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Into the Infection with HIV and Hepatitis C of Persons with Haemophilia and Related Matters)

PROCEEDINGS: WEDNESDAY 20th SEPTEMBER, 2000 – DAY 41

Mr. Gerry Durcan for the Tribunal examined Mr. John McStay.

Mr McStay, an accountant and insolvency practitioner compiled a report on the finances of the BTSB between the years of 1971 and 1990. Mr. McStay was commissioned by McCann Fitzgerald Solicitors for the BTSB to comment on the organisation's financial affairs with respect to the Terms of Reference of the Tribunal. Mr. McStay said that his report was one of fact and not of opinion. He relied on the information he was given and based his report on the annual audited accounts for the period in question.

He said the accounts for the periods 1974 and 1976 were not available.

Mr. McStay said he also consulted the minutes of BTSB Board meetings and Finance Committee minutes, this information formed the basis of his report. Mr. McStay said that while no restrictions were put on his access to staff of the BTSB, he did not seek such access.

Mr McStay said he met Mr. Keating of the BTSB and Mr. Keyes. Mr. McStay said that while he attempted to accumulate the basic data of what was going on at any particular time this was not always apparent from the documentation.

Mr. McStay said that based on the evidence and discussions available to him his report was a reasonable chronology of what had gone on at the time and he believed the figures contained in the report to be reasonably accurate.

In analysing the annual accounts, Mr. Durcan, for the Tribunal, noted under services rendered, a section recording the income from blood fractions. Mr. McStay said the items contained within the category, blood fractions, may have changed over time. Mr. McStay said that his interpretation of blood fractions was that it consisted of blood parts; blood derivatives on the other hand were products, which were manufactured from blood. Mr. McStay said he did not know whether Cryoprecipitate could be characterised as a blood derivative or blood fraction.

Mr McStay's picture of the BTSB's finances during the early 1970s was one of initial equilibrium where the BTSB returned a small surplus each year. By the end of the 1970s the surplus was declining and by 1979 the BTSB was returning a 10 per cent deficit on its operating results as the percentage of services rendered. The deterioration in the BTSB's financial position coincided with its decision to move from its premises in Leeson Street to a new premises at Mespil Road. Mr. McStay explained that as the BTSB's organisation grew, its funding requirement also grew, however it was not raising a sufficient surplus to cover the extra financial requirements of this growth.

To remain within its agreed overdraft with the bank the BTSB would write cheques to its creditors but would not issue them. Therefore while there was never enough money to cover its activities at this time it need not exceed its overdraft. Mr. Durcan put it to Mr. McStay that the BTSB in engaging in such a practice was storing up trouble for itself. Mr. McStay agreed that this was the case, he also agreed that he would have seen this practice in companies to which he was appointed liquidator.

The move in 1978 to Mespil Road represented a major capital expenditure for the BTSB. However the BTSB did not have a capital budget from which to finance the capital expenditure program. Difficulties arose for the BTSB when it was faced with the cost of running two buildings from its own resources. In addition to the Mespil Road costs, wages costs were rising and represented up to 60 per cent of the BTSB's operating costs at this time. The BTSB was therefore not trading profitably and would have been in trouble even without the Mespil Road project.

To fund its move to Mespil Road the BTSB obtained a £650,000 bridging loan from the Bank of Ireland. The BTSB's plan was to use the bridging loan to cover the period of time needed to prepare the Mespil Road premises. It would then sell its Leeson Street premises and refund the bridging loan from the proceeds of the sale of Leeson Street, said Mr McStay. The Mespil Road project was anticipated to cost £350,000, in fact more than £750,000 was spent on the move. The project was protracted by delayed moving plans, deficiencies within the building and contractual delays.

During this time the BTSB was paying for two buildings and to the cost of financing its planned move. Mr. Durcan put it to Mr. McStay the BTSB was therefore a non profitable company with a low surplus, which continued to involve itself in a large capital expenditure program, Mr McStay agreed this was the case.

