 had been given by the Supreme Court in the NIB case not too far beyond that.  
28 But that was an order that myself and Mr. O'Neill and counsel, who was acting  
29 for Mr. Redmond at the time, believed that the Tribunal had power to make, and  
11:40:53 30 subsequently it transpired that because of decisions challenged by Mr. Lawlor

11:41:01 1 to the High and Supreme Court that the Tribunal didn't have those powers, and  
2 there was, and of course the immunity that flows from the, I think the 1979  
3 Act, applies only to evidence given in the witness box. So as a result of that  
4 Mr. Redmond came, he made his speaking statement, he was in the witness box for  
11:41:22 5 a number of weeks and as far as I know none of the evidence that he has given  
6 in that case has been, well there has been no hearings as such in the Redmond  
7 module, which I was lead to believe at one stage there would be a Redmond  
8 module. But as far as I know that was fully accepted that he was telling the  
9 truth at those times.

11:41:43 10  
11 I would just say that as part of those interviews that Mr. Redmond had with the  
12 Tribunal legal team, he discussed his bank accounts, and he gave details of  
13 what he could remember of what banks he had, and not only did he do that, he  
14 gave letters to the individual banks which were prepared in the offices in the  
11:42:11 15 upper yard, addressed to those banks, giving those banks authority to release  
16 all documentation to the Tribunal. Therefore obviating the necessity for  
17 orders for discovery.

18  
19 And I can remember, in particular on the 10th of February 1999, I think is the  
11:42:30 20 date, that Mr. Redmond informed Mr. O'Neill and I think Mr. Hanratty, that he  
21 had an account in the Isle of Man, I think there were two banks. He nominated  
22 the banks, they prepared written authorities for them and he signed the written  
23 authorities. The Tribunal wouldn't have had -- I mean in the other cases he  
24 obviated the need for the Tribunal to go through the process for making orders  
11:42:55 25 of discovery against his banks. The Tribunal couldn't have made an order for  
26 discovery in relation to the Isle of Man accounts. That was nine days before  
27 the famous day when we went to the Isle of Man and he came back, he took his  
28 money out and he came back to Ireland.

29  
11:43:10 30 But he had told the Tribunal, I think on the 10th of February, that date, of

11:43:16 1 the existence of the accounts. He had signed letters of authority for the  
2 banks to get the accounts. And when he was arrested at Dublin Airport, what he  
3 had in his possession was not only the money, but a series of bank statements,  
4 whatever bank statements the bank could have provided to him going back over  
11:43:40 5 the years which was going to enable him, he has given evidence, to comply with  
6 orders for discovery, which the Tribunal had previously made as part of the  
7 ongoing discussions that Mr. Gogarty -- Lord -- Mr. Redmond was having with the  
8 Tribunal team.

9  
11:43:57 10 And as you know, Mr. Chairman, you weren't involved with the Tribunal at the  
11 time he was arrested, his house was searched and a lot of documentation which  
12 he had gathered together was seized and again, my instructions are, and he has  
13 told the legal team and he has told the former Chairman here in the witness  
14 box, that he was gathering that in order to comply with the orders for  
11:44:23 15 discovery. By the way I don't know whether Mr. O'Neill wants to say this, he  
16 was late in complying with the orders for discovery, he was going through a lot  
17 at the time and I was finding it difficult to get instructions from ,  
18 Mr. Chairman, and at the time I got, he was receiving certain medical  
19 treatment, I don't want to go into it too much, I never submitted a report that  
11:44:43 20 I got at the time to the Tribunal, if the Tribunal wishes to be satisfied that  
21 he was having health problems at the time and not facing up to what was before  
22 him, I think I can supply that if Mr. O'Neill wants to make an issue. Yes he  
23 was late in complying with the orders.

