

5. THE COMMISSION'S APPROACH

- 5.1 We considered it necessary for us to understand fully the context of our terms of reference in respect of the allegations made, and the legislation, policy, systems, customs and circumstances within which the relevant events had occurred.
- 5.2 Accordingly the first part of our hearings was designed to inform us as to the matters identified in paragraph 5.1 above. We heard evidence on these matters during six days. This part of the Inquiry, which started on the 23rd May 2002 and finished on the 31st May 2002 was highly beneficial and informative for us. We heard clear and full explanations as to the nature of the allegations by the proposer and seconder of the Tynwald resolutions of 19th February 2002; we also received a great deal of assistance from high ranking civil servants and from those not yet of such high rank which did enable us to understand the context and background. This assistance continued through the Inquiry, by the continuing provision of information, as appropriate, required or requested. The input from several politicians gave us valuable insight as to the political ethos and practices prevailing in the early 1990s and through until today. We are grateful to all those who helped us in this way. It enabled us to be fully informed about the background and systems against which relevant events took place.
- 5.3 The second part of the Inquiry was to investigate the substantive matters constituting our remit, having benefited from the information received during the first part of the Inquiry. For this part of the Inquiry we engaged an advocate, who was assisted by a solicitor's representative, in order to continue the expeditious hearing of evidence. This part of the Inquiry commenced on the 1st July 2002. It had been hoped substantially to conclude this second part of the Inquiry at about the end of July with a few days evidence to be heard after a break during most of August. However this did not happen because of court proceedings.
- 5.4 The court proceedings in question arose following the Commission's finding from government files that planning and related decisions in the planning and development history of Mount Murray were fundamentally linked to the development of amendments to tax legislation dealing with tourism tax reliefs. The Commission therefore sought further oral and documentary evidence on this issue in order to obtain a full and proper understanding of events in relation to it and thereafter to report as appropriate. Companies concerned with the development and ownership of Mount Murray objected to our consideration of such evidence on the grounds that this was not within our remit and was also subject to statutory restriction. They issued court proceedings. The proceedings partly succeeded in the initial court hearing, in relation to statutory restriction, but this was not upheld in the higher courts as shown below.
- 5.5 The Isle of Man appeal court found that these matters were within our remit and were not subject to statutory restriction. The appeal court expressly accepted the reasoning which had been put to the court in the following terms. "To examine and report on the irregularities identified in the Crow report and the Government's handling of them necessarily involves, in the view of the Commission, an examination and understanding of the circumstances surrounding and leading up to the irregularities, and why they came about. Any examination of the Government's handling of them cannot conceivably be achieved without such an understanding. It is clear to the Commission that those circumstances have included and involved negotiations to achieve taxation benefits based on presumed tourist uses at Mount Murray. For the reasons explained later, there is no doubt in the Commission's mind that any reference to the planning and development history of Mount Murray must

include the history of the planning applications and approvals and the interlinked details of the negotiations for and the grant of tax reliefs that supported the development. In taking that view, the Commission is not stepping outside its terms of reference. The fact that in his report Professor Crow chose to make no reference to tax matters does not alter the fact that they bear upon, and form part of, the planning and development of this site.”

- 5.6 The objecting companies appealed to the Privy Council. The Privy Council dismissed the appeals.
- 5.7 Even after the decision of the Privy Council further litigation will follow at least in relation to the use of specific documents. The time when such litigation will be completed, including such appeals as there might be, is unknown, save to say that it will be a significant period of time. The Commission considers that these matters which are the subject of litigation are of basic importance and significance and integral to our terms of reference. We consider that it is essential that they should be investigated so far as decisions of the court allow this to be undertaken.
- 5.8 However, the issue of our report has already been delayed many months by the litigation. That delay may well be turned into delay which could be measured in terms of a year or years. Such significant and uncertain delay is not in the public interest as there are many matters of general public importance in our report which require publication sooner rather than at some indeterminate later time. Therefore, although the optimum course is for all our findings and recommendations to be published together, we have concluded that the delay has already been such that the public interest requires that publication of matters not restricted by court proceedings should now take place. Accordingly we have decided to publish our report in two parts, Part One of which we publish forthwith.
- 5.9 Part One is not an interim report. Insofar as the matters it covers are concerned it is complete in itself. We have been able to draft it so that it reads as a complete whole, notwithstanding that matters to follow are inextricably linked with our remit and are essential elements of it and of much public importance. These matters will be reported in Part Two, the final part of our report, in accordance with the court’s finding when litigation has ended. The conclusions and recommendations now published are final conclusions on the matters covered in Part One, but only on the matters covered in Part One. Further conclusions will of course be reached on the outstanding matters to be reported in Part Two together with any recommendations. It follows from the above that there will be a third stage of the Commission’s Inquiry which will involve the hearing of evidence relating to matters to be covered in the Part Two Report. This stage will start to be put under way when the reasoning of the Privy Council and the nature of further litigation are known.
- 5.10 The hearing of evidence was almost entirely in public. We heard evidence in private on a very few occasions. We have not directly used the information received on such occasions in our report, but it has helped us in acquiring information which we have used in our report.
- 5.11 All the public hearings were recorded; with one exception the private hearings were not recorded. The recorded hearings have been transcribed, and subject to the single exception of the private hearing are available as a public record of the evidence we heard. The recording quality during the first part of the hearings was not good, and transcription was difficult. However, with some assistance from those who gave evidence, we have produced a written record of the oral evidence, and we are satisfied that this written record of the first part of the Inquiry does present a

good, full, accurate and very valuable note of the evidence given. The problems were overcome in the second part of the Inquiry and the written record of the evidence is a good quality transcript.

