

THE HEARING RESUMED AS FOLLOWS ON THE 20TH OF JULY, 1999,

AT 10:30 A.M.:

CHAIRMAN: Good morning. Mr. Coughlan?

MR. COUGHLAN: Mr. Bertie Ahern please.

MR. BRADY: Mr. Chairman, before Mr. Ahern goes to the witness-box, I appear on behalf of the Fianna Fail Party with Ms. Grainne Clohessy, instructed by Frank Ward & Company, and I apply for limited representation on the usual terms.

CHAIRMAN: Thank you Mr. Brady. There will be an order on the usual basis, to yourself and Ms. Clohessy, that will extend to Mr. Fleming, who I understand is anticipated to be a second witness today.

MR. BRADY: Indeed, that is so, Mr. Chairman.

CHAIRMAN: Thank you.

BERTIE AHERN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

A. Mr. Bertie Ahern.

CHAIRMAN: Mr. Ahern please sit down.

Q. MR. COUGHLAN: Morning Mr. Ahern. I think, Mr. Ahern, you have furnished a memorandum of proposed evidence to the Tribunal and an addendum to that, and if you have them with

you in the witness-box I would intend taking you through that or those in the first instance and then maybe asking some questions for clarification, if that's all right with you?

A. That's fine. Thank you.

Q. I think you have informed the Tribunal that for the, a period during the tenure of office of Charles J. Haughey as leader of Fianna Fail, that you were a signatory on a bank account into which the leader's allowance accounts was lodged; is that right?

A. That's correct.

Q. The other signatories on the account were Charles J. Haughey and Ray McSharry; is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that it was normal that a party whip, as you had been, would be a signatory to such an account, that was your understanding?

A. That's correct, I replaced Sean Moore.

Q. You replaced Sean Moore, yes. I think we have heard from Ms. Foy about her work for Sean Moore at one stage during a period of opposition?

A. Yes the prior signatories, it would have been Charlie Haughey, Sean Moore and George Colley, and when I became whip that changed.

Q. Yes, and I think you have informed the Tribunal that while Charles J. Haughey was Taoiseach the account was administered from the Taoiseach's office; is that correct?

A. The Taoiseach's office whip in government, and from the fifth floor of the Fianna Fail offices when in opposition.

Q. Yes, and that while he was the leader of the Opposition the account was administered from the Fianna Fail office or his office of the Fianna Fail office on the fifth floor?

A. Yes.

Q. Yes. I think you have informed the Tribunal, and we have had this evidence, that the account was administered by Ms. Eileen Foy?

A. Yes, Eileen Foy had been the administer of the accounts from 1977. She assumed that position under Jack Lynch and continued until she left in 1992.

Q. Yes, and I think you have informed the Tribunal that the records and documentation relating to the account were at all material times under the control of Eileen Foy and were located either in the Taoiseach's office when Mr. Haughey was in office, or in the office in Leinster House on the fifth floor when he was in opposition?

A. That's correct, the records, everything to do with the party leader's account were kept with Eileen Foy in whatever office Mr. Haughey was in.

Q. Yes. Now, I think you informed the Tribunal that since March of 1992, on the resignation of Mr. Haughey as leader of Fianna Fail, the account has been administered from Fianna Fail headquarters; is that correct?

A. That's correct. When Mr. Haughey left and Mr. Albert Reynolds took over as Taoiseach and leader we changed the

system.

Q. Yes. I think Mr. Fleming is going to give evidence.

A. Mr. Fleming documented Eileen Foy was leaving so there was no administrator there, there was nobody to administer; so for administrative purposes, he will give his evidence, but he spelt out why for convenience purposes and administrative purposes we kept them altogether, and we have done that since 1992.

Q. Yes. I think you have informed the Tribunal that on the resignation of Mr. Haughey some documentation was transmitted by Ms. Foy to Mr. Fleming; is that correct, do you know?

