ANNEX 9

RESPONSES TO CRITICISM IN DRAFT PART TWO REPORT
(in alphabetical order)

1. From Hon A J Bell MHK (so far as material)

I have now had the opportunity to consider the proposed criticism of me contained in the attachment to your letter dated 29 March 2004 ("the Attachment") and in the draft extracts from the Part Two Report contained in your letter dated 23 April 2004 ("the Extract").

As anticipated in my letter to the Commission dated 15 March 2004 (copy annexed) ("my Letter"), it appears to me that the Commission is more concerned with trying to justify its preliminary views about my conduct relating to tax reliefs (as set out in its letter to me dated 5 September 2003), than in reviewing the evidence in an objective manner.

I will not repeat the points made in my Letter, but when considering my responses to the proposed criticism, as set out below, the Commission should also bear in mind the points made in my Letter.

Turning to the proposed criticism itself, I would respond as follows, using the paragraph and sub-paragraph numbering contained in the Extract for ease of reference.

Paragraph a) -

Sub-paragraph ii)

The political decision taken on 20 March 1991 may well have been of material relevance to the scale of tax relief which the developer at Mount Murray was eventually able to secure. However, the political decision was not in any way linked to the Mount Murray development, as is clear from the evidence set out at pages 5 and 6 of my letter. In particular, I would refer you to:

1. Mr Gelling's written statement to the commission (at paragraph 25) that "I am clear that the 1991 Order was not made with a view to assisting any specific developments";

2. The evidence of Mr Kelly, the Assessor, (Day 32, page 48) that had the Treasury known about the Mount Murray development at an earlier date, it would have provided for it, but in fact the development was not specifically provided for.

Sub-paragraph vi)

It is quite wrong for the Commission to claim that my denial that the Mount Murray development was in my mind at the meeting on 20 March 1991 "seems hardly credible". The Tourist Board Incentive Allowances Order ("TBIA") had been discussed long before the Mount Murray development was proposed, and was not in any way linked to the Mount Murray development. Since the TBIA was introduced for the benefit of tourism

as a whole, and not just the Mount Murray development, there is no reason why I would have had the Mount Murray development particularly in mind during my meeting with Mr Gelling on 20 March 1991. In this sub-paragraph the Commission refers to the fact that I met with Mr Spence on the 20 March 1991 as well, and makes the snide comment that, "Mr Bell viewed this as coincidental and that the Treasury meeting was dictated by the Budget process". However, as I demonstrated in my Letter, it is obvious from the evidence before the Commission that the meeting with Mr Gelling on 20 March 1991 was arranged at the behest of Dr Orme, before I had the meeting with Mr Spence, that it was intended that Dr Orme would put forward the argument for the TBIA, and that Dr Orme was not aware of the Mount Murray development at that time. Finally, it is also clear that the Budget in April 1991 was the last opportunity to bring in the TBIA before the General Election due in November 1991.

Sub-paragraph vii)

It is disingenuous for the Commission to state that it is "technically correct" for me to maintain that the TBIA "was not developed for Mount Murray". In reality, it is absolutely correct for me to maintain that the TBIA "was not developed for Mount Murray", a fact that is supported by the evidence of Mr Gelling, who stated that "I am clear that the 1991 Order was not made with a view to assisting any specific developments", and by the other evidence set out at pages 5 and 6 of my Letter.

I do not understand why the Commission seems to be determined to try to twist the evidence to show that the existence of the proposed Mount Murray development should have had a major influence on the 20 March 1991 meeting with Mr Gelling. The Commission appears to be trying to find that if Mr Gelling had known about the size of the proposed Mount Murray development at that meeting (and in my opinion he may well have known about the size of the development, since it was in his constituency), he would not have decided in principle to proceed with the TBIA. However, there is absolutely no basis for such a finding, and the evidence clearly demonstrates that this was not the case, as shown by Mr Gelling's response to a typically leading question from the Commission's Counsel, Mr Lewsley, as follows (Day 37, page 3):

"Mr Lewsley	I am just wondering whether, in those days, in or about February 1991, what you had in your mind was a scheme that would be related to relatively small scale developments of the kind illustrated in this paper and not, really, to big development the size of Mount Murray?
Mr Gelling	I don't think you could actually split them because you would never know what the development might be. You know, you're saying farming would be small, but we have actually seen developments of not just the redundant farm buildings, but other additional bungalows and chalets built on farms because of the success of that particular type of rural tourism. So I wouldn't say at that time we were only - well certainly from the Treasury point of view. Whether Tourism were thinking it was purely for small, redundant buildings, I don't know but certainly, in our mind, if you introduced a scheme it is extremely difficult, in fact it might be impossible, to restrict it. In fact you have take each one on its merits."

Dr Orme emphasised this point in his evidence (Day 44, page 19), when he responded to questions as follows:

"Mr Macleod — I think you said earlier on that you weren't looking at major projects but have I misunderstood you on that?

Dr Orme — Sorry.

Mr Macleod — You weren't looking at major projects or did I misunderstand you?

Dr Orme — No, I don't think I said that or if I did say it, I didn't intend to put it that way.

Mr Macleod — What sort of projects were these other projects you were looking at?

Dr Orme — My ideas were very wide. My view was that anything that stood a reasonable prospect of benefiting tourism needed and justified some kind of incentive at that point. It clearly wasn't happening. There was so little investment going on and hardly any new investment."

Accordingly, the fact that Mount Murray would be a large scale development was not a reason for it to have any particular bearing on the 20 March 1991 meeting.

Sub-paragraph viii)

The Commission states that it considers that had the Assessor, Mr Kelly, better understood the scale of the Mount Murray scheme and the costs involved, this might at least have enabled him to brief his Minister, Mr Gelling, more effectively as to the possible financial consequences of allowances at 250%. Is this relevant? Even if Mr Gelling had understood the scale of the Mount Murray scheme at that time (and in my opinion he might well have done) the TBIA was not developed solely for the benefit of Mount Murray, and was intended for large schemes as well as small schemes, as the evidence that I have set out above demonstrates. Further, although the TBIA had been developed and proposed by the Department of Tourism, the scheme itself was a Treasury scheme and had to be moved in Tynwald by the Treasury Minister. It is inconceivable that the Minister and his officers did not understand the possible financial consequences.

Sub-paragraph ix)

It is quite disingenuous for the Commission to find that I "chose to keep quiet about the scale, nature and importance of the Mount Murray tourism development" at the meeting on 20 March 1991. There was no conscious decision on my part not to discuss the scale of the Mount Murray development at that meeting, and had I done so, it would not have made any difference to the decision to proceed with the TBIA. The TBIA was not introduced solely for the benefit of Mount Murray and the potential scale of some of the

developments that would benefit from the TBIA was not an issue, as the evidence set out above demonstrates.

It is frankly risible for the Commission to conclude that the Mount Murray development took the TBIA proposal away from a low cost, low risk proposal for tourism incentives. Even allowing for tourism developments of the size of the Mount Murray development, the TBIA **was** a "low risk, low cost" scheme, because as at 1991 the total annual tax receipts from the tourist industry were only £150,000.00. (See the evidence on this point from Mr Carse, the Economic Adviser, in a paper dated 18 February 1991, at File D2 Appendix 7). Dr Orme described the tax revenue from the tourist industry which was at risk in 1991 as "miniscule" (Day 44, page 20).

Accordingly, the TBIA was a low risk scheme, because grants were not paid to tourism developers out of public funds, which would be lost if the development failed. Under the TBIA the developer could only claim tax relief if the development was a success and made a profit. The TBIA was also a low cost scheme, because no grants were paid to the developer, and there was no loss to the public purse in terms of tax revenue, because developments such as Mount Murray would not have gone ahead without the TBIA. See the evidence of Mr Gelling to the Commission (Day 37, page 5) that:

> "You must remember that this was an incentive to try to get people to develop so therefore if we had had no tax relief given, the whole scheme would have been a total failure. It would not have happened."

In its Attachment, at paragraph a) the Commission alleged that I was "fully aware of the Mount Murray development proposal and its propensity (sic) for taking substantive advantage of the proposed allowances" at the meeting with Mr Gelling on 20 March 1991. However, there is simply no evidence to substantiate this finding. Mr Nugent of Pannell Kerr Forster, the tax adviser to the Mount Murray developer, gave evidence to the Commission (Day 35, page 17) that he was not even instructed by the developer until December 1991, some nine months after the meeting in March 1991!

Further the Mount Murray development proposal did not have a "propensity (sic) for taking substantial advantage of proposed allowances"; see, for example, the evidence of Mr Nugent (Day 35, pages 99-100), that group relief was never part of the tax planning for the Mount Murray development, which it surely would have been had the development had "a propensity for taking substantial advantage" of the proposed TBIA.

Paragraphs c) to e)

It is a gross over-generalisation to categorise the Department of Tourism and Leisure as "badly mismanaged" or with "virtually non-existent communication". Whilst errors undoubtedly occurred, the Department also achieved some notable successes during the period in question, which it could not have done had it been badly mismanaged with virtually non-existent communication.

