Appeal No. VA88/0/381

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Eastern Health Board **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Offices of the Eastern Health Board, First Floor, Park House, 191-193, North Circular Road, County Borough of Dublin

B E F O R E

Hugh J O'Flaherty	**S.C. Chairman**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 1ST DAY OF MAY, 1989

By notice of appeal dated the 18th day of August 1988, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £700 on the above hereditament.

A preliminary oral hearing of this appeal took place on 6th March 1989 subsequent to which the Chairman of the Tribunal requested both parties to set out before the resumed hearing their views on

(a) the constitution and statutory framework of the Eastern Health Board

(b) the case law to which the Tribunal will be referred and

(c) how the Tribunal should regard the subject premises.

In response to this a memorandum was received on 3rd April 1989 in the Tribunal offices from the appellant. In this memorandum the appellant outlined the history of the health services in Ireland from the passing in 1838 of the Poor Relief (Ireland) Act, dividing the country into 150 Poor Law Unions, through the passing of the Local Government Act, 1925 when the public health functions of the County Council became vested in a committee of the County Council which became a corporate body and was styled the Board of Health and Public Assistance. When the Public Assistance Act, 1939 came into operation on 26th August, 1942 the functions of the Boards of Health and Public Assistance were merged with the County Council.

The primary source of money to defray the cost of the scheme of public assistance so instituted was the local rate, that is to say, the municipal rate in the county boroughs and the poor rate which became known as the county rate from 1946 on in the counties.

Section 5 of the Public Assistance Act, 1939 provided that the administration of public assistance in pursuance of the law (including the Act) for the time being in force in relation to such administration, should be subject to the general direction and control of the Minister meaning thereby the Minister for Local Government and Public Health.

Constitution & Statutory Framework of the Eastern Health Board

Section 18 of the Health Authorities Act, 1960 established four new statutory bodies known respectively as the Dublin Health Authority, the Cork Health Authority, the Limerick Health Authority and the Waterford Health Authority.

Section 4 of the Health Act, 1970 enacted that for the administration of the Health Services in the State, the Minister for Health should after consultation with the Minister for Local Government by regulations establish such number of boards (to be known and in the Act referred to as health boards) as might appear to him to be appropriate, and such regulations specified the title, and defined the functional area of each health board so established and specified the membership of each health board.

The Health Act, 1970 (Commencement) Order, 1970 (S.I. No. 47/1970) brought Section 4 of the Health Act, 1970 into operation on the 12th March, 1970.

The Health Boards Regulations 1970 (S.I. No. 170/1970) established, as from 1st October 1970, inter alia, the Eastern Health Board and fixed its functional area.

The Health Act, 1970 (Commencement) Order 1971 (S.I. No. 90/1971) brought most of the provisions of the Health Act, 1970 into operation on 1st April 1971 and effected the repeal, in whole or in part, of the Acts listed in the Schedule to the Order.

The cumulative effect of the foregoing is that the Eastern Health Board commenced functioning on 1st April 1971.

Section 4(2) provides that membership of the health board shall consist of:-

(i) persons appointed by the relevant local authorities.

(ii) persons appointed by election by registered medical practitioners, and by election by members of such ancillary professions as specified in the appropriate regulations made under Sub-Section (i).

(iii) persons appointed by the Minister.

It is provided also that in the specification of membership of a health board by Regulations under section 4 the number of persons appointed by relevant local authorities shall exceed the total number of other members of the health board.

There are eight health boards, Eastern, Midland, Mid-Western, North-Eastern, North-Western, South-Eastern, Southern and Western.

Section 6 of the Health Act, 1970 described the function of health boards as being the functions conferred on it under the Act and any other functions which immediately before its establishment were performed by a local authority (other than as a sanitary authority) in the functional area of the health board in relation to the operation of services provided under, or in connection with the administration of the enactments specified in sub-section 2 of the section. Those enactments are fourteen in number and in addition the administration of Chapter 6 of the Social Welfare (Consolidation) Act, 1981 which deals with Supplementary Welfare Allowance is also made a function of the relevant health board.