- 5.12 The written statements provided by those who gave evidence are also available as public record of those statements. In this regard we are able to say that virtually everyone we asked to provide written statements before coming to the Inquiry to give evidence did so. We are very grateful to them in their efforts to provide assistance to the Commission in this way. Only a very few people did not provide such assistance, and for the most part there was good reason for this.
- 5.13 All oral evidence was given on oath, written statements were taken as read and the proceedings were inquisitorial.
- 5.14 In the public hearings 58 witnesses have given evidence. On one occasion we took evidence in England from a witness, for reasons of health of that witness. Although it was not possible to accommodate members of the public on that occasion, a transcript of the evidence is available to the public, as is the witness's written statement.
- 5.15 We were not able to take evidence from a number of key witnesses. One of these people has been deceased for a number of years, another could not be traced, despite best proportionate effort, and a third was outside the jurisdiction and, for reasons of ill health, declined to attend before the Commission or to give any other assistance. We did also obtain valuable written assistance from a multi-national organisation based in the United States which had featured quite prominently in relevant events. We also were provided with some limited assistance from another witness who was outside the jurisdiction, and who was involved in material events.
- 5.16 We heard some witnesses on more than one occasion. This would usually be to provide assistance when further events or circumstances had come to light, or had become significant or required more clarification after the witness had first given evidence. In other matters of this sort we were able to pursue our queries satisfactorily through correspondence.
- 5.17 We also had a number of written statements provided to us by interested parties who did not give oral evidence.
- 5.18 In addition to hearing oral evidence and reading written statements or correspondence from witnesses we also perused a multitude of files from government departments. The width of this examination of files (and other matters) can be seen in the annexes. In all we have considered in the order of 15,000 pages of documents and 450 plans and drawings.
- 5.19 Further we engaged a firm of chartered accountants to examine the accounts of persons where we considered that that was appropriate and could reasonably be expected to produce helpful material without undue input. We also engaged a hand writing expert for the examination of a highly material document which had been put under reasonable query by the evidence.
- 5.20 We are of course very conscious of the fact that many of the material events took place more than ten or eleven years prior to us hearing evidence about these events. Recollection of events in any detail over this length of time is self evidently difficult and we have taken this fully into account. However, we have seen a great deal of contemporary documentation and, under expert and informed probing, memories

were in many cases well revived, and we have received a great deal of assistance from direct evidence of events. We are also sceptical of a number of claims which were made by witnesses that they had little or no memory of events which were particularly unusual and significant and could be expected to stand out in memory, especially when assisted by documentation. Fortunately these witnesses were quite few in number.

- 5.21 We are satisfied that our thorough, carefully organised, wide and transparent examination of facts, events and documentation has resulted in us being very well informed on all material matters within our remit, and that we are as fully informed as a rational and proportionate investigation within our terms of reference can reasonably be. This is still the case notwithstanding the absences referred to in paragraph 5.15 above and to the vagaries and weaknesses of the human state as referred to in the last paragraph, although matters the subject of court proceedings remain outstanding.
- 5.22 We carried out two official site inspections on, 16th July 2002 and on 24th April 2003, to familiarise ourselves thoroughly with, and check, the physical features of the site.
- 5.23 The evidence which we have considered is complex and the report itself is substantial. We have therefore thought it helpful to have some degree of repetition, so that various parts of the report are more easily capable of being considered as discrete entities within their own contexts.
- 5.24 We have sought to reference in the report, unless otherwise self-evident, every statement of fact, events, or circumstances directly to evidence which has come before us.
- 5.25 Our investigations have covered events over a good many years, and over that time practices, systems and approaches to issues have altered in material degree. The form of our report has therefore sought to reflect that changing scene, but still to show how events some dozen or more years ago are still impacting importantly on present day circumstances and illustrate the current necessity for change which we have identified in our recommendations.
- 5.26 We have taken into account all we have read, heard and seen, but apart from identification in the appendices, we have not referred in the body of the report specifically to every item of evidence which was presented to us, as this would not be practicable.
- 5.27 Bearing in mind our remit to investigate government's handling of irregularities we have sought to focus upon government itself, or the system of government, in the comments or criticisms that we have, rather than upon individuals who were operating that system of government, whether as politician, civil servant, or otherwise. Nevertheless there are some occasions when we consider that it is appropriate and necessary to focus on individuals.
- 5.28 Where, consequent upon our investigations following the above approach, we have subjected persons to significant criticism, we have given each of these persons, and indeed all parties criticised, the opportunity to consider the gist of these criticisms at draft report stage and to comment to us upon them. This provided the chance for all the persons concerned to provide a full written response to the points of criticism should they have wished to do so. We have included in this facility persons who are not being criticised individually, but who might feel or be seen to be, criticised because of their connection with a body or group which is the subject of criticism.

The response to the offering of this facility has been extremely good and we are grateful to all who responded. Where requests, direct or implicitly, have been made for more information we have provided this as appropriate, together with further time for response. We have taken the comments in their responses fully into account and have either modified the final report accordingly and/or have referred to the response in the report, or we have set out the representations and comments upon the criticisms in an annex to the report (Annex 4) when the persons or parties in question took up our offer to do this. Where we have accepted or partly accepted the response we have indicated this in the annex or have modified the response to reflect the removal from or adjustment to the draft report.

End of Section 5