The only failure of communication emanated from Mr Mitchell. The rest of the Department functioned perfectly normally. Mr Mitchell was very concerned that confidential information, for which he had ultimate responsibility, was leaking out of the Department and became overly defensive in the release of such information.

As I explained in evidence, I was not aware that Mr Mitchell was excluding the Chief Executive of the Department, Mr Toohey, and I only became fully aware of this when I saw the disciplinary papers against Mr Mitchell dated 22nd September 1994, which stated that he had failed to keep the Chief Executive informed about a range of very important issues. Those disciplinary papers also show that Mr Mitchell had also been deliberately misleading his Minister.

I am amazed to note that the Commission seeks to justify its findings, in part, by relying upon evidence from Mr Toohey that he feared that he might lose his job if he argued about the situation relating to Mr Mitchell. This suggestion was never put to me on any of the occasions that I gave evidence to the Commission, and had it been I would have rejected it outright. There would never have been any question of Mr Toohey losing his job had he raised any concerns about Mr Mitchell. Even had I wanted to fire Mr Toohey for raising such concerns, which I certainly would not have done, I did not have the power to do so. That would have been a matter for the Civil Service Commission, and there is no corroborating evidence from the Civil Service Commission that Mr Toohey's job would have been at risk had he raised concerns about Mr Mitchell.

With regard to the propriety of the tax discussions with the developer's agent, there is no evidence to suggest that these discussions were not entirely proper, and as I stated at page 8 of my Letter, the Department's discussions with the tax adviser of the Mount Murray developer were undertaken to identify areas where the tax schemes could be improved and extended to assist the wider regeneration of the tourist industry as a whole.

Paragraph f) and g)

It is wholly wrong for the Commission to find that "the meetings/correspondence in February 1992 and following were primarily directed to Mount Murray with the knowledge of all parties". This finding flies in the face of the evidence. For example:

1. The evidence of Mr Nugent (Day 35, page 26) that in February 1992:

   > "By this stage I was already two or three months into examining this whole area in a lot of detail and was quite excited about the opportunity that it offered and thought that this sort of regime could be used to attract industrial type operations to the Isle of Man as well. The reason that that is linked to Mr Bell was, I seem to recall - I may be wrong - that was involved in the Industry Board at that time."

   Mr Nugent is correct in stating that I was also the Industry Minister at that time.

2. The letters from Mr Nugent to Mr Mitchell dated 18 and 24 February 1992, shown to me at the hearing on 22 January 2004, show that the Tourist Department was discussing with Mr Nugent amendments in general to the 1991 TBIA, and not just in relation to the Mount Murray development. The letters do not specifically refer to the Mount Murray development, and nor does the schedule attached to the second letter, which is headed "Tourist Business Allowance/Tourist Business Incentive Allowance - Review of Typical Items Included in a Hotel or Holiday

Village Development". Indeed, it is obvious that the first letter is written in general terms because it also talks about attracting industrial as well as tourist operations to the Isle of Man.

It is also quite wrong for the Commission to allege that these discussions "raised clear understandings on the part of the developer's agent that agreements and commitments had been made", for the following reasons:

(1) The developer's agent in relation to tax allowance discussions was Mr Nugent, who confirmed in evidence that he was the only person giving advice on taxation matters at that point (Day 35, page 36).

(2) It is clear from the evidence of Mr Nugent that he did not consider that any agreements or commitments had been made by the Tourist Department during his discussions with either me or Mr Mitchell, or with the Tourist Department. For example, Mr Nugent stated in evidence (Day 35, page 42) that:

> "I have explained why we approached the Tourist Board initially. I have explained that it was a tourist initiative. It was an initiative designed to give relief of some description to encourage new tourist development. The relief that had been chosen was capital allowances which was in the domain of the Tax Authorities but the basic issue surrounding that relief and the basic issue surrounding the incentive were in the domain of the Tourist Board. I have already acknowledged that if we had the support of the Tourist Board for enhancements to that relief because the existing legislation did not go as far it was meant to go, that would be useful."

(3) Mr Solly, a member of the Commission, asked Mr Nugent (Day 35, page 42):

> "I am intrigued to ask why you are asked for technical interpretations about legislation from the Tourist Department which has no competence in the matter."

Mr Nugent replied:

> "For the reasons I explained, we were going through the Tourist Board. I was not asking for "technical interpretations" of the legislation. I was seeking to identify what the Tourist Department believed relief should be given for in terms of the incentive nature of these allowances. Not in terms of details of capital allowance legislation. In terms of how the incentive was intended to operate. How they wanted to give relief of some description to encourage new tourist development. That is what I was after from the Tourist Board."

At Day 35, page 44 Mr Nugent said:

> "If we go back to the 18 February those two columns and this goes, I guess, to the nub of my point. Those first two columns are a comparison of what appears to be available under the legislation as drafted, and what seems reasonable, in my interpretation, what seems reasonable to give for relief. That's what I put to the Tourist Board. We then discussed that and the other columns were completed. Now, the Commission are saying that it is incorrect to say that "a decision was made" because it was a technical decision and that had to have been made by the Assessor's Office. I accept that and perhaps the phraseology used was incorrect…"

Accordingly, whilst the developer's agent may have understood that the Tourist Department would support enhancements to the relief available, he also clearly understood that the final decision lay with the Assessor's Office. I see nothing wrong in indicating to the developer's agent that the Tourist Department would support enhancements to the relief available, if that would assist the wider regeneration of the tourist industry as a whole, and that was always my sole intent. I must emphasise, as is demonstrated by the evidence, that the discussions with Mr Nugent in early 1992 were not primarily directed to Mount Murray.

I accept that it would have been wrong for Mr Mitchell or I to make agreements or give undertakings or commitments in relation to tax matters, and that the Department of Tourism had no authority to enter into any agreement with Mr Nugent on tax matters. The evidence of Mr Nugent shows, however, that no such agreement was entered into, and that the only undertakings or commitments given by me, Mr Mitchell or the Department of Tourism to Mr Nugent were to provide support for enhancements to available tax relief. This support was given because I believed that it would help to re-generate the Manx tourist industry as a whole, and not just to benefit the Mount Murray development.

The fact that neither Mr Mitchell, nor I, nor the Tourist Department entered into in any agreement with Mr Nugent or gave any undertakings relating to tax matters, is demonstrated by the notes of a meeting held on the 30 July 1992 and attended by Mr Ian Kelly, Mr Robbie Kennaugh, Mr Mitchell and Mr Toohey, which was shown to Mr Toohey (Day 34, page 29). Paragraph (iii) of that note states that:

> "Mitchell and Toohey's first response was that they had given no undertakings whatsoever".

At paragraph g) of the Attachment, the Commission alleges that my actions enabled the Tourist Department to be played off against the Treasury Department. This is simply not the case, and the person who would know for certain whether the Tourist Department had been played off against the Treasury is Mr Nugent, whose evidence (Day 35, page 41) is very clear that this did not happen. I would refer you to the following exchange between Mr Solly and Mr Nugent:

"Mr Solly Equally, did it occur to you that, by getting undertakings from the Tourist Department or undertaking or something less than expressions of intent from the Tourist Department, that you required, you got them from the Tourist Department but they could only be delivered by the Treasury, wouldn't that, then, put Government in a very embarrassing situation if you had promises from the Tourist Department that the Treasury were not then delivering on, or not prepared to deliver on?

Mr Nugent That scenario that you describe it did not occur to me. I was in no way seeking to create a situation of that nature, or take advantage of a situation of that nature.

Mr Solly But don't you agree that that is possibly one of the practical consequences of the way you conducted this?

Mr Nugent I don't agree that that was one of the practical consequences because for the simple reason that much of what we were suggesting should happen in terms of these tax allowances and this tax relief, the Treasury ultimately said "No" to it…

Mr Solly … would you accept that you were creating a situation by seeking undertakings from the Tourism Department which may later have been embarrassing if the Treasury had not delivered on those?

Mr Nugent No, I don't accept that I was creating that situation at all."

Paragraphs h) to k)

The Commission proposes to severely criticise me in relation to the answer that I gave to the House of Keys (not Tynwald) on 7 April 1992. In this regard the Commission appears to have entirely ignored the points that I made at pages 13 to 15 **[presumably the two last full pages of the letter of 15th March 2004 below. The Letter only has 11 pages]** of my Letter.

I would emphasise what I said at page 13 **[The Letter only has 11 pages]** of my Letter. I do not believe that I misled the House of Keys in terms of my answer to what I understood the question to mean, and what I consider the Members understood the question to mean. In my opinion it is quite wrong to equate the payment of grants with tax incentives, where there is clear evidence that the Mount Murray development would not have proceeded without such tax relief, so that no taxable profit at all would have come into Island, there would have been no actual loss to the tax payer. In other words, there would have been no loss of "public money". In reality, even after the tax relief granted to the Mount Murray development, the public coffers were better off, since tax was still paid on 50% of the profits made by Mount Murray, and this tax would not have been obtained if the Mount Murray development had not proceeded.

