

The Minister for the Environment and Local Government appointed Mr. Justice Flood, a Judge of the High Court, by instrument dated the 4th November, 1997 as the sole member of the Tribunal.

The Tribunal then took steps to engage a legal team with the appropriate specialist expertise for the work of this Tribunal. The Chief State Solicitor, Mr. Michael A. Buckley, made a member of his staff available to act as a Solicitor to the Tribunal. The Chief Registrar of the High Court, Mr. John Delahunty, made an experienced member of his staff available to act as Registrar to the tribunal. Ms. Mary Moylan, principal officer of the Planning and Land Section of the Department of the Environment and Local Government made an administrative team under the management of Mr. John Kiernan available to the Tribunal. The work load of the Tribunal was such that the Tribunal required the assistance of a second experienced solicitor. Due to staff shortages the Chief State Solicitor was not in a position to provide a further experienced Solicitor. Consequently it was necessary for the Tribunal to find an experienced Solicitor, willing to work on a contract basis from the private sector.

The Tribunal was assigned premises at the Clock Tower Building, Dublin Castle. The Tribunal has been greatly assisted in the establishment of its offices by the General Manager of Dublin Castle, Mr. David L. Byers.

The Tribunal commenced its work on the 11th day of December 1997, the terms of appointment of the Tribunal legal team having been agreed on the 9th day of December 1997.

The Tribunal has sat in public on two occasions. The first sitting took place on the 14th January, 1998. The second sitting took place on the 2nd February, 1998. The first sitting was a publicly advertised sitting to hear applications from interested persons for legal representation. The second sitting was to publicly announce the decisions of the Tribunal in respect of various applications for representation.

At the first public sitting on the 14th of January, 1998, certain guidelines were issued for the benefit of parties interested in the work of the Tribunal. These are set out in Appendix 2.

Representation has been granted to 22 parties. There is common representation for associated or related companies and the number of "interests" represented, taking common representation into account, is 9. A number of applications for representation have been refused.

It is anticipated that other parties may apply for representation either before or at the commencement of the public hearings.

All parties who have been given representation have been given limited representation. No party has been given full representation.

HEARINGS

In accordance with paragraph B (i) of the Terms of Reference, the Tribunal has been carrying out preliminary investigations in private for the purpose of determining whether sufficient evidence exists in relation to the matters referred to in the Terms of Reference. These investigations are continuing. However, it is already clear, from these preliminary investigations in respect of a number of matters, that there is sufficient evidence to warrant proceeding to a full public inquiry and, consequently, the Tribunal will so proceed.

Having regard to the Terms of Reference, the necessity for the Tribunal to assemble information which may lead to evidence and having regard to the confidential nature of the information it is receiving and to the fact that portion of that information may transpire not to be relevant to the

inquiry, the Tribunal formed the opinion that it is in the public interest, expedient that the investigating and evidence gathering stage of the inquiry be conducted in private.

The Tribunal will therefore, for the time being, continue its work (including the preliminary investigations referred to above) in private until the Tribunal is ready to proceed to a public hearing. The Tribunal indicated at its public sitting on the 14th day of January 1998 the manner in which it would treat the confidential nature of any commercial or personal information that came into the possession of the Tribunal. These are contained in the guidelines in Appendix 2.

Due to the confidential nature of the material in its possession, the fact that inquiries are not yet complete and the requirements of natural justice, it is not possible for the Tribunal, at this stage, to disclose specific details of the matters being inquired into and the Tribunal begs the indulgence of the members of the Oireachtas in this regard.

The Tribunal has made substantial progress in relation to the matters referred to at paragraphs A.1, A.2 and A.3 of the Terms of Reference. In addition, the matters referred to at paragraph A.4 and a number of matters of which the Tribunal has become aware, as envisaged by paragraph A.5 are under active investigation. The Tribunal intends to conduct as thorough an investigation as possible before holding public hearings.

The Tribunal confirms that it is proceeding to inquire into the matter referred to in clause B (ii) of the Terms of Reference in the manner therein directed.

As directed by clause B (iii) of the Terms of Reference, the Tribunal has sought discovery of all relevant documents, files and papers in the possession, power or procurement of Mr. Michael Bailey, Mr. James Gogarty and Donnelly Neary and Donnelly, Solicitors. The relevant files and documents have been received by the Tribunal from Mr. James Gogarty and Donnelly, Neary and Donnelly, Solicitors. The discovery and documentation from Mr. Michael Bailey is awaited by the Tribunal.

The Tribunal has also sought discovery and production of documents from a substantial number of other parties who are believed to be in possession of relevant documentation.

The legal validity of the orders made by the Tribunal against two of the interests represented before the Tribunal have been challenged in correspondence. The Tribunal is satisfied that there is no valid basis for such a challenge and is insisting on compliance with its orders.