24  
11:45:01 25 Mr. Redmond stayed overnight in custody as you know and on Monday the 22nd of  
26 February, Mr. O'Neill rang me in the morning, said we would like to see George  
27 and of course Mr. Redmond came down and was produced and had conversations with  
28 Counsel. And on that date he was asked and he did sign a letter addressed to  
29 the Criminal Assets Bureau, consenting to them releasing the documents which  
11:45:36 30 had been seized or copies of those documents to the Tribunal.

11:45:39 1  
2 And he continued to see Counsel for the Tribunal at private meetings, and  
3 indeed he continued, he began seeing officers of the Criminal Assets Bureau  
4 with me, wherein he made voluntary statements admitting several things,  
11:46:06 5 receiving monies, and dealing with various issues that have subsequently been  
6 aired at the Tribunal sittings in May of 2000.  
7  
8 He continued and he made a statement for instance on the 1st of April 1999, in  
9 relation to a payment that he had received from a Mr. Fassnidge and you know  
11:46:36 10 that that gave rise ultimately, I should say that the Tribunal -- other things  
11 happened, there was applications between CAB and the Tribunal and, about the  
12 documents. In fact an order was made I think on the 13th April of that year,  
13 ordering the Chief Bureau Officer of the Criminal Assets Bureau to produce to,  
14 to produce and hand over I think, the documents or some of the documents. And  
11:47:14 15 as it happens, Mr. Redmond wasn't notified of the intention to make that  
16 order -- I am only just saying this, not to criticise the Tribunal everything  
17 was happening very fast at the time. I in fact got a telephone call from a  
18 journalist to say why aren't you down there, there was an application --  
19  
11:47:35 20 Ultimately that order to produce the documents was challenged by the criminal,  
21 by Fachtna Murphy, and in those proceedings Mr. Redmond was made a notice  
22 party, so he had a say, and he could have filed an affidavit supporting the  
23 relief sought on the basis, because he had an open and shut case after Bailey  
24 versus Flood and Haughey versus Moriarty that no notice had been given to him  
11:48:05 25 of the intention to make the orders. He didn't. He didn't vote if you like  
26 one way or the other. In fact we went to the High Court and we said "look we  
27 haven't put in, we are just saying we could have objected we haven't put in a  
28 replying affidavit and even if we had objected the answer is exhibited in the  
29 Tribunal's affidavit, which is Mr. Redmond letter of consent."  
11:48:24 30

11:48:24 1 And we just flagged that again, because of legal advice, the Tribunal --  
2 Mr. Redmond didn't want to stand in the way of the Tribunal and it's  
3 investigations, but he wanted orders to be made. He didn't want to be seen to  
4 consent to matters which would deprive him, because of the case law, of an  
11:48:50 5 opportunity to raise the issue of prejudice in another context, in another  
6 place, and in fact there was very severe prejudice as a result I would say, of  
7 airing those documents ultimately.  
8  
9 He didn't do that. If I could just, if you bear with me for a moment --  
11:49:20 10 ultimately the statements which he had made to the Gardai, the Tribunal wanted  
11 to see the statements and the position that was adopted by me on the  
12 instructions of my client was, "just make an order Mr. Chairman, I am here,  
13 make an order." He was a Sole Member at the time, providing I have an order you  
14 can have the statements and an order was made in the morning and the statements  
11:49:45 15 were delivered to me at 2pm that day. The Tribunal at another stage wanted to  
16 see Mr. Redmond's telephone records, he signed authorities. The Tribunal  
17 wanted a letter from Mr. Redmond consenting to CAB releasing the original  
18 diary, his 1998 diary which formed such an essential part of the evidence, both  
19 within the Gogarty Module and the speaking statement which I have spoken about  
11:50:17 20 earlier, and he signed such a letter.  
21  
22 So other than, I mean -- to me there is findings, my client doesn't accept them  
23 but there are findings, but the findings of non-cooperation with the Tribunal  
24 or in fact obstruction which is a criminal offence I think, those findings are  
11:50:40 25 contained in paragraph 8 and they are essentially, that Mr. Redmond has told a  
26 story which is different from Mr. Gogarty's story, and the report having  
27 already found if you like, in favour of Mr. Gogarty's version of events, and  
28 also found which I think was clear, that look this couldn't be just a lapse of  
29 memory somebody is telling a lie here and then went on to conclude that it was  
11:51:12 30 Mr. Redmond who was telling the lie and that essentially is the core of the