Whilst I accept that it would have been preferable to inform the House of Keys that tax relief was available to the Mount Murray developer, if it made a profit, but that it was

only on the basis of tax relief being available that the developer was prepared to proceed, so that there would be no real loss to the tax payer in terms of that financial assistance, I firmly hold the view that to severely criticise me for this oversight is unwarranted and disproportionate.

Whilst I accept that it would have been preferable to inform the House of Keys that tax relief was available to the Mount Murray developer, if it made a profit, but that it was only on the basis of tax relief being available that the developer was prepared to proceed, so that there would be no real loss to the tax payer in terms of that financial assistance, I firmly hold the view that to severely criticise me for this oversight is unwarranted and disproportionate.

Paragraph l)

The Extract does not criticise me in relation to the TBIA Certificate dated 21 December 1992, although the Attachment does. The Attachment states that I signed the Certificate with regard to the prerequisite economic criteria required under the 1992 Amending Order, before the Order had either been made in the Tourism Department of approved by Tynwald. However, it is clear from the heading to the Certificate (which specifically refers to the *draft* TBIA Order 1992) and from the body of the Certificate, that it was acknowledged that the 1992 Order was not in force, and that the Certificate was therefore signed in anticipation of the 1992 Order coming into force on 20 January 1993.

Conclusion

There is no "fundamental link" between planning decisions relating to Mount Murray and the development of tourism tax reliefs, contrary to the finding of the Commission at paragraph 5.4 of its Part One Report. Unfortunately, the Commission appears to be determined to rely upon coincidence and inference to try to cobble together some sort of link.

The TBIA was not introduced solely for the benefit of Mount Murray, as Mr Gelling, the Treasury Minister at the time, made plain in his evidence to the Commission. I would also refer to the Commission to the overwhelming evidence to support this fact as set out at pages 5 and 6 of my Letter.

The Part Two Report relates to tax. No tax relief whatsoever has been granted in relation to the housing element of the Mount Murray development. However, the tone of the Extract of the Part Two Report that I have been allowed to read suggests that there was something wrong with tax relief being granted in relation to the hotel and sports complex at Mount Murray, and that such tax relief was only obtained because of the misguided actions of Mr Mitchell and I. This appears to me to be an entirely self-serving approach by the Commission, lacking in any objectivity or dispassionate analysis of the evidence as a whole.

Viewed in its entirety, the position with regard to the Mount Murray development and the TBIA is as follows:

1. The TBIA was not introduced or developed for the benefit of the Mount Murray developer;

2. The Mount Murray developer benefited from the TBIA, as did a number of other important tourism developers, but there is nothing wrong with that. The TBIA was intended to be an incentive;

3. The Mount Murray development would not have proceeded without the TBIA (and nor, indeed, would a number of other important tourism developments, which have greatly benefited the Island);

4. Whilst it is correct that the Mount Murray developer saved 50% of the development costs through tax relief, there has been no real loss to the exchequer of the Isle of Man, because without the TBIA the development would not have proceeded, and the developer would not have paid any tax at all;

5. As a result of the TBIA the Mount Murray development proceeded, and the Island got a fine hotel, conference centre and sports complex, which kick-started the regeneration of the tourist industry in the Isle of Man, and created new jobs within the industry;

6. Because the Mount Murray development proceeded, as a result of the TBIA, the Island also got large amounts of tax that it would not otherwise have received, including:

    (a) tax on 50% of the profits of Mount Murray each year for the first five years, and tax on all 100% of the profits for each year thereafter;

    (b) VAT on construction costs of the development;

    (c) VAT generated through the business of Mount Murray;

    (d) tax and national insurance paid by employees working at the Mount Murray development.

I would refer you to the closing submission made by Dr Orme in his evidence to the Commission (Day 44, page 21) that:

> "There was a different state of mind in that period than there is now and I hope that that will be considered. The other thing that I would urge the Commission to consider is that a man comes along and takes what was a tremendous risk in those days of taking a site which I used to cycle past quite a lot and look at it and think "what on earth ever happened there?", and put a considerable amount of money into it. The Island has to decide whether it is going to value those things or not. Personally I believe that a value should be placed on the fact that that contribution that has been made and all that was done, that it has been of benefit to the Island, and it has brought something that wasn't here before. It's a pity that it is surrounded now with the suggestion of a wrongdoing. I can say for myself that if I'd have known that something that I had created would have led to Mount Murray, I would still have done it, and knowing that it did, afterwards, I feel

quite pleased notwithstanding all the problems. I think it was positive. If it created that, good."

I would also refer you to the evidence of the Assessor, Mr Kelly, (Day 32, page 28) that:

"Extra revenue would have come into Government as a consequence of that (ie introduction of TBIA) and that certainly goes into millions)."

The table produced in evidence to the Commission by Mrs Williams revealed that from 1992/93 to 2001 there has been a 65.1% real increase in income generated by tourism. It is clear to me that the TBIA order played a significant role in this.

Leaving aside the planning issues which were dealt with in the Part One Report, and focussing on the TBIA, I would argue that there is nothing wrong with the tax relief that was granted to the Mount Murray developer, and that in fact, the tax relief achieved the purpose for which it was intended as a whole, which was to incentivise tourism developers to undertake tourist development within the Island. Those developments, including the Mount Murray hotel and sports complex, have been of great benefit to the Island.

For reasons best known to itself, the Commission has chosen to reinterpret the definition of "corruption" in its remit to include "corruption of the systems of Government on the Isle of Man".

For the reasons that I have set out above, there was clearly no "corruption of the systems of Government" in relation to the TBIA, which was intended to act as an incentive to tourist developers, and which succeeded in doing so, leading, in the case of the Mount Murray development, to:

(a) a good hotel, conference centre and sports complex for the Island;

(b) a kick-start to the regeneration of tourism in the Island;

(c) a substantial amount of tax revenue which the Isle of Man would not otherwise have received.

I would again suggest that the Commission's proposed criticism of me is disproportionate and unwarranted.

Please confirm that this response (including my letter to the Commission dated 15 March 2004 which is annexed to it) will be included in the Appendix to the Part Two Report.

Yours faithfully

A Bell MHK.

LETTER 15 MARCH 2004 **(so far as material)**

(This letter is only reproduced insofar as relates to criticism which was put to Mr Bell for comment in the Commission's letters to him dated 29th March 2004 and 23rd April 2004. The full letter is in the Inquiry Library.)

Mount Murray Inquiry - Part Two Report

As the Commission has concluded taking oral evidence in relation to Part Two of its Report, I think that this is the appropriate time for me to respond to the Commission's letter to me dated 5 September 2003, which warned me that my conduct may be the subject of significant criticism in the Part Two Report because of my:

> "involvement in, or connection with, in or about the early 1990s the formulation of legislation concerning the granting of tourism related tax reliefs, and/or its application in respect of parts of the Mount Murray development."

I assume that the Commission's preliminary views about my conduct on this point are tied in with the Commission's finding (at paragraph 5.4 of the Part One Report) 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".

Unfortunately, it appears to me that the Commission's approach in Part Two has been to try to justify its finding about a link between planning and tax relief relating to Mount Murray, and to prove that its preliminary view about my conduct is correct, rather than to investigate matters with an open mind, as indicated by the unsupported suggestions and leading questions put to me at the hearings on 12 November 2003 and 22 January 2004.

Nevertheless, it is clear to me from the totality of the evidence given to the Commission in relation to Part Two that any criticism of me relating to "the formulation of legislation concerning the granting of tourism related tax relief, and/or its application in respect of parts of the Mount Murray development" would be completely unwarranted. I will, in broad terms, review the evidence available to the Commission on this point, below, but before doing so I feel that I must make the point that the Commission is considering matters that happened approximately 12 years ago, and that inevitably memories fade and documents are lost. Accordingly, all evidence considered by the Commission must be viewed very carefully.

The 1992 Order

Whilst the amendments contained in the 1992 Order benefited the Mount Murray development, it is clear that the amendments were not just intended for Mount Murray. See:

1. Paragraph 2 (3) of my written statement dated 3 November 2003, in which I made it clear that at that time the Tourist Department felt strongly that its top priority was to stimulate the regeneration of all elements of the tourist industry, and that amendments of the nature suggested by Mr Nugent would be beneficial throughout the tourist industry, and not just to the Mount Murray development.

Indeed, the amendments have stimulated a number of schemes subsequently which have nothing to do with Mount Murray. I also explained at paragraph 5 of my written statement that the Department of Tourism's discussions with the Mount Murray representatives helped to identify areas where the tax schemes could be improved and extended to assist the wider regeneration of the tourist industry as a whole, and that was always my sole intent;

2. The letters from Mr Nugent to Mr Mitchell dated 18 and 24 February 1992, shown to me at the hearing on 22 January 2004, which show that the Tourist Department was discussing with Mr Nugent amendments in general to the 1991 Order, and not just in relation to the Mount Murray development. The letters do not specifically refer to the Mount Murray development, and nor does the schedule attached to the second letter. Indeed, it is especially clear that the first letter is written in general terms because it talks about attracting industrial as well as tourist operations to the Isle of Man. (See Day 35 at page 26 of Mr Nugent's evidence);

To my mind Mr Lewsley's questions relating to this correspondence were very indicative of the Commission's approach, which appears to be to try to seek evidence to support its preliminary views, rather than considering the evidence objectively. It is clear from the evidence that I was considering Mr Nugent's suggestions to amend the 1991 Order in relation to the tourist industry as a whole. It is also clear that I was being cross-examined to try to prove a preliminary conclusion, rather than in an objective manner.