Mr. Durcan put it to Mr. McStay that until the BTSB received Government grants in 1982, that the years 1978, 1980 and 1981 the financial position was pretty disastrous. Mr. McStay agreed with this proposition. Mr. Durcan asked Mr. McStay if it was the case that during this time that the BTSB remained solvent at all times. Mr McStay said that within the text book definition of solvency, being that a company is able to pay its debts without recourse to further borrowing an example taken from the Creation Group case, he said it was not the case that the BTSB remained solvent.

Mr McStay agreed with Mr Durcan's proposition that during this period the BTSB was in fact insolvent. With respect to its disastrous financial position Mr. Durcan asked Mr. McStay to look at the figures for 1976 contained in his report whereby blood derivatives constituted 10.6 per cent of turnover he asked him to compare this to the figures for 1980 when blood derivatives constituted 16.3 per cent of turnover. Mr. McStay agreed that blood derivatives over time constituted a bigger element of the BTSB's turnover. In this respect the blood derivatives element of the business was becoming more important? Mr. McStay agreed that this was the case. During this time these products were generating a profit. Mr. McStay agreed that a profit was particularly important at this time. Mr. McStay said in reviewing this period, that in 1977 an emphasis on organisation was apparent in a budget prepared for each BTSB department. Mr. McStay said that this would point to a greater emphasis being placed on financial control.

Mr. Durcan said that one of the things that must follow from that basic picture is that the BTSB and each department in it would have had a clearer view of the elements, which were bringing in money as opposed to the elements, which were not?

In 1981 the BTSB had a deficit of £1.2 million, at the end of 1982 the deficit was £98,000. The recovery had been effected by a number of grants from the State and an increase in the price of blood had been granted by the Department of Health. Further, the BTSB was no longer running two buildings in that it had moved into its new premises on Mespil Road.

Mr. McStay said that fundamental to the BTSB's fortunes was the price of blood. If the Department refused to allow an increase in the price of blood it was bad news for the BTSB. By 1982 the BTSB had become dependent on grant aid. The BTSB received a total grant aid of £1.65 million in 1982; £700,000 of which was paid early in the year with £900,000 paid in the latter part.

With respect to an the increase in the price of blood, Mr. McStay said that in the November 1980 whole blood cost £20.00 per unit, in January 1983 the price was £38.50 which was almost 100 per cent of an increase in the price in the period of three years. Mr Durcan put it to Mr. McStay that given the financial situation the BTSB found itself in there was very little money available for other investment and money would be spent only when it was absolutely necessary, Mr. McStay agreed with this proposition.

With regard to contract fractionation, Mr. McStay said that deal with Travenol produced a double benefit for the BTSB the organisation was paid for plasma by Travenol and was getting back factor VII for nothing. Which in turn the BTSB was able to sell. Mr. McStay said that this was an attractive financial proposition for the BTSB provided the harvesting and preparing the plasma was in line with their expectations.

Mr. McStay said that it seemed to him from his reading of the documents that for a period of time leading up to about 1984 self–sufficiency meant the BTSB doing everything itself. There were a number of reports to Board meetings and scientific meetings talking about trials and about the intentions of the BTSB itself to produce the necessary product. Mr. McStay said that this continued to be the case up until July of 1984 when a decision was taken in principal to adopt the idea of contract fractionation. It would therefore appear that up the end of 1983 the BTSB appeared to be planning to produce its own factor VII. Thereafter the BTSB engaged and prepared for a program of contract fractionation. Mr. McStay said that the decision was taken in July 1984 to achieve self-efficiency through contract fractionation.

Mr. McStay said that virtually every single document he looked at from the middle of 1984 to 1985 was respect to contract fractionation continuously discusses only the cost of this program. Mr. McStay said that the cost of the program was under discussion rather than financial benefits, which would be derived by the BTSB.

With the advent of custom fractionation and the return of finished Factor VII from Travenol in 1986 blood derivatives constituted just over 20 per cent of BTSB turnover.