Chapter 3 of the Health Act, 1970 deals with the finances of health boards. Sections 27 to 31 deal with:-

(a) the accounts of health boards;

(b) audit of health board accounts;

(c) publication by health boards of abstracts of the accounts of health boards and the l

(d) the submission to the Minister for estimates of receipts and expenditure for such p

Section 32 provides that the Minister shall out of monies provided by the Oireachtas make grants to health boards. The exchequer contribution towards the funds for statutory health services in 1986 amounted to 91.12% of the total amount expended.

Health Boards are divided functionally into three programmes, Community Care, Special Hospital Care and General Hospital Care.

The appellants referred to the following cases:-

Dublin Cemeteries Committee v. Commissioner of Valuation -(1897) 2 I.R. 157;

Harte v. Holmes - (1898) 2 I.R. 656;

Pembroke Urban District Council v. Commissioner of Valuation - (1904) 2 I.R.;

University College Cork v. Commissioner of Valuation -(1911) 2 I.R. 503 and (1912) 2 I.R. 328;

The State (Rita Kershaw) v. Eastern Health Board - (1984) No. 263 S.S. (unreported)

The State (James McLaughlin) v. Eastern Health Board -(1986) 288 S.S. (unreported)

They submitted that the Tribunal should regard the subject premises as follows:-

(1) As constituting a separate hereditament;

(2) As a hereditament which is used for public purposes in the same way as the offices occupied by the Department of Health or the Department of Social W

(3) As a hereditament to which the public in general have a right of resort for the purposes of seeking and obtaining the services to which they are entitled by statute.

In a written submission in response to the Tribunal's request at the preliminary hearing the respondent again outlined the history of the health services in Ireland and described the functional areas administered in the subject premises. In addition with regard to the Community Welfare Section the respondent stated that maternity cash grants and blind welfare allowances are distinct from allowances paid under the Social Welfare Acts and that it cannot be said that the health boards are acting as agents for central government. It was also submitted that fostering is not a function of central government but was historically a function of local government transferred to the health boards and as not all of the health boards operate adoption societies that this is not a matter for central government.
The respondent referred to the following cases:-

Kerry County Council v. Commissioner of Valuation (1934) I.R. 527

McGahan v. Commissioner of Valuation & Killarney U.D.C. (1934)
I.R. 736

Trinity College Dublin v. Commissioner of Valuation (1919) I.R. 493

Dore v. Commissioner of Valuation K.B. 50 I.L.T.R. 105
Maynooth College v. Commissioner of Valuation (1958) I.R. 189

Guardians of Londonderry Union v. Londonderry Bridge Commissioners I.R. 2 C.L. 577

Commissioner of Valuation v. Sligo Harbour Commissioners
(1899) 2 I.R. 214

Wesley College Case (1984) I.L.R.M. 117

A written precis of evidence dated 10th February, 1989 was submitted by Mr Declan Lavelle, a valuer with eight years experience in the Valuation Office in which he described the premises as being located in the front wing on the first floor of Park House, a seven storey over basement office block at 191-193 North Circular Road, Dublin 7. He said the premises comprise of a first floor suite of offices (c. 1170 sq m) with canteen facilities, shared toilet facilities and twenty five car spaces. The first floor is serviced by three lifts. The premises are held by means of a 35 year lease with 7 year rent reviews from October 1974. The current rent is £80,000 per annum. The subject was acquired in 1986 on the receipt of a reverse premium of £15,000.

Valuation History

The subject premises was first valued in 1975 when the occupier was Dublin Co. Council and was described as offices (1st floor front wing) and car spaces. R.V. £700.

The premises was listed for revision in 1987 - "Exemption Sought". No change was made as a result of this revision. The occupier appealed the decision of the Commissioner not to distinguish the subject property on the basis that:-

> "The offices at Park House accommodates health and welfare services provided by this Board under the 1970 Health Act and other legislation. In particular, it accommodates the Board's fostering and social services along with the welfare services. The services provided are non-profit making."