I see nothing wrong in discussing with Mr Nugent his suggestions for amending the 1991 Order, and indeed if there were any suggestions put forward by Mr Nugent which were considered acceptable, it was because they would benefit the tourist industry as a whole, and not just Mount Murray. It has long been Government policy to work closely with the private sector to develop new ideas or proposals which would benefit the economy of the Island, as was pointed out by Acting Deemster John Hall QC in his judgment in the *Re Manx Ices Limited* case. Indeed, I understand that the Assessor has drawn the attention of the Commission to the Civil Service College - Guide to Legislative Procedures which states, at page 13, that:

> "Legislation will very often benefit from prior consultation with outside bodies including business … which will be affected by its contents … consultation with interested bodies might begin as soon as outline of policy is settled or on technical points even earlier."

I also see nothing wrong in supporting some of the suggestions put forward by Mr Nugent from the 1991 Order in discussions with the Treasury and the Assessor. It is entirely proper for a Government Department to "fight its corner", as Dr Orme put it, when seeking tax reliefs, or an increased budget, that will assist it to carry out its functions. This is part of the day to day operation of a departmental government.

Nor was there anything wrong in indicating to Mr Nugent, or his clients, that his suggested amendments had the support of the Tourist Department. The evidence given by both Mr Nugent and I made it plain that the suggested amendments to the 1991 Order were being discussed in relation to a number of clients of Mr Nugent, and in relation to other projects in addition to Mount Murray. This strongly supports my

evidence, and my statement, that the Tourist Department supported the 1992 Order because it would benefit tourism as a whole, and not just because it would benefit the Mount Murray development.

This is an important point, since the Commission has chosen to extend the definition of "corruption" in its remit to include "corruption of the systems of Government on the Isle of Man" and whether Government departments "failed to resist manipulations and pressures to which they were said to be subjected by the developer and his various agents and associates". (Paragraph 4.13 of the Part One Report).

For the reasons that I have set out above, there was plainly no "corruption of the systems of Government" in relation to the 1991 Order, and it cannot be said that either the Tourist Department or I failed to resist any manipulations and pressures to which we were said to be subjected by the developer and his agents. As Donald Gelling said in his written statement to the Commission (at paragraph 25):

> "I am clear that the 1991 Order was not made with a view to assisting any specific developments".

With regard to the 1992 Order, I have made it clear that the Tourist Department supported Mr Nugent's suggested amendments to the 1991 Order because it believed that they would benefit the tourist industry as a whole. I accept that the correspondence by the Department with Mr Nugent leaves something to be desired, but it is also plain from the evidence of Mr Nugent that he did not consider that he was manipulating or pressurising the Tourist Department in order to obtain assurances that would embarrass the Treasury into conceding ground on his suggested amendments. **[Passage not included because Commission does not criticise Mr Nugent in this way.]**

In all of the circumstances set out above, therefore, I do not believe that the Commission can claim that there has been "corruption of the system of Government" insofar as the Tourist Department agreed with some of the amendments to the 1991 Order suggested by Mr Nugent, on the basis that they would assist the tourist industry as a whole, and was prepared to argue for those amendments with the Treasury.

Accordingly, I must strongly argue that any criticism of me relating to my involvement in "the formulation of legislation" concerning the granting of tax relief and its application in respect of the Mount Murray development is unwarranted. Further, the TBIA Orders have been very good for the Isle of Man. See:

1. The table produced in evidence to the Commission by Mrs Williams which revealed that from 1992/1993 to 2001 there has been a 65.1% real increase in income generated by tourism. It is clear to me that the TBIA Orders played a significant role in this;

2. The evidence of Mr Kelly (Day 32 at page 28) that:

> "Extra revenue would have come into Government as a consequence of that (i.e. introduction of TBIA) and that certainly goes into millions";

3. The evidence of Mr Gelling that the Manx Government coffers are being boosted by increased tax receipts resulting from the TBIA Orders.

I accept that the Mount Murray development would probably not have happened without the tax relief available to it, but the whole purpose of the TBIA Orders was to attract new tourism developments to the Isle of Man. See the evidence of Mr Gelling to the Commission (Day 37 at page 5) that:

> "You must remember that this was an incentive to try to get people to develop so therefore if we had had no tax relief given, the whole scheme would have been a total failure. It wouldn't have happened";

Other Matters

It became apparent to me at the hearing before the Commission on 22 January 2003 that the Commission may seek to criticise me again in relation to my answers to the house of Keys on 7 April 1992, this time in relation to my answer to the question "will public money be required in this development?" notwithstanding that such possible criticism is not mentioned in the Commission's letter to me dated 5 September 2003, and that the Commission described my answer as literally correct in its Part One Report.

During the hearing on 22 January 2004 it became obvious to me that the Commission will try to argue that the final paragraph of my initial answer in the House of Keys on 7 April 1992 was incorrect, when I said:

> "As I have said on many occasions, no applications for Government financial assistance have been submitted, nor has there been any intimation that an application will be submitted in the future."

It would appear that the Commission intends to allege that at the time of my answer there were applications for Government financial assistance, or at least applications had been intimated, in the form of:

1. Tax relief granted to the Mount Murray developer; and/or

I do not believe that I misled the House of Keys in terms of my answer to what I understood the question to mean, and what I consider the Members understood the question to mean, but if I did so, I did not do so deliberately or knowingly.

Tax Relief

At the time that I gave my answer to the House of Keys on 7 April 1992 I had in mind cash grants of the type previously given by the Government to tourist businesses, and the question put to me by Mr Delaney was "will public money be required in this development?"

At the hearing on 12 November 2003 Mr Lewsley tried to badger me into agreeing that there is no difference between a cash grant and tax relief; see for example Day 36 at page 5 at which Mr Lewsley said:

> "there's no real difference, is there, between grant and tax relief, it's simply a different way of dealing with it? Whichever of those two ways is chosen, the Isle of Man taxpayer either funds the grant or he has to make up for the tax which is not paid because of the allowance."

However, this statement is such a gross oversimplification as to be misleading. Under the grant system money is paid out of the public coffers. There is a direct loss by the taxpayer.

Under the tax release scheme, however, there is only a loss if the taxable profit would have come into the Island irrespective of the tax relief available. If the taxable profit would not have come into the Island without the tax relief incentive then there is no loss to the taxpayer. It is entirely wrong to equate the payment of grants with tax incentives where there is strong evidence that the Mount Murray development would not have proceeded without tax relief, meaning that no taxable profit would have come into the Island at all, and there would have been no actual loss to the taxpayer. In other words, there would have been no loss of "public money". In reality, even after the tax relief granted to the Mount Murray development, the public coffers were better off.

I understand that the Commission has asked questions about group tax relief, but as I stated in evidence (Day 36, page 6) "Group relief wasn't discussed in 1991", and I was not then aware of this issue. Further, as I understand it, group relief does not create additional reliefs, but simply affects the time at which such reliefs are granted. Distribution throughout a group may accelerate the utilisation of reliefs, but nothing more. In addition, it is clear that the Mount Murray developer was not relying upon group tax relief when he initiated the development and obtained planning permission. See the evidence of Mr Nugent at Day 35, page 99 and also page 100, at which the following exchange took place:

> "Mr Lewsley - I think what I'm putting to you is that was it part of the planning of this that, at some point, Radcon would go within a group structure?
>
> Mr Nugent - No, not as far as I am aware.
>
> Mr Lewsley - It wasn't part of your tax planning for this project?
>
> Mr Nugent - No. My advice was not structured in that way. I have no doubt that I would have been talking in terms of possibilities for speeding up the allowances that we were looking at, possibilities of other sources of income, other group companies that have profits, but I didn't enter into it on that basis. My understanding wasn't that this was designed to generate group relief."

I understand that, in fact, group relief has not really been used in relation to the Mount Murray development. See the evidence of Mr Nugent (Day 35, page 100):

> "As it turns out, this was a very profitable undertaking and has generated large profits every year so it has, itself, utilised a lot of those allowances."

I repeat, however, that when I answered Mr Delaney's question about "public money" I had in mind only the issue of grants, and not tax incentives.

Conclusion

In the light of the matters et out above, the Commission will understand why I consider that it would be totally unwarranted for the Commission to criticise me in its Part 2 Report for any of the reasons suggested in its letter dated 5 September 2003.

Yours faithfully

Hon A R Bell, MHK

2. <u>From Mr D Gelling MLC</u> (so far as material)

I refer to your letter of 29th March addressed to Simcocks Advocates and I welcome the opportunity to respond to the proposed criticisms relating to my role in the development at Mount Murray.

I confirm that I do wish this response to be placed in the appendix to the report.