Mr. McStay agreed that custom fractionation represented an important element of the BTSB's business. However while the advantages of custom fractionation appeared to be clear what was less apparent was the cost involved. Mr. Durcan put it to Mr. McStay that there was a surplus generated by the custom fractionation arrangement and the resulting financial advantage helped to keep the place running. Mr. McStay said that at face value a positive benefit accrued to the whole organisation from the custom fractionation arrangements.

Mr. McStay said, given that the Travenol contract returned Factor VIII free of charge, it would appear that the Travenol contract was a more attractive proposition to the BTSB than the subsequent Armour contract.

Referring to Mr. McStay's report in the period 1986 to 1990 Mr. Durcan pointed to comments from Mr. Keyes quoted in the report. The report noted that Mr Keyes observed …"Finance is the Board's biggest problem, particularly its cash flow, the problem goes back over years and relates to the way the BTSB was originally financially structured. No provisions were made for working capital and since its rents are at least 60 days in arrears of payment it has had to rely on the bank overdrafts for day to day finance. This position has been exacerbated by substantial capital expenditure over the past seven years and the position now is that it is a major source of embarrassment."

Mr. McStay said that he agreed with Mr. Keyes' views with respect to finance being Board's biggest problem. Mr. McStay said focusing on finance as an accountant this was indeed the Board's biggest problem; he also identified cash flow as a major problem for the BTSB. Mr. McStay said that the BTSB was established such that it was supposed to generate a small profit and then could then invest this capital requirements, but this was not happening. Mr. McStay said with reference to the Board's statutory instrument there was no provision made for capital funding.

Mr. Durcan referred Mr. McStay to a letter from Mr. Meagher chairman of the BTSB dated the 18th March 1982. Mr. Meagher's letter is to the Secretary of the Department of Health. The letter informs the Secretary that the restriction of the recent price increase to 17 per cent, with effect from the 1st March 1982, will result in the BTSB having a deficit approaching £500,000 in 1982 which coupled with an actual aggregated deficit from 1980 and 1981 indicate the necessity for a substantial grant in order to maintain the organisation as a financially viable service. The urgency of the situation is reflected in the bank's recent attitude as indicated by an unwillingness to honour BTSB selected cheques notably those issued to the Revenue Commissioners and other Government organisations. Currently the bank is offering temporary accommodation on a month to month basis of up to £400,000 until the end of April 1982 within which figures the BTSB is currently operating by the deferring payment to selected creditors. In the view of the foregoing financial situation the Board has requested Mr Meagher to write seeking agreement to receive a Board deputation consisting of the chairman and various others from the BTSB. It would therefore appear that during this period the BTSB cheques written to discharge Revenue debts were being returned by the bank.

PROCEEDINGS: THURSDAY 21st SEPTEMBER, 2000 – DAY 42

Mr. Gerry Durcan S.C., for the Tribunal, continued his examination of Mr. John McStay, who gave evidence on behalf of the BTSB in respect of the organisation's finances.

In relation to an issue which arose on the previous day, concerning forward financing arrangements of the BTSB, by Health Boards or hospitals, Mr. McStay said that this practice occurred during several instances of financial difficulty experienced by the BTSB. Mr. McStay said that during 1983 and 1984 the BTSB was in reasonable shape financially. To support this argument Mr. McStay pointed to a document in which Mr. Ryan, the BTSB's financial controller, noted in July of 1984 that: "All cheques are being released on due date."

Mr. McStay said that there were no forward financing arrangements during the years 1983, 1984 or 1985. A document dated the 22nd of July 1991, from Mr. Keyes, indicated that a forward financing arrangement was in place during the years 1989 to 1991. The letter concerned is a reference to terminating this arrangement.

Mr. McStay's position therefore would appear to be that during 1983 and 1984 the BTSB had overcome its financial difficulties.

Mr. Durcan then referred Mr. McStay to a letter dated the 4th of March 1981 from Mr. Cusack, of the Management Services of the FDVH, the letter is addressed to Mr. Hanratty. The letter discusses a report by Mr. Hanratty and Professor Temperley concerning the viability of the BTSB commencing production of a concentrated product to replace that which was presently imported.