In describing the subject premises the appellants stated that the Board occupies the subject premises for the purposes of its Community Care Programme and for two specific sections of

this Programme, namely, Community Welfare Section and Children Section. The accommodation for the Community Welfare administrative function occupies approx 4,500 sq. ft. A staff of 20 full-time salaried officers of the Board are engaged in this section. This staff provides the administrative back-up and records for 15 Superintendent Community Welfare Officers and in turn these Superintendents are responsible for some 150 Community Welfare Officers working throughout the Board's functional area. The Community Welfare Programme administers the Disabled Persons Allowances and Maternity Cash Grants and Blind Welfare Allowances. The Disabled Persons Allowance is paid by the Health Boards by virtue of Section 69 of the Health Act, 1970 prior to which the scheme was administered by the Department of Social Welfare. The Maternity Cash Grants and Blind Welfare Allowances are distinct from the allowances paid under the Social Welfare Acts but in most circumstances are supplementary to these payments, the provisions for which are specifically governed by the 1970 Health Act. The Supplementary Welfare Allowance scheme is the largest scheme in terms of persons eligible and case allocation. Supplementary Welfare Allowances are essentially "top-up" or interim payments in respect of benefits that are in the long-term payable by the Department of Social Welfare or where the payment made by that Department is inadequate to meet the specific needs of the applicant. Payments are also made in respect of persons whose applications for payments are awaiting processing by the Department of Social Welfare. These payments come under a myriad of Social Welfare Acts which were all under the control of the Department of Social Welfare until regulations were made in 1977 transferring their administration to health boards. The payments in respect of supplementary welfare are allocated by the Department of Social Welfare providing for dual funding from the central exchequer through that Department and the Department of Health. The Eastern Health Board distributes approximately £25 million per annum in Supplementary Welfare Payments.

The premises also provides accommodation for the Children's Section which occupies some 8,000 sq. ft. and employs 18 people, 12 administrative and 6 social workers. The administrative component constitutes the administrative staff and records for the Board's entire functional area and with responsibility for administrative back-up for the specialist Social Workers Unit, the Fostering Resource Group. The group comprises 6 social workers which are an elite group specially skilled and trained in fostering methods and its members provide back-up and specialised knowledge relating to this for social workers operating in the individual Community Care Areas. Fostering was originally under the control of local authorities but was transferred to the health boards.

The section also accommodates the Board's adoption agency -St. Louise Adoption Society. The society's functions encompass the full range of an adoption agency from the natural parent to the finalisation of the adoption by the adoptive parents. This includes all assessments, interviews, recommendations and correspondence in ascertaining suitability of prospective parents and the liaison with the Adoption Board for the making of the adoption orders.

ORAL HEARING

At the oral hearing which was held on the 10th April, 1989 Mr Richard Cooke S.C. appeared for the appellants instructed by Mr Colm Carroll of Roger Greene & Sons, Solicitors, 11 Wellington Quay, Dublin 2. Also present were Messrs John Doyle, Programme Manager Community Care E.H.B., Mr Philip Doyle, Estate Manager, Mr Ray Kavanagh, Senior Administrative Officer and Mr Frank Murphy, Section Officer. Mr Aindrias O Caoimh Barrister appeared on behalf of the respondent, instructed by the Chief State Solicitor. Mr Declan Lavelle also attended.

Mr Cooke traced the background to the 1970 legislation which had formed part of the written response put in by the appellants. He drew a distinction between municipal purposes which he said were not public purposes for the purpose of exemption. He said the activities here involved were not municipal purposes; they are State purposes. He said that activity of the health board was not in pari materia with local authorities at all. He said that municipal purposes is a very narrow matter. The area of the rate was not co-terminous with the area of the persons concerned. The legislation sought to equalise the services throughout the country. Thus people in Connemara were entitled to expect the same services as people in Dunlaoghaire.

He said that over 90% of the revenue of health boards came from the exchequer.

With regard to the welfare activities carried on in the building Mr Cooke referred to the "progressive interlocking" between the Department of Social Welfare and the Department of Health.

The touch stone in the early cases was the "area of charge". In the present case the "area of charge" was the country at large.

He elaborated on the concept of adoption and fostering and said that fostering was traditionally a local government function but it was taken away from the local government and transferred to a new authority which divorces it from the municipal purposes as heretofore envisaged.

Mr O Caoimh for the respondents said that it was up to the appellant to establish that the premises came within one or other of the categories alluded to by Mr Justice Keane in his

book on Local Government in Ireland where (p. 297) the learned author said it now seems clear that property is "used for public purposes" where, and only where;

(1) it belongs to the Government;

or

(2) each member of the public has an interest in the property.

Both parties appear to agree that "belonging to the Government" had the meaning of "pertaining" to Government.