I deal with the matters of proposed criticism in the order in which they appear in the attachment to your letter:

1.1 Paragraph (a) contains the general criticism that I "made mistakes". For the reasons which are set out in more detail below, I am bound to reject each and every one of these accusations. Furthermore, I believe it is common ground among all the witnesses who have appeared before the Commission that the end result of the Tourist Premises Incentive Allowance ("TBIA") Schemes has been the resurgence of the Isle of Man tourist industry and the emergence of a tourist development at Mount Murray of which we can all be proud.

1.2 As my Advocate Mr Corlett of Simcocks submitted to the Commission in his closing address, "on any measure the TBIA Orders have been highly successful in incentivising an extremely significant and successful operation at Mount Murray". Dr Orme said in evidence "things were desperate" in so far as the tourism industry was concerned in the late 1980s and he took the view in evidence that the Mount Murray development has been of benefit to the Island. The table produced in evidence by the Chief Secretary revealed that from 1992/93 to 2000/01 there had been a 65.1% real increase in income generated by tourism, and I have no doubt that the TBIA has played a not insignificant role in this.

1.3 I further believe, as once again stated by Mr Corlett in his closing address, that Treasury, its politicians and officials, should be given credit for helping to introduce a far sighted system of tax reliefs which has helped to rescue a dying tourist industry and has contributed towards the development of what is regarded without exception as a fine hotel and sports facility at Mount Murray. The housing development is of course another matter, about which opinions are divided. However, the Commission can feel sure that such residential housing

development was not assisted by and did not receive the benefit of the tax reliefs introduced by the TBIA Orders of 1991 and 1992. That is common ground shared by all relevant witnesses.

2.1 The next paragraph (b) focuses on the 20th March 1991 meeting which is rightly described in your paragraph (b) (although not I believe in paragraph (d)) as resulting in a "decision in principle to take forward the Department of Tourism's proposal for a 250% allowance".

2.2 Mr Kelly wrote a note the day after the meeting at which he referred to my having "referred this morning to the possibility of agreeing to the Department of Tourism's suggestion" of the 250% tax relief on capital expenditure. Mr Kelly referred in evidence to my having made a "statement of intent" and Mr Bell gave evidence that I had taken on board what had been said and agreed to take it back to Treasury for further discussion. My evidence in this regard is strongly corroborated by Dr Orme who said that he did not accept that the decision was made on 20th March 1991 and he said that he had no recollection of having "succeeded" at that meeting.

2.3 In my statement at paragraph 14 I said that I accepted that it might not be possible on a practical level of implement the DTL's proposal and that there was still work to be done on the detail.

2.4 I must emphasise that I made a decision on the 20th March 1991 to take the proposal back to Treasury for further discussion as the proposal was subject to the approval of Treasury, the Council of Ministers and Tynwald. There were therefore three distinct levels of checks and balances and at any one of those stages the whole proposal could have failed.

2.5 The Commission say that there is no record of how or why the decision was made, nor of the discussions at the meeting. I accept that there was no written record of how the decision was made in the sense that no formal minute was taken of the meeting between myself, Mr Bell and Dr Orme on 20th March 1991, although I have to say that despite the lengthy passage of time there is a remarkable degree of unanimity between those three people as to precisely what happened at the meeting. I would have been highly unusual for such a meeting between three politicians to have been minuted.

2.6 The Commission then seeks to criticise the minutes of Treasury of 25th March 1991 and the minutes of the Council of Ministers at which that proposal, amongst other budget proposals, was discussed. I cannot see that it is either fair or reasonable to level criticism about the minute taking processes of either the Treasury or the Council of Ministers at my door. Further more, it had been a long standing practice to regard budget proposals as highly confidential such that it was regarded as inappropriate to have any detailed minutes of budget proposals at either Treasury or Council of Ministers level. To the best of my recollection, even the Treasury Administrator was excluded from Treasury meetings at which budget proposals were considered.

2.7 Paragraph (b) also contains the statement that I did not know whether meetings where the matter might be discussed would be minuted or not. This is an unfair and unreasonable finding. Having Trawled through the transcript to find from where the Commission may have derived this conclusion, I have noted pages 13 to 16 of the transcript of my evidence and note that I was challenged as to the minuting of meetings which took place in 1991. I made the point that I was being asked to remember what happened many years before. The Commission has also been supplied with all relevant Treasury and Council of Ministers minutes and has been told why, for good reason, those minutes are very brief in respect of budget proposals.

2.8 The Commission also appear to take into account what is described as "the unprecedented nature of the intended change". I should point out that it is by no means unusual for the Island to lead the field in financial incentives or indeed legislation generally relating to financial products and financial services. The Island can only survive and thrive by the use of adventurous and entrepreneurial ways of thinking and the fact that the TBIA rates of allowance were somewhat higher than had been seen previously cannot in my view be regarded as a criticism. The recent proposal by the Government to implement a "zero tax strategy" is but one example of an initiative in a similar vein. As I have said in my evidence, I felt that it was necessary for the allowance to be at the rate of 250% in order for the proposal to work. This I believe is borne out by our subsequent experience of the Scheme.

3.1 In paragraph (c) the Commission criticise me for the fact that it was intended that there should be "legislative procedures which would limit the scale of tax foregone by the Revenue which might follow from the implementation of the Order" and that "this never happened" and further that I did not check whether or not it had happened.

3.2 Firstly, this criticism cannot properly be raised in relation to the 1991 Order. Although group relief was discussed as an issue in relation to the 1991 Order, the relevant intention to limit the scale of tax foregone was only formulated in the discussions leading up to the passing of the 1992 Order when Treasury specifically agreed at its meeting on Wednesday 9th September 1992 to include a restriction of group relief in the revised order. This was a meeting at which I was of course present. As such, it was clearly my intention that a restriction on group relief should be implemented. The fact that such restriction was not in fact implemented in relation to TBIA is not a matter which can be laid at my door. As was apparent from the evidence, legal advice post September 1992 was obtained from the Attorney General's Chambers to the effect that it was impossible to restrict group relief as the law then stood. It was not until the Income Tax Act 1995 was passed that it became possible to restrict group relief in relation to TBIA. By the time that had occurred, the Commission knows that a change of attitude had taken place within Treasury, following consultation with the private sector and the Department of Tourism, this being the subject of Mr Kelly's evidence and a matter on which Mr Corlett made submissions in paragraph 36 to 38 of his closing submissions. It will be recalled that by the time it proved possible to introduce restrictions on group relief, the issue of group relief on tourist premises had largely gone away and the Mount Murray capital

expenditure had in any event been incurred several years before. Any failure was a failure of the Treasury administrative system to record the change in policy requiring there to be no such restriction in relation to TBIA.

3.3 I do not believe it was appropriate for me personally to check whether or not the intended restriction on group relief had been implemented but in any event, as noted above, there was undoubtedly a change of thinking within Treasury between December/January 1993 and 1995 such that the whole attitude to group relief had changed considerably. It will perhaps be helpful to recall that I ceased to be Treasury Minister in December 1996.

4.1 Paragraph (d) appears to criticise me for having accepted a proposal on 20th March 1991 which had only recently been rejected by Treasury.

4.2 I must repeat once again that my so called "acceptance" of the Department of Tourism's proposal at the meeting on 20th March 1991 was an in principle acceptance to take the proposal forward and the matter was subject to subsequent vetting and approval by Treasury, Council of Ministers and Tynwald before it could enter into law.

4.3 To say that I effectively overrode any concerns the Assessor might have as expressed in his note of 21st March 1991 so that the "Order proceeded to the budget" is simply wrong. The proposal only became an Order when it was approved by Treasury on the 25th September 1991 and passed by Tynwald on the 15th October 1991. There was certainly no undue haste about the matter and the proposal was subject to the checks and balances provided by the Treasury, Council of Ministers and Tynwald system.

4.4 It is true that I made no reference in the Tynwald debate when moving the original 1991 Order on 15th October 1991 to the estimated cost of the TBIA scheme. However the proposed criticism seems to suggest that I deliberately did not read out some part of the briefing which had been provided to me by the Assessor of Income Tax. However, this is factually incorrect. The Assessor of Income Tax had, in an internal paper to Treasury dated 18th February 1991, indicated a potential cost of £150,000 per annum although he added that "in practice it would be less."

4.5 As pointed out in Mr Corlett's closing submission to the Commission, this figure of £150,000 was based on the then current level of taxation collected from the tourist industry as a whole. As such, Dr Orme in his evidence stated that the incentive scheme was a "low risk" strategy. It was low risk because the tax revenue at risk was, as Dr Orme said, the "miniscule" tax take from the ailing tourist industry as it then was. It is not I believe helpful for the Commission to make the somewhat vague and unsatisfactory statement that "the ultimate cost to revenue may have been many millions of pounds". It is my view that in fact the Isle of Man economy and its people have been net benefactors of the TBIA Scheme. As pointed out in Mr Corlett's closing submissions at paragraph 14, the concept of "tax foregone" is potentially misleading in that both tax foregone and tax retained from developments arising as a result of TBIA would never have arisen in the first place were it not for the TBIA Orders. As the Commission will

recall, the overwhelming evidence was that the Mount Murray development would not have proceeded without the benefit of the TBIA Orders.