Mr. McStay said that while he had seen letters discussing applications for IDA funding, he could not recall any grant application being made in the documents he had examined.

Mr. Durcan put it to Mr. McStay that the letter made it clear that the BTSB was contemplating Factor VIII production, and what he wanted to know was had any step been taken to allow this to happen? Mr. McStay said that he did not recall any mention of financing the project with respect to self-sufficiency, but he would make inquiries concerning the narrative of events as set out by Dr. Lawlor.

Mr. Durcan put it to Mr. McStay would he not agree that given the financial situation of the BTSB in 1981 it was very unlikely that funds would be made available for such a project? Mr McStay agreed that this was likely to be the case.

Mr. Durcan referred Mr. McStay to the BTSB finance committee meeting minutes, contained in volume 55, page 219, of the Tribunal's books. The Budget committee report for 1983 states that new products such as Factor VIII concentrates, while being highly desirable, as import substitutes will not generate a profit in early stages of production.

Mr. Durcan put it to Mr. McStay that the import of what was being said here was that while it may be desirable to engage in the home production of a BTSB Factor VIII concentrate, in the short term such a project would not make a profit.

Mr. McStay said that while this was factually correct, his interpretation of the document was that the BTSB was not saying that these products will not be introduced for financial reasons, but that introducing them now would not solve the problem that the BTSB was then attempting to address.

Mr. Durcan put it to Mr. McStay that the introduction of a BTSB produced Factor VIII concentrate would produce a situation where there would be no profit from the product in contrast to where the BTSB was importing the product and making a profit. Mr. McStay disagreed with this interpretation.

Mr. McStay agreed that the introduction of the Irish product in 1983 would have made the BTSB's financial situation worse rather than better.

Mr. Durcan referred Mr. McStay to a special finance committee meeting of the 16th of February 1983. With regard to blood fractions the meeting noted that whilst it was appreciated that at present it was economically prudent to purchase some blood derivatives abroad, consideration was to be given to more home production by the BTSB. It was indicated that there may be possibilities of IDA subventions to enable home production development at a later stage. Mr. Durcan asked Mr. McStay did that mean in a financial sense it was economically better to continue with a foreign product than to either get or start with a home product in 1983? Mr. McStay agreed that that was what the minute said.

Mr. McStay said that the production of a Factor VIII concentrate by the BTSB was probably far beyond its financial ability. Mr. Durcan put it to Mr. McStay was it not the case that the BTSB had been investigating a production of a form of cryopercipitate or of concentrated Factor VIII for a number of years. This was evident by the discussions surrounding the funding of such projects.

In 1981 it had been seen that the BTSB was engaged in a project to produce its own Factor VIII. In 1983 it was still engaged in this project.

Mr. Durcan said that the bottom line was that in terms of home production the BTSB was looking for subventions in 1981 and were still talking about looking for subventions 1983. Mr. Durcan put it to Mr. McStay that the bottom line was that from an economic point of view it was better for the BTSB to continue to sell foreign Factors, or Factor concentrates rather than get into the business of selling or attempting to sell home-produced concentrates in 1983. Mr. McStay agreed that the minute recorded that it was economically more prudent to take this course of action.

Mr. McStay said that in his own opinion, it was impractical for the BTSB to consider making its own Factor VIII concentrate, and agreed with Mr. Durcan, that economically it was a good idea to continue selling the foreign products.

Mr. Durcan then referred Mr. McStay to the BTSB Board minute of March 20th 1985. This minute sets out a discussion surrounding the start up of custom fractionation and the costing thereof. The minute notes that while the start-up of custom fractionation would result in a loss to the BTSB in the long term, financial advantages would accrue.

With regard to the benefits of custom fractionation, Mr. Durcan referred Mr. McStay to a letter from Imuno dated the 14th of May 1984. The company offers to produce Factor VIII from BTSB plasma and offers £5 per litre for plasma. In addition to purchasing BTSB plasma, Imuno offered to provide free Factor VIII from the plasma.