He said that the Eastern Health Board is a body corporate and it was not a "sub-office of a Department of State". It is a separate corporate entity. The subject premises are not State property.

He said that adoption is not an activity of Government in the traditional sense. The adoption services are carried out by the St. Louise Adoption Society. Mr O'Caoimh said that only five of the health boards provide such adoption service. Therefore, it is not an essential function of the health board. The real point which Mr O'Caoimh said must be addressed is whether all members of the public have a right to enter upon the premises. Entry is limited and, in a word, the premises were not used for public purposes.

If the Tribunal were disposed to make a distinction in regard to the welfare activities he invited the Tribunal to distinguish portion only under section 2 of the Valuation (Ireland) Amendment Act, 1854.

Mr Cooke responded and said that it was a State function to look after those who needed fostering and adoption. Ownership was never the question in deciding upon rateable valuations. Occupation is central to liability for the poor rate.

A map of the floor area involved was submitted by Mr Lavelle and both sides agreed on the allocation of floor space as outlined by Mr Lavelle. It is attached to this judgment as an appendix.

FINDINGS

As regards the description of the hereditaments and the activities carried on in the respective sections, there was no dispute between the parties. Accordingly, the Tribunal finds that what may be termed the "welfare section" is for the benefit of all the public. That does not mean that each member of the public is likely to resort there. The test is: is the building potentially available to the public generally. The Tribunal thinks that it clearly is. The dispensing of social welfare benefits is clearly for the public benefit generally.

The Tribunal accepts as fact - and, indeed, there is no dispute on the matter - the description of the use that is made of the children's section and as is set out in the appellants written response to the Tribunal's request for information in regard to this.

Doctor Hensey in his book The Health Services of Ireland gives the background history to the enactment of the Health Act, 1970. Doctor Hensey said that the idea of special bodies for the administration of the health services having been referred to in the 1947 white paper "surfaced again in the 1966 white paper, in which it was proposed that legislation should be introduced to transfer the services to regional boards whose membership would 'represent a partnership between local government, central government and the vocational organisations'" Doctor Hensey makes clear that the decision to take health administration away from the

local authorities was not lightly reached but he refers to the case for change in health administration, as stated in the white paper as having two bases.

"The first was that, because the State had taken over the major financial interest in the health services and this interest was increasing, it was desirable that a new administrative framework combining national and local interests should be developed for the services. The second basis for a change arose from the developments in professional techniques and equipment, which meant that better services could be provided on an inter-county basis. This argument was, of course, of greater relevance in the hospital services. For many of these services, and for the general organisation of hospital services, the county had become too small as a unit. In 1966, over half of all in-patients in acute hospitals were being treated in the regional and teaching hospitals in the larger centres, and specialist services at out-patient departments were being organised increasingly on a regional basis. It had become clear that the future efficiency of the hospital services was becoming more and more dependent on full co-ordination of the various units and that a board covering a number of counties could plan and arrange the hospital services for those counties so as to serve better the people in its area. From many counties, hundreds of patients were being sent annually at the expense of the local health authority to hospitals in other areas, but in these circumstances, the county concerned had no say in the organisation or operation of these hospitals. The grouping of counties under new bodies, representative of all counties within the group, meant that each county could become directly associated with the hospital centres to which most of its patients were traditionally sent and have a voice in the creation of policy on the services in those centres.

Based on these arguments, the case was made for the organisation of the hospital services in larger units. The option was open to do this and to leave the other health services, such as the general practitioner service and the preventive services, with the local authorities. This option was, however, rejected because always in mind as the main consideration was the

importance of unitary control and responsibility for all the health services in each area. The services are all interdependent. Hospital care is related to what general practitioners do and may be an alternative to general practitioner care, and, of course, the activities of the preventive services can also affect the requirements for hospital and other services. It was, therefore, decided that it would be an essential principle of the new administration that one body would be responsible for the operation of all the health services in its area.

It was, in any event, apparent that many of the health services outside hospitals - such as general practitioner services, public health nursing services and child welfare services - would benefit from being organised across county boundaries. The Health Services of Ireland by Doctor Brendan Hensey; 4th edition (1988); Institute of Public Administration.

> The Tribunal acknowledges with gratitude permission given by the author and publishers to quote from pages 56-58 of the book.