5.1 Paragraph (e) criticises me for failing to update the cost estimate provided by the Assessor and my failure to monitor the costs of the proposals. Again, I fail to see that it is reasonable to criticise me personally for this alleged failing. As I have already pointed out, an initial assessment of the cost involved was done. The only revenue which was actually vulnerable was the comparatively trivial sum of £150,000 which was the total tax receipts from the tourist industry at that time. It was of course virtually impossible to predict what the new system would actually "cost". It was after all an incentive allowance system and its success and consequent cost to the revenue depended crucially upon how many companies and individuals were sufficiently incentivised to incur expenditure.

5.2 I believe that the Assessor accepted in his evidence that a more formalised system of monitoring would have been appropriate but nevertheless the impact of the TBIA capital allowances was in fact continually monitored on a less formal but nevertheless rigorous basis with all such claims being dealt with by a Deputy Assessor. I was never made aware of any undue distortion of the tax system and neither were any concerns about the system brought to my attention. I believe it is reasonable for me to have relied on the Assessor as to whether in his experience the scheme could be sustained. Furthermore, I would point out that it was difficult if not impossible for me to receive any detailed information about how the process was working by reference to individual tax payers in light of statutory restrictions on disclosure of tax payers' affairs set out in Section 106 of the Income Tax Act 1970.

5.3 As to the allegation that I did not know what could be afforded, or that I did not know whether a feasible proposal had been made or not, (a criticism made in your paragraph (b)), I was receiving constant updates on the state of the Island's tax receipts (for example see the Treasury Minute of 13th M^{ar}ch 1991 which refers to the Assessor reporting to Treasury that the current tax receipts received totalled £83 million and that he was confident that the revised estimate figure of £85 million would be achieved). As I said in my evidence "we were persuaded that we could afford it" (ie the TBIA proposals emanating from the Department of Tourism and Leisure). As Treasury Minister I took a political decision to discuss the proposals again in the Treasury on the basis that the Island's tax receipts were sufficiently buoyant to enable this Scheme to proceed. This decision was supported by my Treasury colleagues, the Council of Ministers and Tynwald and I believe that experience reveals that decision to have been fully justified.

5.4 I note that in this paragraph the Commission have said that the Assessor had put the first year costs on present levels of investment in the order of %500,000. This is a figure which appears to be derived from the additional information annexed to the briefing note for the Income Tax (Capital Relief) Order 1991 moved in Tynwald on 16th A^{pr}il 1991. This Order was a "general" Order applying not only to the tourist industry and as such, I do not consider it to be an appropriate reference. So far as I am aware the only specific figure mentioned by the Assessor relating to the cost of the TBIA Scheme was that of £150,000

referred to in the paper of 18th February 1991 a figure repeated in Mr Kelly's paper of 20th June 1991.

6.1 The Commission in paragraph (f) seeks to criticise me for not taking action which was intended to limit the effects of group relief. I believe I have already dealt with this matter at paragraph 3 above. The Commission then go on to say that I apparently accepted (presumably in evidence) "that this was an unfortunate error on [my] behalf". I cannot recall having stated this in evidence and cannot accept that I made any error concerning an alleged failure to take action intended to limit the effects of group relief. I will not repeat what I have already stated above. Having trawled through my transcript to locate any reference to my acceptance of "an unfortunate error" I have now found that phrase at page 51 of the transcript and find that I accepted that there had been a failure of communication between me and the Assessor with regard to my reading out part of my brief in respect of the 1992 Order. In my view, this is a quite separate and distinct matter and not of any particular significance.

6.2 The Commission also say in this paragraph that "it was intended that there would be a statement to Tynwald which would have allowed retrospective restrictions". It will be recalled that a briefing note was provided by the Assessor for my potential use at Tynwald at its January 1993 sitting when the 1992 Amendment Order was for approval. I gave evidence on day 37 of the hearing (see page 48 of the relevant part of the transcript) setting out my reasons for not reading out that part of the briefing. It was essentially a matter of political judgment or "taking the mood of the House". The part of the briefing note which I did not read out relates to the intention to introduce in the next Income Tax Bill measures preventing any group relief set off for incentive allowances for 1994/5 and subsequent years. I have already explained above why the intention of Treasury in December 1992 was not carried forward into subsequent years, so that when legislation was eventually enacted enabling group relief to be restricted, Treasury had taken the view (albeit not set forth in a Minutes of Treasury) that group relief should not be restricted in relation to TBIA.

6.3 I would also like to reiterate that there can be no suggestion that Tynwald was in any way misled when I moved either the 1991 Order or the Amendment Order in January 1993. My budget speech of 16th April 1991 plainly set out the proposal and the explanatory note to the 1991 Order, supplied to all members of Tynwald, makes it clear that up to <u>50% of the cost of any eligible development would be funded by way of tax relief</u>. In my submission the matter could not be any clearer. Tynwald Members knew or should have known precisely what was being proposed.

6.4 The Commission also seem to consider that I should be criticised for not having informed Tynwald when moving the 1992 Order that there were only two known projects which would qualify, one of which was Mount Murray and the other a comparatively small project in the south of the Island. In answer to this, I would like to reiterate what Mr Corlett has stated in his closing submission at paragraph 51, namely that I do not believe that I was required by any relevant Code of Practice on Access to Government Information or relevant Ministerial Code to disclose this information. Information concerning commercial confidences

(including grants and loans) are rightly exempt from the commitment to provide information to the public. By analogy, information about tax reliefs would be similarly exempt and arguably would also be covered by the statutory duty of confidentiality in Section 106 of the Income Tax Act 1970. I therefore do not believe it would have been appropriate for me to mention in Tynwald the affairs of individual tax payers when moving the 1992 Amendment Order.

I do hope that the Commission will carefully consider its proposed criticisms in the light of the above.

Yours sincerely

Donald J Gelling CBE CP MLC

3. <u>From Mr I Q Kelly</u> (so far as material)

I refer to the Commission's letter of 29th March 2004 to Mr Corlett and the potential criticism set out in the attachment in relation to me and I thank the Commission for the opportunity to respond. This letter and my attachment set out my response to the specific issues raised.

Given the manner in which they are set out, the points could be construed as criticisms and accordingly I feel I must respond on that basis.

For the reasons which I have set out in the attachment I do not accept the various criticisms because I do not believe they fairly reflect the overall position.

Hopefully in the light of my response the Commission will give further consideration to its proposed comments but in the interests of fairness I feel it appropriate that this letter and the attachment should be placed in the appendix to the report to the extent that the Commission retains its current view.

Yours sincerely

I Q Kelly
Assessor of Income Tax

Attachment

1. **The following facts and events are fundamental to the responses given on the specific criticisms. Most if not all were covered by my Advocate Mr Corlett in his summing up.**

1.1 Direct taxation is used by Government as a mechanism for both collecting revenue and securing the future economic well being of the Island. In particular the Assessor's role includes a responsibility to recommend ways of stimulating the economy through the use of direct taxation measures and incentives.

1.2 Given the manner in which the Departmental system operates within Government, the Assessor has a dual role in relation to economic incentives. Either to work in conjunction with Departments in developing their initiatives or to respond to Treasury in relation to any proposed initiatives received. In respect of the tourism initiative, I expressed my reservations to Treasury on several occasions about the problems associated with a 250% allowance.

1.3 Irrespective of any reservations, once a policy has been agreed by Treasury, the Assessor is responsible for ensuring that, working within the policy framework, the incentives meet the specific needs of the industry concerned. This will often be in relation to emerging business concepts and operations that are new to the Island. In order to understand the specific needs of any new business, given the size of the Island and the manner in which Government is structured, it is a prerequisite that the Assessor or senior officers in the Income Tax Division liaise at an early stage with business representatives. This constructive approach has always been viewed within the political and business arena as one of the Island's strengths.

1.4 At no time in the development of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 was I made aware of the Mount Murray Development. Had I been made aware of the concept and nature of such a development the specific issues which necessitated the subsequent Income Tax (Capital Relief) (tourist Business Incentive Allowance) (Amendment) Order 1992 would have been considered as part of the 1991 Order.

1.5 Unfortunately, as stated in evidence, I do feel my position was compromised by the exclusion of the Division from the early detailed discussions on specific taxation issues held by an officer of the Department of Tourism with the tax advisors of the Company in relation to the Mount Murray Development.