11:51:16 1 findings of obstruction, so it's the other side of the coin of the findings of  
2 corruption, which incidentally Mr. Chairman when I was looking at The amended  
3 Terms of Reference last night, I just noted and I mean, I just say it for the  
4 record, that the terms A1 to 4 are about the Gogarty letter and the lands and  
11:51:47 5 who owned the lands and whether money was paid. And I think it was  
6 acknowledged early on in the Tribunal hearings insofar as there is any  
7 investigations of Mr. Redmond, it was under A5 because -- anyway for various  
8 reasons, I think it had been submitted and it was accepted by the Supreme Court  
9 early on which I will return to incidentally.

11:52:13 10  
11 CHAIRMAN: But -- Mr. Harris they are, issues arising from the Terms of  
12 Reference as I understand the context in which you now raise them, are  
13 effectively challenging the validity of the orders or of the findings.  
14

11:52:33 15 MR. HARRIS: If I can just say what I was going to say --  
16

17 CHAIRMAN: I have to operate on the basis that the findings were properly made  
18 an the Terms of Reference were --  
19

11:52:44 20 MR. HARRIS: I just want to say that paragraph A5 says, "if in the course of  
21 the inquiries is made aware of acts associated with the planning process which  
22 may in it's opinion amount to corruption and there was no requirement under the  
23 section to find that they were actually corruption", so -- I will just point  
24 that out.

11:53:06 25  
26 So I suppose, what I say is I have outlined what I say was really  
27 Mr. Gogarty's, sorry -- Mr. Redmond's extensive behind the scenes discussions,  
28 cooperations, how he didn't oppose orders that he could have opposed, how he  
29 consented to CAB giving over the documents, how he signed authorities for  
11:53:31 30 various banks, obviating orders for discovery and in some cases helping the

11:53:37 1 Tribunal which they couldn't have made an enforceable order for discovery and  
2 also identifying his accounts. I say these are all examples of his cooperation  
3 with the Tribunal.  
4

11:53:47 5 If you go back Mr. Chairman, to January 1999 before Mr. Gogarty had given  
6 evidence, the Sole Member at the time was complaining that certain parties  
7 hadn't put in a narrative statement, I know the Murphy group and the Baileys  
8 and some other persons, but excluded from that list was Mr. Redmond, who put in  
9 a detailed statement. He put in another statement later on, about money which  
11:54:17 10 has been rejected by the way, by the Tribunal, and he then made other various  
11 handwritten statements which have never come out. He was asked to deal with  
12 specific things by Counsel to the Tribunal and he did submit several statements  
13 and they may arise in the future.  
14

11:54:35 15 I should really say that he does have a difficulty with the fact, he had a  
16 particular -- he is a very strong concern himself that it was found that he  
17 cost the council 120 or whatever, 120,000 or that the Tribunal was satisfied of  
18 that. He had specifically asked from the very first time he came to this  
19 Tribunal with counsel on the 4th November 1998, he wanted access to council  
11:55:06 20 documents and he did get the Tribunal -- the Tribunal did try, but there were  
21 certain documents which he never got. He wanted John Prendergast who was the  
22 Planning Manager to come and give evidence in relation to certain matters,  
23 there was plenty of correspondence about that. When I was asked to make  
24 submissions on the evidence I wrote to the Tribunal and I said "well hold on a  
11:55:25 25 minute, you know, what about Mr. Prendergast and what about the documents", in  
26 the submissions, the 42 pages of submissions which I submitted I had also  
27 prefaced it by where is Mr. Prendergast.  
28

29 Can I say that the submissions have lot of turgid stuff about planning and what  
11:55:48 30 the law is, because I was being asked to make them and Mr. Prendergast hadn't

11:55:52 1 come yet to give evidence. Prior to that, Mr. Gallagher had said that there  
2 would be a Redmond module and both in my written submissions and at my letter  
3 and at my oral submissions I said "look I am making the submissions, but we'll  
4 hear Mr, we'll hear Mr. Prendergast as part of the Gogarty Module", at that  
11:56:14 5 time Mr. Chairman there had been an interim report, there was no second third  
6 or fourth interim report at the time. We didn't know that there was to be  
7 one -- yes I understand.