It seems to the Tribunal that the health boards are the creation of statute; that they represent a new departure and that they cannot be regarded merely as successors to the local authorities some of whose functions they have undoubtedly taken over. It appears, therefore, that much of the debate that took place in the old cases as regards the distinction between public purposes and municipal purposes is of no relevance to what the Tribunal has to resolve in the instant case.

However, the Tribunal would wish to restate the law governing the topic. It has been summarised in judgments from time to time and the Tribunal would refer to one summary, viz. that provided by Lord Justice Holmes in the University College Cork case (1912) 2 I.R. 328 at 340

Statutes relating to the valuation of rateable property in Ireland have been passed from time to time, and a Commissioner to conduct and superintend such valuation has been appointed pursuant to those statutes by the Lord Lieutenant, but of their many provisions it is, I think only necessary in considering this appeal to refer to sections 15 and 16 of 15 & 16 Vict. c. 63 (Valuation (Ireland) Act, 1852), and section 2 of 17 Vict. c. 8 (Valuation (Ireland) Amendment Act, 1854). The first mentioned section enacts that "in making out the lists or tables of valuation, the Commissioner shall distinguish all hereditaments and tenements, or portions of the same, of a public nature, or used for charitable purposes, or for the purposes of science, literature, and the fine arts, as specified in 6 & 7 Vict. c. 36, and the value of the same shall be deducted from the gross amount of the valuation of the hereditaments and tenements comprised in each such list or table; and all such hereditaments or tenements, or portions of the same, so distinguished and deducted, shall, for the purpose of this Act be deemed exempt from all assessment whatsoever, so long as they shall continue to be of a public nature, or used for the purposes aforesaid."

Section 16 enacts that "for the purposes of such valuation no hereditaments or tenements, or portions of same, shall be deemed to be of a public nature, or used for such charitable, scientific, or other purposes as hereinbefore specified within the meaning of this Act, unless such hereditaments or tenements, or portions of the same respectively, shall be altogether of a public nature, or used exclusively for such charitable, scientific, or other purposes aforesaid."

Section 2 of 17 Vict. c. 8 follows the 15th section of the earlier Act already quoted verbatim down to the words "6 & 7 Vict. c. 36," after which there is a slight deviation in the language, which runs - "And all such hereditaments or tenements, or portions of the same, so distinguished, shall, so long as they shall continue to be of a public nature, and occupied for the public service, or used for the purposes aforesaid, be

deemed exempt from all assessment, for the relief of the destitute poor in Ireland, and for grand jury and county rates."

It will be noticed that there are two differences between the sections - (1) the words "and occupied for the public service" following the words "so long as they shall continue to be of a public nature"; and (2), the words, "for the relief of the destitute poor in Ireland, and for grand jury and county rates," after the words "exempt from all assessment."

The Acts to which I have referred relate to the valuation of hereditaments and premises for the purposes of rating, but they impose no rates and taxes. The authority for imposing the assessments for the relief of the destitute poor in Ireland, and for grand jury and county rates referred to in section 2 of 17 Vict. c. 8, must be looked for in other statutes; and it is reasonable to expect that the provisions relating to exemption from liability to be found in each class of legislation should harmonize. Accordingly, when the exemptions in the Valuation Acts have been under consideration in an Irish tribunal, the 63rd section of 1 & 2 Vict. c. 56, which declares what hereditaments are rateable for poor-rate, has always been supposed to assist in their construction. For example, on the only occasion on which a question precisely similar to the present was argued and decided in this Court, three of its four Judges, then present, referred to this section as throwing light upon what is meant by premises of a public nature in the Valuation Code.

I shall, therefore, conclude this portion of my judgment by quoting the final proviso of section 63 - "Provided also that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor any infirmary, hospital, charity school, or other

> building used exclusively for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use."

The gloss that has to be added to that is to point out that the Supreme Court has set out that the grounds for exemption from rates are to be found in the proviso to S. 63; see McGahon and Ryan v. Commissioner of Valuation (1934) I.R. 76 and Barrington's Hospital v. Commissioner of Valuation (1957) I.R. 299.

It is right to say that in the Kerry County Council case (1934) I.R. 527 the Supreme Court followed the old law, with regard to the distinction between public purposes and municipal purposes, though, it would appear, with some reluctance on the part of Chief Justice Kennedy.