2. Criticism: Actions were not apparently taken for attempted mitigation or limitation of tax foregone by effects of group relief, or otherwise restricting the manner in which any unrelieved incentive allowances may be utilised notwithstanding that this was the basis or consideration upon which the revised tourist business incentive allowances were taken forward.

a) Group relief as an issue was certainly not ignored by me. As early as 1991 I had expressed concerns about group relief and its potential to distort tax receipts (based on the timing of the use of the allowances). As I said in evidence I "raised the profile" of group relief again in 1992, when the amendment proposals came to Treasury. It was undoubtedly the desire and intention of Treasury to deal with group relief in the 1992 Order (see Minutes of Treasury of 9 September 1992) but, following legal advice that this could not be done, amending primary legislation had to be progressed first.

b) Between December 1992 and the 1995 Income Tax Act (which introduced the necessary legal framework to enable group relief to be restricted) I explained in evidence that the attitude to group relief had changed considerably. A point acknowledged by Mr Gelling. Consultation had

taken place with the private sector in January 1993 which was firmly against any restriction of group relief. Consideration was being given to the use of the capital allowance framework to rejuvenate the lower Douglas area including the Promenade, which included areas of significant tourist, retail and office use. By the time it proved possible to introduce such restrictions, the issue of group relief on tourist premises had largely gone away and the Mount Murray capital expenditure had in any event been incurred several years before.

c) While I was unable to point to a specific document minuting a change of approach, such a change did nonetheless occur. There was a good relationship throughout this period between myself and Treasury. In what is a relatively small and unbureaucratic department interaction on an informal basis readily takes place. Whilst I fully accept that I would have been responsible for the implementation of any group relief restriction, the failure was not in fact in relation to any such implementation. If there was any failure it was a failure of the Treasury system to record the change in policy requiring there to be no such restriction in relation to Tourist Business Incentive Allowances.

d) It must be recognised that in the case of Mount Murray, even if a restriction for group relief had been introduced it would not have had the desired effect. Firstly because the enabling legislation was too late to have any material impact; secondly, the structure of the group that was ultimately put in place permits losses to be utilised by way of distributions being paid up to the parent (as stated in evidence by J Nugent).

e) On the basis of the above facts and observations I find the criticism to be unreasonable and I invite the Commission to reconsider its view.

3. Criticism: There has been a failure to have any formal monitoring of the effects of the tourist business incentive allowance.

a) Whilst I accept, with hindsight, that a more formalised system of monitoring may have been appropriate, the impact of the tourist business incentive allowances was in fact continually monitored on a case by case basis. Each year I am required to forecast for a three year period the amount of money that will be raised via direct taxes. In so doing, by necessity, I have to take account of changes impacting on all sectors of the economy to identify any undue distortions that could affect tax receipts. Whilst I was aware of the impact of tourist business incentive allowances, despite my concerns tax receipts remained buoyant. If tax receipts had been in jeopardy I would have brought this to the attention of the Treasury when dealing with budget estimates and suggested a remedy.

4. Criticism: There has not been any economic appraisal of the effects of the tourist business incentive allowance.

a) As already acknowledged in my opening comments I do recognise that lessons have been learned which will assist when faced with future projects which could give rise to similar cross departmental initiatives which involve taxation issues. However, as with the grants system operated by the Tourism Department, the responsibility for carrying out any economic appraisal has to rest with that Department.

b) The incentive allowances came out of a recommendation from the Department of Tourist following an earlier detailed appraisal by the Department of the state of the tourist industry at that time. Only that Department could have been aware of the economic impact of the allowances and whether or not they were achieving the desired effect. It should not be overlooked that in the 1992 Order it is the responsibility for that Department to provide a certificate that any project "is in the interest of the economy of the Island" in order for the project to qualify for Tourist Business Incentive Allowances.

c) My role is to monitor the tax receipts which I do on a monthly basis as part of the Budget Strategy process.

6. Criticism: With regard to the drawing up and drafting of the 1992 Order the consultation involved only the party which would benefit from the legislation and went so far as to pass to that party a copy of the draft legislation.

a) In light of the following facts I strongly refute this criticism of my actions. They were in accordance with my approved job description, with Treasury expectations and, in relation to the second Order, were with the specific authorisation of Treasury.

b) This criticism raises matters that cause me personal concern. It is accepted by all relevant witnesses that the 1992 Amendment Order (in marked contrast to the 1991 Order) was very closely linked with the development at Mount Murray.

c) I do not accept that it was in any way improper to consult with an interested party over the likely content of subordinate legislation. Indeed, as already explained, this is a specific and necessary part of my duties when developing new incentives or liaising with new business. In an appendix to my letter of 21st January 2004 I provided the Commission with an extract from "The Guide to Legislative Procedures" published by the UK Cabinet Office. Section 5 paragraph 5.1 promotes such consultation:

"Legislation will very often benefit from prior consultation with interested outside bodies, including business and professional organisations… which will be affected by its content… Consultation with interested bodies might begin as soon as outlines of policy are settled or on technical points even earlier."

d) I also produced to the Commission at Appendix 33 to my statement a copy of the Treasury Minute 528/92 in which Treasury specifically authorised me to communicate the content of the draft 1992 Order to Pannell Kerr Forster who were acting on behalf of the developer. It was at my instigation that this

authorisation was given because of the difficulties and sensitivities associated with bringing this matter to a conclusion.

e) It has also been confirmed in my evidence and that of J Nugent of Pannell Kerr Forster that no amendments of substance were made to the Order as a result of the draft Order being passed to him by me with the concurrence of Treasury.

f) As stated in my evidence, there is a question as to the extent to which the second Order was actually required. In many respects it did no more than provide certainty on specific aspects of the development that did not readily fit within the Division's interpretation of the capital allowances provisions. I would refer the Commission to point 2 in my letter of 20th January 2004 in this respect. Had I been made aware of the development from its early inception, these aspects would invariably have been taken into account at the time of developing the first Order.

I trust the Commission will find my comments to be of assistance.

I Q Kelly
Assessor

4. From Mr R Kennaugh

I refer to your letter of 19th March addressed to my Advocate Mr Corlett of Simcocks and welcome the opportunity to respond to the proposed criticism of my role in this matter.

I would be grateful if my response could be placed in the appendix to the Report.

I note that the Commission considers there to be some contradiction in the evidence that I gave concerning a purported certificate for 23 houses dated 10th April 1995. I assume that the Commission are focusing on that part of my evidence set out at pages 73 to 79 of the transcript of my evidence.

It is perhaps not surprising that there was a little confusion on my part when dealing with the matter of certificates, particularly when I was confronted for the first time with a purported certificate dated 10th April 1995. As I have stated in evidence, the purported certificate of 10th April 1995 "remains a mystery one to me".

I would like briefly to refer to the closing submissions made by my Advocate on the issue of certificates. I refer to paragraph 43 of his submissions when he reminded the Commission that in fact only three certificates were actually issued and sent to the Treasury, namely one of 21st December 1992 relating to the hotel, one of 2nd March 1993 relating to the hotel extension and sports facilities and one of 21st September 1994 relating to "villas or apartments". Only the first two have ever given rise to valid claims for tax relief. The third could only possibly have given rise to a valid tax relief claim upon the houses being (a) built and (b) registered as tourist premises. The latter has of course never happened.

Any other drafts or unsigned so called "certificates" should be disregarded as should any which have never been validly submitted to the Treasury. In particular, as to the

"certificate" of 10th April 1995 its provenance has not been established and there is no evidence whatsoever to suggest that it was ever sent to the Treasury. Furthermore, the unsigned "certificate" of 10th April 1995 assumes that the houses will be used for the purpose of the tourist business of Mount Murray Country Club Limited and this has never happened. Accordingly, the certificate is of little or no significance.

Accordingly, I am bound to say that I find it somewhat surprising that the Commission should attach some importance to the document dated 10th April 1995.

Nevertheless, I am heartened to note that the Commission sees no reason or evidence to indicate anything untoward in my conduct and I hope the Commission will take the points I have raised into account.

Yours sincerely

R Kennaugh
Deputy Assessor of Income Tax

5. From Mr J Nugent (so far as material)

Supplementary Statement of John Nugent

Response to the Commission's Letter Dated 29 March 2004 and the Proposed Comments Regarding John Nugent in the Commission's Final Report.

This statement responds to specific points made in the attachment to the Commission's letter dated 29 March 2004, which referred to my involvement as taxation adviser to Mount Murray Country Club Limited.

2. Pressure applied regarding taxation matters and the requirement for tax reliefs for the development.

   In paragraph (a) of the above mentioned attachment the Commission has stated that "… pressures were applied on taxation matters, often aggressive in nature, and including strongly made threats of withdrawal of the Mount Murray project…" It is clear from the copy correspondence that the Commission have available to them that these pressures developed over time as a direct result of the failure of the Department of Tourism to respond to correspondence regarding this matter and the failure of that department to properly liaise with the Income Tax Division. Furthermore, whilst the Commission indicates in paragraph (e) of the attachment that it does not believe that the development would not have proceeded without the allowances, I sincerely did not and do not believe that that was the case. Therefore, to the extent that I stated to the Department of Tourism that the project would not proceed without clarification regarding the tax reliefs, I was relaying comments from my client which I believed and still believe to be the case.

3. Group relief matters

With regard to paragraph (d) of the attachment I have previously stated my understanding of the ownership arrangements to the Commission and therefore can only re-iterate my understanding of the position is clearly set out in the evidence I have already given.

John Nugent
15 April 2004

6. From Mr T P Toohey

I write in response to your letter dated 29th March, 2004, and have now had an opportunity to consider the attachment related to myself.

If, following consideration of the content of this letter, the Commission of Inquiry is still minded to be critical of my action or as the case may be inaction, then I would request that this letter be contained in total in an Appendix to Part Two of the Report.