Mr. Durcan referred Mr. McStay to a letter dated the 24th of February 1986, contained in volume 56 page 271 of the Tribunal's core books. Mr. McStay agreed with Mr. Durcan that under the heading "HTLV-III costing" a total of £80,000 worth of non-heat treated products were to be withheld as a result being produced from non-tested material.

Mr. McStay said that from his understanding, half the stock was held by the BTSB and approximately half the stock was in the hospitals. The BTSB recalled the product, said Mr. McStay, but they did not intend to give the hospitals credit for returned stock. The context of this decision was an attempt to put pressure on the Department to come up with funding to pay the BTSB for the costs it had incurred.

It would therefore appear that as part of the BTSB's plan to recall unscreened Factor IX in early 1986, the BTSB decided it would not credit hospitals with returned stock in order to put pressure on the Department of Health to compensate the BTSB for losses arising from the Department's directive that only screened product be used. Mr. McStay said that the value of the stock was written off in the 1985 account to the value of some £79,000.

Mr. Durcan then referred Mr. McStay to a document entitled "Comments on the draft revenue account for the year ending 31st of December 1985", to be found in volume 56 page 308 of the Tribunal's core documents.

Mr. McStay agreed that this document appeared to be an investigation by Mr. Keyes as to why the 1985 projections had not been achieved. Under the heading Services Rendered the report notes that "Sale of blood derivatives/fractions increased by £179,466 or 17 and a half per cent, derivatives differ from other blood products as they are manufactured or purchased as they are required to meet hospital demands. More purchases equals more sales equals greater profit in general. Mr. Durcan asked Mr. McStay was this the thinking of the BTSB at the time? Mr. McStay agreed that this statement reflected the reality of the blood derivatives market, in that the more blood products that the BTSB sold the more profit it made.

Mr. McStay agreed that over the years in question the BTSB in its role as a wholesale agent for Factor concentrates returned a net profit to the organisation. However, Mr. McStay said that the information did not exist upon which an accurate estimate of the profit could be made. He agreed with Mr. Durcan that fraction buying and selling resulted in a guaranteed profit.

Mr. Durcan asked Mr. McStay that in all the documents he had seen was there anything he had seen, or was there anything to suggest the issue of profit interfered with clinical judgement or a piece of medical advice as to what should be done or what product should be obtained? Mr. McStay said that he did not see any such specific document.

Mr. McStay said that he did not see any document which suggested to him that the BTSB took or decided against any particular course of action for financial reasons. Mr. Durcan asked Mr. McStay would he equally accept that decisions were made in a financial context, and sometimes the financial context was very tight indeed? Mr. McStay said that as an experienced liquidator and receiver, he believed that when an organisation is in financial difficulties it does impact upon the actions of the individuals.

Mr. McStay said that from his examination of the documents, relevant financial information was disseminated, to all the appropriate levels within the organisation and decisions were taken within that context.

Mr. McStay said that from his reading of the documents, the BTSB had over estimated its capacity in contemplating production of its own Factor VIII concentrates.

Mr. Durcan asked Mr. McStay was it the case that there was never any serious investment in the project and in these circumstances the issue of capacity did not arise because no one had ever seriously addressed the issue? Mr. McStay said that in his opinion, the BTSB never had the physical capability to produce such a product. Mr. McStay said that was it not the case that the discussion about putting capital into the project had went on for years? Mr. McStay said that it wasn't a question of capital, it was a question of capacity.

Mr. Durcan then turned to the issue of the BTSB's relationship with Travenol during the late 1970s and the early 1980s, through which it was purchasing Factor concentrates from the company. Mr. McStay agreed that there was a growth in the sales of Factor concentrates. He also agreed that the period 1978 to 1982 represented a financial crisis for the BTSB largely on the back of its move to Mespil Road, in these circumstances cash flow was very important to the BTSB and during this time also the BTSB was withholding payments to a number of its creditors.