A. That's correct. Some matters to do with payroll for some staff, I think two staff, and some other documentation.

Q. Yes, and I think you informed the Tribunal the manner in which the account has been administered since 1992 and up to the present day is set out in a Memorandum of Evidence of Mr. Fleming, which you have seen in your capacity as president of Fianna Fail, I presume, but he is going to give evidence to the Tribunal?

A. Yes. I support all that; from 1992 on the account has been dealt with by Mount Street, the cheque given to the party leader every month still made out in the name of the party leader, still made out in the name of Bertie Ahern, a party leader's account that is submitted as it was when Albert Reynolds, straight to Mount Street; the accounts are administered by the accountant, Hugh Dolan, who has now

replaced Sean Fleming, and that is followed since and audited by our accountants.

Q. Yes. Now, I think you informed the Tribunal that you were not involved in the day-to-day administration of the account?

A. No, I had no involvement in fact, in the day-to-day administration.

Q. And I think as we have heard from Ms. Foy you also informed the Tribunal that the account was used for the payment of various expenses, such as salaries, wages, publicity, stationery and personal expenses?

A. That's correct, Chairman.

Q. And that in addition PAYE and PRSI in respect of employees was also paid out in the account?

A. Correct.

Q. Now, I think you have informed the Tribunal that the administrator of the account, Ms. Foy, maintained the day-to-day records?

A. All of the invoices as they would come in, or order dockets and whatever other correspondence, bank statements, statements from companies, she maintained all of those records.

Q. Yes, and when cheques were required to be signed she would present those cheques to the signatories for signing?

A. That's correct. The procedure was, Chairman, Eileen Foy was administrator, she also dealt with staff matters, she had a large amount of work, and I think she said that she

could spend about two days a month on the work, that she would assemble the invoices, do a list of the companies and creditors to be paid, normally bring that typed list, not all the invoices but bring the typed list to me. She would go through what companies there were, they were fairly straightforward; using PAYE, social welfare, salary cheques, the company that would supply the newspapers, advertising companies, maybe hotels if the party had taken out rooms and, you know she would go through those and I would sign them.

Q. Yes, and that would be the normal run of the mill of office expenses as you expect?

A. Yes, the cheques were, Chairman, very routine because almost on a monthly basis they were the same companies we were dealing with. PAYE to individuals on the payroll.

Q. Yes. We put up a sample of drawings on the account and you, many of them would just be ordinary office expenses?

A. That's correct.

Q. Now, I think that you informed the Tribunal that the signing of the cheques would typically occur consecutively, thus the position that obtained was that the cheques were drawn on the account, signed at different points in time and probably at different locations by the signatories to the account?

A. That's correct. I can never recall when they were done simultaneously.

Q. And that Ms. Foy would present the cheques for signing and

they would be so signed?

A. Correct.

Q. And that you were a signatory to a number of these cheques as far as you know? I can just inform you, I think or is your recollection in accord with Ms. Foy's, that when Mr. McSharry went to Europe obviously he wouldn't have been signing cheques at all?

A. When he went to Europe, he simply didn't sign any, his name remained on, but I think I would have been the signatory to all of them, there was about 16, over 1,600 cheques went through the account in those years. I would say I probably was the signatory to most of them.

Q. Yes. I think you informed the Tribunal that because of the volume of transactions through the account and the number of bills being payed, combined with the necessity for the regular writing of cheques, a practice of presigning cheques in blank was put in place; is that correct?

A. That's correct.

Q. And that that was a practice that was in place for administrative convenience?

A. What happened, Chairman, was that perhaps on the day or maybe twice monthly, sometimes once a month, other times twice a month, that Eileen Foy would bring the cheque book and cheques to me. She would perhaps sign all of the money ones available and then she would say there were other statements that she had to pay, she yet hadn't assembled or salary cheques still to be paid or some

outstanding bill, would I - or it was into a weekend or bank holiday weekend, Christmas break, Dail recess, multiple reasons, ask me to presign a certain number and I would do that.