8  
9 CHAIRMAN: Again Mr. Harris that's more a criticism, which of course you are  
11:56:29 10 entitled to make, but it's not a matter which I can take into account, any  
11 criticism of the procedures. I again have to proceed under the assumption that  
12 the procedures were correct.

13  
14 MR. HARRIS: Okay that's fine, as long as we are clear that that is the  
11:56:46 15 presumption and that I have raised the issue.

16  
17 Look finally I see there are other matters that you will take into  
18 consideration, in relation to, in concerning an application and one of them I  
19 see is the personal circumstances of the applicant, including his financial  
11:57:04 20 status.

21  
22 Now, Mr. Redmond as you know Mr. Chairman is 80 years of age, he is in his 81st  
23 year. I think it's fair to say that he has paid a higher price as a result of  
24 his dealings with this Tribunal, than anybody. He didn't have -- well I  
11:57:22 25 mean -- compared to some of the people who have appeared before the Tribunal,  
26 his financial resources at the time were reasonably limited, now they were  
27 taken in paying legal fees, paying tax, he had to sell his house, and as you  
28 know he spent 8 months in prison for a crime which was ultimately held -- I  
29 mean, he was, his appeal was allowed by the Court of Criminal Appeal not on  
11:57:57 30 some technicality but on the basis of you know, additional evidence that had

11:58:01 1           been received.  
2  
3           His health hasn't been good, for an 80 year old man I am not saying that he is  
4           weak or feeble, but his health has deteriorated considerably. He has paid a  
11:58:12 5           significant amount of fees which he has financed from borrowings. In respect  
6           of other matters, other than proceedings before this Tribunal, he had counsel  
7           engaged in the early days, it became apparent though that, you know, the matter  
8           wasn't going to finish in the 10 months that Mr. Justice Flood thought it would  
9           finish in and realistically Mr. Redmond wasn't able to continue with Counsel,  
11:58:45 10          so from, for the vast majority of the Tribunal hearings it was only myself, his  
11          solicitor who was appearing for him. And also I think, if you check with  
12          Mr. Kavanagh your registrar, I didn't appear on days when I wasn't needed, like  
13          the thing wasn't -- the boat wasn't getting pushed out in relation to that.  
14  
11:59:06 15          He did pay his counsel for their, their involvement at the beginning. He paid  
16          a very modest retainer to his solicitor and I would say a monthly retainer  
17          which would compare modestly with some of the daily retainers of some of the  
18          other people who have appeared before the Tribunal.  
19  
11:59:40 20          He has no chance of being able to pay the costs that would arise because of the  
21          length of his involvement with it and the complexity of the matter and the  
22          amount of documentation that emanated was just extraordinary. So I am going to  
23          ask you to take those into consideration.  
24  
12:00:01 25          I don't know whether Mr. O'Neill is making the case that insofar as the  
26          findings of, not non-cooperation, but actually of obstruction are concerned,  
27          that they elongated the proceedings of the Tribunal in anyway, or caused him to  
28          incur costs himself, which he wouldn't otherwise have incurred, but I suggest  
29          Mr. Chairman is that, had Mr. Redmond come here as essentially an accused  
12:00:30 30          person, I know we have been told on many occasions that nobody is accused, but

12:00:34 1 there were certainly allegations against him, and in the initial correspondence  
2 from the Tribunal on the 20th of October 1998, because of those he was granted  
3 limited representation. And a person in that position could well have  
4 justified being here with a solicitor and Senior and Junior Counsel, some of  
12:00:52 5 the parties had several Senior Counsel. And indeed I think at the beginning  
6 the former Chairman had said that he would certify for one senior and one  
7 junior, not in relation to Mr. Redmond but in relation to all the parties.