Mr. Durcan asked Mr. McStay what type of credit terms were being obtained by the BTSB from Travenol? Mr. McStay said that he did not specifically look at this issue.

Mr. Durcan referred Mr. McStay to a letter from Mr. Ryan of the BTSB to Mr. Boushel of the Department of Health, wherein Mr. Ryan indicates that on the 19th of November

1980, £200,000 is long overdue to Travenol Limited. The fact that £200,000 is outstanding in this matter would suggest very good credit terms being afforded by Travenol to the BTSB, in these circumstances the BTSB was able to avail of Travenol products to assist its cash flow, such products include Factor VIII concentrate. Mr. McStay said that without access to accurate information as to the price being charged by Travenol, it was difficult to try and work out the profit margin. Mr. McStay could not accurately establish a selling price for the product.

Mr. McStay then conducted an accountancy exercise, whereby he estimated the gross profit and the net profit, which could be obtained by the BTSB when it sold Factor VIII. If the selling price were 15 pence per unit, the BTSB's turnover from concentrates would be approximately £360,000 per annum or £30,000 per month which would have approximate about 5 per cent of the BTSB's cash flow in 1982. Using these figures Hemofil would represent a profit of between £9,000 and £72,000 per annum to the BTSB. In pure financial terms.

Mr. McStay was then cross-examined by Mr. Martin Hayden on behalf of the Irish Haemophilia Society.

Mr. Hayden put it to Mr. McStay, that while it was a case that a number of the important persons who took decisions on behalf of the BTSB during the period under investigation were now dead, did Mr. McStay avail of the persons who were still alive and able to give their versions of events to him during the course of his investigation? Mr. McStay said that he did not interview any survivors of the period other than to talk to Mr. Keating about technical aspects of the matters under investigation.

Mr. McStay said that he did not talk to Mr. Keyes. Mr. McStay said that he did not talk to Mr. Keyes because time was against him and he did not wish to influence Mr. Keyes in the preparation of his own evidence.

Mr. McStay said that he relied on the minutes of the Finance Committee and Board meetings, and prepared his report within the constraints contained in the minutes and also prepared his report to a deadline.

Mr. McStay said that the financial aspects of Mr. Trainor's cross-examination of Dr. Lawlor formed part of the basis of his investigation.

Mr. McStay said that there was no specific mention in any of the documents he looked at of money from Hemofil and there was no direct reference to the issue of costs versus safety.

Mr. McStay said that in the documents he examined there was no record of a decision having been made not to take a particular course of action due to financial considerations.

Mr. McStay said that the Finance Committee asked in its deliberations how particular products were going to be paid for. Mr. Hayden asked Mr. McStay had he asked Travenol to provide a price list in order to assist him establish a selling price for Travenol products? Mr. McStay said that he understood that this particular information would not be forthcoming voluntarily and in the circumstances the company had not been asked to provide such a price list, neither was the National Haemophilia Treatment Centre asked for such information.

PROCEEDINGS: FRIDAY 22nd SEPTEMBER, 2000 – DAY 43

Mr Martin Hayden, B.L. continued his cross-examination of Mr John McStay.

Mr. Hayden asked Mr. McStay had he asked Travenol for information regarding the price of its product Hemofil. Mr. McStay said that he had discussed this matter with his solicitors and that the consensus they had reached was that it was unlikely that they would get the information from Travenol voluntarily, and therefore did not ask Travenol for the information. Inquires were also directed to Professor Temperley at the National Haemophilia Treatment Centre.

Mr. Hayden asked Mr. McStay was it not the case that any question on the price of Hemofil could have been resolved by a question to Travenol, but that the assumption was made that Travenol might not give the answer so nobody actually asked. Mr. McStay said that he certainly did not ask them.

Mr. Hayden referred Mr. McStay to the early 1983 period, and to the BTSB's requirement that the organisation live within its means. Mr. McStay said that the general pattern of the Board's finances was that it went through its worse period in 1981 and 1982. Funding came in from the Department in the last three to four months of 1982 and brought borrowings into line. The Board was also permitted to increase its prices and the effects of the price increase were felt a few months later.