Q. Yes and well, I will come back to seek clarification of some of these matters, I will just take you through the memorandum first, if I may, Mr. Ahern? I think, you have informed the Tribunal that as you said, a series of cheques would be presigned by a signatory on the account and thereafter the appropriate co-signatory would sign the cheque with the details of the identity of the payee and the amount of the cheque duly inserted thereon, that was your understanding?

A. That's correct, Chairman.

Q. And as the account was being administered by Eileen Foy, a highly competent and efficient administrator and bookkeeper, this practice was believed to operate in a proper manner as far as you were concerned?

A. As far as I was concerned it did. Eileen Foy was an excellent bookkeeper, competent and efficient person, did the payroll, the social welfare, dealt with Revenue, and in my years of dealing with the party in one form and another, I never saw any queries back from any other organisation.

Q. Yes, and again as far as you were concerned there was no evidence of any irregularity applying to the use of cheques drawn on the account and which were presigned, as far as you know?

A. As far as I know.

Q. And I think, you have informed the Tribunal that the existence of that practice, that is the practice of presigning cheques, is corroborated by the contents of a cheque book which was handed over in 1992 by Eileen Foy to Sean Fleming, and the cheque book which was furnished to the Tribunal in the month of June 1998 contains a number of presigned cheques bearing the sole signature of Bertie Ahern, and I think we just can show one or two of those cheques on the screen. You will see the monitor there in front of you I think as well. I think that is an example of a, presigning blank cheques for administrative convenience?

A. That's correct, precisely how the system worked.

Q. Turning now to the question of the cheque of the 16th of June, 1989. I think you have informed the Tribunal that the 1989 general election was held on the 15th of June, 1989. You can take that as fact?

A. Correct, Chairman.

Q. And that it is your belief that as you were involved in intensive electoral campaigning at that juncture, that the likelihood is that you presigned a series of cheques in advance of the election date?

A. It would be unlikely that I would have been much in Leinster House during the course of the campaign. That was, the date of that particular cheque was the day after it was, it was the day of the count.

Q. Yes.

A. I think, Chairman, I can say with fair certainty the last place I was in was Leinster House that day.

Q. Yes. I think you believe or you say, that the reason for the presigning was to allow the account to be administered by Eileen Foy, and for the normal business and trading debts paid out of the that account to be discharged?

A. Precisely, because during the election period there would have been more of a pull on the account, there would have been more cheques drawn down during the election campaign. I would say during that period I would have presigned more than I normally do.

Q. Yes. Of course the reality of the situation is, notwithstanding the politicians were on the husting, the staff still had to be paid wages and salaries and the PAYE and PRSI had to be paid on time?

A. The reality is staff would be busier, and have more activities.

Q. Yes. I think you informed the Tribunal that the cheque bearing the date of the 16th of June, 1989, was apparently written on the day after the general election, that would appear to be so?

A. Written on count day.

Q. Yes, and I think we, we have had it up before in the Tribunal and we will put it up again in a moment and - there is the cheque on screen, and I think you can confirm that it does bear your signature; Bertie Ahern; isn't that

correct?

A. That's correct.

Q. Yes. However, the writing of the word "Cash", the date, the amount and the figures of €25,000 are not in your writing; is that correct?

A. That's correct and I should say, Chairman, that writing the date, the payee, or the writing would not have been a function that I ever would have done.

Q. Ever would have done, yes, and I think it has been confirmed that the other signature is that of Charles J. Haughey on the cheque; isn't that right?

A. It looks like it, Chairman.

Q. Yes. Now I think you informed the Tribunal that you have no recollection of ever having signed a cheque on the relevant or any account made out to cash and in the amount of €25,000 or indeed, in any other significant sum of money?

A. That's correct, Chairman. My recollection, I would not have been paying enormous attention to the cheques that Eileen Foy would have brought to me, but they were very much run of the mill and because it was more or less the same companies, unless we had a separate conference it would have been in some hotel, we would have been paying bills to that hotel, normally not cash amounts other than petty cash, certainly €25,000 would not have been something I would have thought was petty cash.