General Observations - Executive Government

As you are aware, the Isle of Man is a small separate legal jurisdiction forming part of the British Isles, but not the United Kingdom. The Isle of Man to all intents and purposes attempts to be a microcosm of the United Kingdom with the approach being of one of the Departmental Government.

The Island's population is well served by its Politicians and Civil Service given that we attempt here to almost replicate what is happening elsewhere and particularly in the United Kingdom, which is our greatest influence in terms of social policy and welfare issues.

Unfortunately, this replication places upon almost all Civil Servants a requirement to be a jack-of-all-trades and master of none. It is not unusual for certain Civil Servants to carry responsibility across a broad area of work, which in itself could justify a whole Department or indeed a Division within a major ministry. I do not suggest that the volume of work would be identical to that in the United Kingdom. There is, however, a requirement for a specific level of knowledge and expertise to ensure that our standards in the isle of Man do meet acceptable standards of administration, social policy, education and criminal justice prevailing within the United Kingdom, if not Western Europe.

It is with this particular position in mind that I believe the Commission of Inquiry should take on board when considering the action or inaction of individuals rather than applying a standard, which they consider to be appropriate in the United Kingdom. I do not seek a lesser standard, but one which is applicable to those individuals who work within the Isle of Man in the circumstances pertaining to the Isle of Man.

a. While your initial comments in respect of my situation is acknowledged and noted, I feel insufficient recognition of the situation alluded to in respect of my role is reflected in your subsequent comment that appears in the attachment.

b. With reference to bringing Mr Mitchell "under control" and that "things went back to the state they were in May, 1992" I would like to underline the fact that Mr Mitchell was not a Civil Servant during this period and as Accounting Officer my ability to exercise disciplinary control over Mr Mitchell was accordingly severely limited. He also, I would wish to stress, continued to enjoy the Minister's patronage and support throughout this period. In regard to my own situation, I was still employed on a contractual basis up until the beginning of 1995. The consequence of the latter being that this contract could be terminated at the end of a contractual period by the Minister should he see fit.

I advised Mr Lewsley of Mr Mitchell's "consultancy" status which placed him effectively out of reach of Civil Service disciplinary measures, immediately after Mr Lewsley's questioning of Mary Williams, the Isle of Man Government's Chief Secretary, in October 2003, when she had been questioned by him about disciplinary issues. Hence the circumstances which would have assisted me in keeping Mr Mitchell "under control" as you refer to it, were not present. But, matters did ultimately change and I initiated that process. I would add that after Mr Mitchell's status changed to that of a Civil Servant, I ultimately suspended him for reasons unrelated to the subject matter of the Mount Murray Inquiry.

As a direct consequence of the above, I would submit that I did have control over my Department; such limitation was only in respect of Mr Mitchell and his status within the Department as highlighted above.

Development matters were just one element (and a minor element at that) of the Department of Tourism, Leisure and Transport as my Department was titled at that time. Hence it is a highly inaccurate and denigrating claim that I exercised "extremely poor management of the Department at all material times."

The Development Section had three (3) personnel attached to it out of a total establishment of approximately 400 staff in my Department (compared with 452 (winter) to 900 (summer) staff today.)

I cannot express strongly enough my dissatisfaction and frustration that you believe that I was under the misapprehension that the document "issued on your behalf on the 21st September, 1994, was believed by you initially to be a certificate although, in fact, it was procedurally ineffective." As I advised your Inquiry, the letter (not certificate) faxed to Mr Kennaugh of the Income Tax Division was sent to him as a draft for discussion purposes. A staff colleague who faxed the letter to Mr Kennaugh inadvertently left off the notation "draft." He had sent the fax on my behalf as I was off the Island at the time. Owing to pressure from the Developer (Mr Spence) I had asked my colleague to request early comment from Income Tax and this request was inadvertently included by him in the body of the letter rather than being an accompanying note.

I presume that the letter referred to above has prompted your comment that the (alleged) certificate was, in fact, procedurally defective.

I would comment:-

i) It was not a certificate - it was a document sent to Income Tax (Mr Kennaugh) in draft form for comment and advice.

ii) My claim that the letter was not a certificate but a "draft" document was not a fabrication on my behalf and this is borne out by the record of the meeting held on 14th October 1994 (attached). Reference to this very fact is contained within the memorandum sent by J M Caley, Senior Economic Assistant, to his Manager, Mr S Carse, the Government Economic Adviser. I quote from the memorandum, "a letter from Mr Toohey to the Assistant Assessor of Income Tax exists which, on the face of it, looks like the certificate sought by the company. Mr Toohey maintains that it was a draft sent for comment and Mr Kennaugh states that it is inadequate for his purpose as it fails to specify which houses are to qualify for the TBIA and contains a request which would not be included in a suitable certificate." Mr Kennaugh's comments hence highlight not only the inadequacy of the "draft" document if it had been perceived by Mr Spence as a certificate, but also underlines the fact that it was not a certificate.

iii) Hence, at no stage did I hold the view that the document was a "certificate."

You maintain that Treasury gave specific advice to me. That is correct, and it was I who sought that advice. From the documentation it is also obvious that I had made prior contact with the Income Tax Division and later also contact with the Attorney General's Department. All of these actions were motivated by my determination, in the knowledge that I had been dropped, virtually from a standing start, into a difficult negotiating scenario with a rather aggressive and, at times, unpleasant individual (Mr Spence) and that I was not going to allow my Department or myself to be compromised in any way by the situation that I found myself in.

Your comment that "I failed to follow …. elementary advice which had come from the Treasury" is not correct. You will note Mr Caley's memorandum referred to a letter for Mount Murray drafted by me outlining the requirements of Government as a pre-cursor to any possible certificate. Mr Caley confirms that he had sight of the letter and agreed with its contents. Hence the advice offered to me by the Treasury was acted upon by myself. This was thereafter followed by a subsequent meeting with the Attorney General, Mount Murray's legal representatives and myself inter alia. That meeting had also occurred because I was still being recalcitrant in the issuance of any documentation or certificate up to that point.

You also appear to have misunderstood the long established practice in respect of legal advice being obtained from the Attorney General.

Historically, Government Departments do not have a budget for the securing of legal advice and assistance outside the Attorney General's Chambers. The requirement is for the Attorney General or his Legal

Officers to be consulted. In the normal course of events, his advice will be followed and applied.

You seek to censor me on a policy applied then and still today across Government Departments. Such a position can only confirm that in the course of your Inquiry you failed to understand the political and Executive Government practices of the Island.

Finally on this point, the legal adviser at the time is now the Island's Senior Judge.

However, much of your comment related to this issue could possibly be deemed academic inasmuch as the Mount Murray organisation never registered the residential properties as tourist premises and hence never received, as far as the houses were concerned, any funding from the TBIA.

You state that I "appear not to have fully understood the procedures" and I strongly contest that point. I was aware that the situation that I found myself in possessed certain complexities that were new to me and I was determined to the point of obstinacy to ensure that I sought and benefited from the full corporate advice available to me from Government, specifically related to tax matters.

In relation to the time period taken before the production of guidelines were considered, the primary reason for the delay was quite simply that it was some years later that a TBIA (with possibly one minor claim in the interim) was requested by a hotel operation on the Isle of Man.

c) Accordingly, I strongly feel that failings you feel existed, could not be described as "serious", particularly bearing in mind the mitigating factors that you have acknowledged.

I have also been advised in recent weeks by personnel from the Income Tax division that, in their opinion, the tax benefits received by the Mount Murray Hotel and Country Club have been totally justified in relation to the economic return to the Island's economy namely, within the tourism, employment and other supply related sectors.

Conclusion

In the light of the above comments and responses to your intended criticism, I cannot accept your final conclusion.

The Commission had a brief to look at the issue of the Mount Murray Development. The involvement of my Department was to secure the project, if possible. The project was secured and we have a much needed major hotel and leisure complex on the Island.

My Department fulfilled its obligations under the incentive process in line with the practice existing or adopted at the time.

The real issue appears to be how a planning process for tourist accommodation evolved into approval for full time residential.

The Department which I head has no part to play in the planning process as regards what is or is not approved.

In conclusion, with the benefit of hindsight, this Island may in the course of your Inquiry have exhibited some shortcomings in the manner by which this major project was progressed from the drawing board to the completed development. In the circumstances, such shortcomings are due to the fact we are a very small Island endeavouring to carry out similar functions and provide services similar to those available in western democracies.

We actually do so to a high level and do so notwithstanding significant restraints. With the benefit of hindsight, all of us can review our past actions and say we could have approached this differently or carried out the work more effectively. I am prepared to accept such a conclusion, but have come to a conclusion that after such a period of Inquiry, it will be necessary to find one or more scapegoats. In the circumstances, I reject your indicated conclusion that I should be one of them.

For the reasons stated above, I feel much of the criticism directed at me is inaccurate, unfounded and unjustified and would request that you consider revising your comments accordingly.

Yours sincerely

T P Toohey
Chief Executive

(Attachment: Memorandum J M Caley, Senior Economic Assistant, to S Carse, Economic Adviser, 14.10.1994 - Inquiry File I, pages 364 to 366)