Needless to say, this Tribunal would regard itself as bound by the decision of the Supreme Court in the Kerry County Council case if it thought that it was relevant to what it had to decide.

However, it appears that what was the concern of the court in that case was the dichotomy between public purposes and municipal purposes.

It would be safe to say that when some of the old cases were argued central government did not impinge on the average citizen to any great extent. Services, such as they were, were organised on a local level; they were funded by the rates.

The modern state has extended its influence in areas of social activity in many directions.

That is what appears to the Tribunal to have happened under the Health Act, 1970.

Indeed, the appellants have been given functions under chapter 6 of the Social Welfare (Consolidation) Act, 1981, which, in a sense, have nothing at all to do with health. Now, however, the appellants seem to be clearly discharging a function of the central government and the Tribunal finds it impossible to think that insofar as the administration of supplementary welfare allowances is concerned - and it is agreed between the parties that that is what takes place in that part of the building - that it must be regarded as being for the use and service of the public and, therefore, the Tribunal concludes that this part of the premises is clearly being used for public purposes.

The Tribunal cannot find any distinction, either, in respect of the child care services which have to do with adoption, fostering and residential care of distressed children.
It seems to the Tribunal that it is idle to look to 19th century concepts as regards the care of children. One must now have regard to the duty that is reposed on the State by virtue of the Constitution. In particular, article 42, section 5 is of relevance. It provides -

> "In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child."

In the case of in the matter of Article 26 of the Constitution and in the matter of the Adoption (No. 2) Bill, 1987 (decision of the Supreme Court delivered 26th July, 1988) the court considered the ambit of this constitutional provision. The court said;

> Article 42, section 5 of the Constitution should not, in the view of the Court, be construed as being confined, in its reference to the duty of parents towards their children, to the duty of providing education for them. In the exceptional cases envisaged by that Section where a failure in duty has occurred, the State by appropriate means shall endeavour to supply the place of the parents. This must necessarily involve supplying not only the parental duty to educate but also the parental duty to cater for the other personal rights of the child.
>
> Article 42, section 5, does not in any way mean that the children whose parents have failed in their duty to them become the children of the State or that they are to be disposed of as such.
>
> The State, would, in any event, by virtue of Article 40, section 3 of the Constitution be obliged as far as practicable to vindicate the personal rights of the child whose parents have failed in their duty to it.

Adoption, which, of course, is a comparatively recent legal concept is, as has been held by that decision of the Supreme Court, completely in accord with the Constitution and, indeed, in accord with the State's obligations under the Constitution. The fostering of children and the care of distressed children would clearly also create obligations for the State.

It appears to the Tribunal that the premises are clearly "used for public purposes"; that there is no question of any local or municipal element involved in the matter though, of necessity, of course the health boards are organised on regional bases.

The Tribunal would adopt the language used by the Lord Chancellor in the University College case (1912) 2 I.R. 328 at 331 where he said:-

> It is difficult to entertain a doubt that the property in the case is altogether of a public nature, and is occupied for the public service or, in the language of section 63 of the Act of 1838, that it is dedicated to or used for public purposes.

It follows, therefore, that the Tribunal must hold that in respect of both activities in respect of which application has been made that the appellants are entitled to exemption under the proviso to section 63 of the Poor Relief (Ireland) Act, 1838.

The respondent had been asked in advance of the hearing to set out how the premises of other health boards are regarded by him. It appears to the Tribunal, however, that there is no set pattern and while the Tribunal appreciates that this information was readily made available it did not assist it in reaching its determination.

At the conclusion of the judgment Mr Cooke applied for costs. Mr O Caoimh invited the Tribunal to exercise its discretion not to award costs on the basis that the judgment was a "seminal" judgment and had broken new ground.

Paragraph 12 of the First Schedule to the Valuation Act, 1988, provides that the Tribunal shall award costs to a successful party "unless there is good reason for not doing so".

It appears to the Tribunal that in the first instance one is concerned with two public bodies because that was the whole point of the case mounted by the appellants that they were funded by central funds to an extent of more than 90%. Also, in the past, the Tribunal has not awarded costs to the respondent where new ground was broken. The Tribunal, accordingly,

determines that because these two factors are present in this case it should exercise its discretion and for these reasons not make any order as to costs.