Q. Yes.

A. Eileen Foy was a person who when you were signing the cheques would give you a report to the best of her ability of what it was for, what it was about, she had a habit of giving you detail of the content of the cheque, it was not a question of just putting the cheque book down and signing the cheques; she would normally report to you what this was for, that was for, particularly if it was a different cheque, she was a very efficient person, she would automatically give you the details of who you were paying.

Q. As far as you were concerned from even your previous experience, previous to politics, that she was running the office in an appropriate way, she was seeking to have cheques signed but she was giving information to the signatory as far as you were concerned?

A. In an absolute appropriate way, because she was that kind of a person. She did the same with dealing with the staff, she was responsible for all the staff and dealt with that in a very meticulous way, so I would have Chairman, total confidence in the way she ran it.

Q. I think that when you became aware of this, and you have informed the Tribunal that the only conclusion that you can draw is that the cheque was one of a category of presigned cheques that were signed by you in accordance with the practice and procedure that developed for ease of administration of the account?

A. That's correct, because when this was brought to my notice last autumn

Q. Yes?

A. I recall that I had said to the Tribunal back on the 3rd of June last year, said to the Dail in September of 1997, that I believed that the account was ran in an appropriate way. While I am not saying that this cheque was otherwise, but it certainly lead me to believe that it did not seem to be in order with what I had already stated, because it was a cheque for €25,000. I should say, Chairman, in my period of over, of four years as leader of the party the biggest cheque for cash I think was probably €1,000 which was the week of an Ard-Fheis.

Q. Yes. But you certainly would have no difficulty in recollecting if you signed a cheque for €25,000 for cash?

A. I believe that to be so, Chairman.

Q. Yes. Now, I think you have also informed the Tribunal that you received correspondence from Guinness and Mahon Bank in September of 1998, and that you replied to the bank in question, and subsequently through your solicitors wrote to this Tribunal, appraising the Tribunal of information you then possessed relating to the cheque, and you sent documentation relating to this matter to the Tribunal, or instructed the solicitors to act on your behalf to do it?

A. That's correct, Chairman.

Q. I think that in addition to advising the Tribunal of the facts revealed in relation to the €25,000 cheque, the Fianna Fail Party initiated its own inquiries in relation to that matter?

A. That's correct. When Guinness and Mahon, the inspector, Ms. McCarthy; the legal advisor, the legal agent in Guinness Mahon, we checked it, it took us some time to check with where the account was drawn from, was it drawn from the party's account as controlled by party headquarters? And then subsequently we found out that it was not, it was drawn on the party leader's account.

Q. Yes. Sorry, it has just come up, my colleagues have just drawn my attention to the fact it came up the word "inspector", it was the solicitor of Guinness and Mahon, the solicitor?

A. The solicitor, yes.

Q. I think you informed the Tribunal that the inquiries being conducted by Fianna Fail were hampered by the fact that records from the period 1979 up to and including 1992 when Mr. Haughey resigned as leader were missing or appeared to be missing; is that correct?

A. That's so. When the correspondence and the, that had been had in relation to the account we have passed on in June of last year to the Tribunal.

Q. Yes.

A. But the ledgers and the documentation which Eileen Foy filled in from the cheque stubs, they were missing.

Q. Yes. I think you are aware of the fact that Ms. Foy gave evidence last week that she kept ledgers, she entered everything meticulously in the ledgers, she filled in the cheque stubs, she put the backing documentation, invoices

and such matters, and perhaps the list which she would have drawn to the attention of the signatories or a signatory, would all have been filed in filing cabinets, none of those were available as far as could you ascertain?

A. None of those were available. Any data we had we passed to the Tribunal. None of the relevant data from the ledgers were available.