The Tribunal published its Terms of Reference together with notice of a public sitting in 69 newspapers.

The Terms of Reference together with the notices appeared once in each newspaper over a period from the 15th of December 1997 to the 21st of December 1997. The same format of notice was used in each newspaper.

A copy of the Terms of Reference together with the notice published by the Tribunal is set out at Appendix 1 of this Interim Report.

The Tribunal invited members of the public to provide, in confidence, to the Tribunal any information in their possession which they considered relevant to the Terms of Reference of the Tribunal. The public request for information was contained in the notices published in the local and national newspapers.

The Tribunal at its public sittings repeated this request for information. A considerable volume of such information has been received.

The Tribunal is at present considering the information furnished with a view to deciding whether the matters identified are within the Terms of Reference to the Tribunal.

Opening address

I draw the attention of parties interested in the business of the Tribunal to the fact that the nature of the Tribunal is primarily an inquisitorial rather than an adversarial one. Consequently the evidence before the Tribunal will be led by Counsel on behalf of the Tribunal.

Any person whose interests are, in the opinion of the Tribunal, likely to be affected will be allowed such representation as is necessary to protect those interests and such parties will be allowed to cross examine relevant witnesses.

All proceedings before the Tribunal will be conducted in a manner so as to ensure compliance with the requirements of natural justice

In the first instance it is necessary for the Tribunal to carry out a considerable amount of investigative work. The Tribunal has been engaged in this work since shortly before Christmas. In the course of this work a large volume of material falls to be considered. The Tribunal has already received material from a number of sources and will be in contact with persons and companies who may have relevant documentation and information.

The members of the Tribunal legal team will be available to provide assistance to any party seeking to make statements or to forward documents to the Tribunal

The Tribunal earnestly hopes that all persons who have an interest in the business of the inquiry will co-operate fully in the provision of information and documentation to enable the inquiry to be brought to an expeditious and successful conclusion.

I fully appreciate concerns which persons wishing to assist the Tribunal may have in relation to the issues of personal and commercial confidentiality. In order to protect these legitimate concerns I propose to adopt the following protocol in regard to documents:-

All original documents will be returned to their owners after the Tribunal has concluded its work.

All copies of documents with confidential, commercially sensitive or personal information will be destroyed after the conclusion of the inquiry.

All documents will be stored in a secure location.

Confidential information not relevant to the inquiry will not be disclosed to any outside party. The only parties who will have access to such documents will be the Chairman and the legal team to the Tribunal.

Documents, which contain both confidential, personal or commercially sensitive information not relevant to the inquiry, and other information, which is relevant, will have the irrelevant information blanked out.

Counsel for the Tribunal will be willing at all times to discuss any concerns any person may have

concerning confidential, personal or commercially sensitive information.

With regard to the question of public hearings it should be noted that under its terms of reference the Tribunal is obliged in the first instance to carry out such preliminary investigations in private as are necessary to determine whether sufficient evidence exists in relation to any of the terms of reference to warrant proceeding to a full public enquiry. These preliminary investigations are already in hand and I hope to be in a position to make this determination before my interim report to the Dail in February. The fact that representation may be granted to any person or company should not be taken as implying that the Tribunal has made any finding that there is sufficient evidence to warrant proceeding to a full public inquiry.

Any person who may be in a position to assist this preliminary investigation in private should come forward at the earliest opportunity. The telephone and FAX numbers of the Tribunal, which are posted on a noticeboard in the lobby, are Telephone 4785633 and FAX 4785584.

It is not possible until the preliminary private investigation is completed to make an informed assessment as to when the public hearings, if any, will commence, if I conclude that such hearings are warranted. I can say however that if it is decided to have public hearings I intend to follow the excellent example of the Finlay and McCracken Tribunals which demonstrated that time spent on investigation can pay considerable dividends in terms of keeping the amount of expensive hearing days to a minimum consistent with the Tribunal fully discharging its terms of reference.

On the question of representation it should be noted that any decisions taken as a result of applications made to-day are not in any sense final. Any party who may not be given representation at this time may renew their application later if it subsequently becomes apparent that such representation is warranted.

For the purpose of any particular application for representation I may require a party to make submissions in writing as to the basis upon which the application for representation is made and reserve my decision on the application until the submissions have been considered.

Parties who are granted representation should note that the granting of representation is not a guarantee that such party will be awarded costs at the conclusion of the inquiry.

Without fettering my discretion in any way, I would indicate that, in general, where any person or body, whether represented before the Tribunal or not has realistically and reasonably incurred any legal expense in fully and promptly assisting the Tribunal in its work, I would be favourably disposed to providing for indemnity in respect of such expense.

Justice Feargus Flood