Mr. McStay said that in the early part of 1983 the Board was still holding back cheques but as they get to the latter part of 1983 the financial affairs eased. That continued to be the situation to late 1984 at which point the Board ran into some difficulties relating to the heating system of Mespil Road, the refurbishing of Cork and some unanticipated wage increases, which caused the mini crisis.

Mr. Hayden put it Mr. McStay that no cognisance had been taken by the BTSB of having to fund growth in the underlying volume of its activity. Mr. McStay said that he could not recall any document, which interpreted the growing level of activity requiring particular funding each month. Mr. McStay said that the evaluation tended to be an interpretation of the cash requirement of the organisation on an analysis basis rather than a month by month basis. Mr. McStay said that such an evaluation was conducted on an annual basis and also tended to be conducted on an interpretation of the crisis of that time. This was certainly the cause of crisis in the Mespil Road period when the costs of the organisation were growing strongly. Mr. McStay said that the cash crisis of the BTSB did not continue on into 1983 and 1984.

Mr. Hayden asked Mr. McStay that given the best year for the BTSB in his estimation, was 1983, could he explain the correspondence in relation to the Revenue position. Mr. Hayden asked Mr. McStay what was the state of the affairs in March and April 1983 between the BTSB and the Revenue.

Mr Hayden referred Mr McStay to revenue correspondence that indicated the BTSB had failed to make PAYE and PRSI returns for the months of November and December of 1981 and January, February and March of 1982. Mr McStay said by way of explanation that when a company is in financial difficulties, the person who shouts the loudest is paid, and the Revenue Commissioners at this time would not be an aggressive pursuer of debts and therefore did not get paid. It would therefore appear that between November 1981 and April 1982 the BTSB failed to make PAYE and PRSI returns to the Revenue Commissioners.

Mr. Hayden then referred Mr. McStay to the 1982 accounts compiled by the BTSB's auditors, Coopers and Lybrand. The 1982 accounts note that the 1981 account remains unsigned until the 11th of October 1982. The accounts were accompanied by a letter requesting the Department to underwrite the Board for the remainder of 1982.

Mr. Hayden then referred Mr. McStay to a communications between the BTSB and the Revenue Commissioners dated the 13th of May 1983. The letter from the BTSB to the Revenue Commissioners is a response to a summary summons issued on behalf of the Revenue Commissioners in respect of a written undertaking from the BTSB to the Revenue to discharge the amounts due by making double payments. A total of £246,000 is outstanding. The letter was written in May 1983.

Mr. Hayden put it to Mr. McStay that if this was the best period for BTSB was it not unusual that the Revenue was suing the company for a Revenue debt. Mr. Hayden asked was it usually an indication of corporate well-being to be sued by the Revenue Commissioners. Mr. McStay said that the letter had to be seen in the context of the grants received from the Government in late 1982 and the sale price increase in August 1982 which started to create a beneficial cash effect for the BTSB in and around November 1982. A further price increase in January 1983 improved the Boards financial position.

Mr. McStay said that by the early part of 1983, while everything was not rosy, the financial problems that were being experienced were the rump end of the problems of 1982. By the time the Board got into 1984 financial benefits of the improvements were available to the BTSB and cheques were not being held back.

Mr. McStay maintained that in 1983 the directors were entitled to look forward to a period of relative financial security and were entitled to conclude that they could trade their way out of difficulties at this time.

Mr. McStay said that it was his understanding that at the Board meeting in March 1983 a reference was made to an arrangement being in place with the Revenue Commissioners whereby two payments were being made for every payment due. Mr. Hayden said it would appear that on the 13th May the Revenue has sued so therefore whatever the Board thought might have been its position or whatever agreement it thought it had entered into the Revenue didn't seem to think there was one otherwise it wouldn't have issued proceedings. Mr. McStay said that he thought this was a fair comment.