8  
9 So, whilst the fees would be very great for Mr. Redmond on the other hand  
12:01:17 10 compared to some of the other fees, I don't think that they would match up to  
11 those. He didn't have any other professional advice, other really than his  
12 solicitor.

13  
14 I should say Mr. Chairman, that I think you have ruled that you can allow costs  
12:01:40 15 in whole or in part. Now, how you would propose to apply such a mechanism is a  
16 bit unclear to me. Would you say look whatever the costs are I will give 50  
17 percent of those or 20 percent of those or I will give this figure? I really  
18 think that the procedure needs to be looked at, because part of the cost that  
19 Mr. Redmond incurred were, dealing with orders of the Tribunal. For instance,  
12:02:08 20 when we all thought that the Tribunal was permitted to make an order for him to  
21 come and talk to Mr. O'Neill and Mr. Hanratty, he came along with me, he  
22 probably couldn't have justified bringing a Senior and Junior Counsel, but in  
23 any event, he took an appropriate level of representation I would suggest,  
24 maybe even less than appropriate, for what was going on at the time. So when  
12:02:32 25 he chooses to engage representation, which is appropriate in complying with  
26 orders of the Tribunal, which in some cases have lead to people being put in  
27 jail for failure to comply with them, it is my submission that the Tribunal  
28 should of necessity, grant orders for costs, whatever the findings are. And  
29 that if the Tribunal is to go through a process whereby, it would consider  
12:03:01 30 granting Mr. Redmond part of his costs that it would be appropriate to say "I

12:03:06 1 grant costs of doing X, Y, Z" as opposed to - I think certainly when he was  
2 here in the witness box under subpoena, I have many correspondence from the  
3 Tribunal have Mr. Redmond on stand by, he was always here when he was needed he  
4 didn't go playing golf or anything like that on days when he was subpoenaed.

12:03:27 5  
6 So, I am just not quite sure how you would do that.

7  
8 I suppose finally I will come back again to the fact that, in the report itself  
9 many of the chapters, chapter 6, the claimed payment to Mr. Redmond by  
12:03:48 10 Mr. Bailey, I accept that, that he is telling the truth and some of the  
11 chapters also chapter 3 as I have said, the financial history, Mr. Redmond, the  
12 Tribunal wouldn't have been able to put some of that financial history together  
13 without his cooperation. In particular in relation to the Isle of Man  
14 accounts, and he certainly saved them a lot of trouble in making orders for  
12:04:12 15 discovery when he consented to his banks handing over documentation and then he  
16 consented to his documents which had been seized by CAB going to the Tribunal,  
17 his statements going to the Tribunal, and then Mr. O'Neill in May 2000 brought  
18 him through a lot of those and it seemed to me that his evidence, to a large  
19 extent, has been accepted by the Tribunal, although that may remain to be seen.

12:04:35 20  
21 So I say that even within the report itself, it can be seen that some of the  
22 times his evidence has been accepted by the Tribunal and really the only time  
23 it hasn't been is when it contradicted Mr. Gogarty's evidence.

12:04:48 25 CHAIRMAN: All right. Thank you Mr. Harris.

26  
27 Do you wish to say anything?

28  
29 MR. O'NEILL: No sir.

12:04:54 30

12:04:54 1 CHAIRMAN: All right as in Mr. Egan's case Mr. Harris, I have endeavour to  
2 give the ruling sometime in October, you will be informed by the Tribunal's  
3 solicitor.

12:05:06 5 MR. HARRIS: Thank you Chairman.

6

7

CHAIRMAN: All right. Thank you very much.

8

9

**THE TRIBUNAL THEN ADJOURNED TO MONDAY 11TH OCTOBER 2004**

12:05:34 10

**AT 10.30 AM.**

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