Q. Yes. I think you informed the Tribunal from the inquiries which were conducted by the Fianna Fail Party, that the records that were handed over to Sean Fleming by Eileen Foy as detailed in the memorandum of evidence; this is evidence that Mr. Fleming will be giving; did not constitute all of the records relating to the relevant accounts. What you were talking about there is the ledgers, cheque stubs and backing documentation?

A. Correct. The main documents were not available to Mr. Fleming or to the party.

Q. And I think you have informed the Tribunal in your memorandum of evidence that in May of 1998 the Tribunal wrote to Fianna Fail looking for its records relating to the account, and Fianna Fail furnished the records it then had and corresponded with Allied Irish Banks, and gave permission to the Tribunal to obtain copies of all bank statements, cheques and other banking documentation from its bankers, the Fianna Fail bankers?

A. That's correct, Chairman.

Q. And I think you say that the details of such correspondence

is in the possession of the Tribunal?

A. Yes.

Q. Now, I think in the conducting of the inquiry on behalf of the Fianna Fail Party, that because of the inadequacy of the records available to Fianna Fail its solicitor, Frank Ward & Company, wrote to the former leader of the party, Charles J. Haughey; is that correct?

A. That's correct, on the 10th of March.

Q. On the 10th of March. And a letter was sent to Mr. Haughey on the 10th of March, 1999, asking him questions concerning inter alia the cheque for €25,000, I think we put up that correspondence. (Document on screen).

I think on the 10th of March your solicitors, and when I use the term "yours", I mean you and Fianna Fail, Mr. Ahern?

A. That's correct.

Q. Wrote to Mr. Haughey at Abbeville, Kinsealy, County Dublin, and it was Re: Moriarty Tribunal and Leaders Account.

"Dear Mr. Haughey,

I act on behalf of the Fianna Fail Party.

My client has been considering the public deliberations of the Moriarty Tribunal in Dublin Castle as reported in the media. Without in anyway wishing to interfere with the workings of the Tribunal, I have been requested to ask you a number of questions relating to monies paid to you.

In addition, I have been asked to address to you some questions relating to the use made of funds withdrawn from the leader's allowance account when you were leader of the Fianna Fail Party. I deal with this separately hereunder".

And the first matter then is raised as "contributions".

"1. Please confirm that no monies received by you from 1979 to the date of today's letter (other than those forwarded by you to my client)" That's monies paid to Fianna Fail I guess?

A. Correct.

Q. "Were received by you for the benefit of the Fianna Fail Party.

2. If you have received funds intended for Fianna Fail, but not forwarded to the party I will be obliged if you could confirm in writing this fact, and in addition furnish the following information:

(I) When did you receive such funds?

(II) What was the amount or amounts of such funds?

(III) Please identify the donor or donors of such funds.

(IV) please outline the circumstances whereby you received such funds".

Then B, under the heading "Leaders" or sub-heading.

"The Fianna Fail Party has ascertained that a cheque drawn on the leaders allowance account AIB Baggot Street, dated 16th of June, 1989, in the sum of €25,000 was lodged to the credit of an account, apparently beneficially owned or controlled by you with Guinness and Mahon. The Moriarty Tribunal has already been advised of this fact and furnished with such documentation as was available to the Fianna Fail Party relating to the same. The cheque in question is dated the day after the 1989 general election. In respect of the said cheque I would be obliged if you would provide the following information:

(A) What use was made by you either directly or indirectly of the said €25,000?

(B) Insofar as the use of those funds was connected with your position as leader of the Fianna Fail Party, would you please explain in detail how such use conferred a benefit on the Fianna Fail Party and was a proper and appropriate use of the leaders allowance account?

(C) Please explain the circumstances whereby a cheque in the sum of €25,000 was lodged to the Guinness and Mahon account?

I look forward to hearing from you. Yours faithfully Frank Ward & Company".

I think you were aware and involved in the instruction that that letter would be sent to Mr. Haughey; is that correct?

A. It was, Chairman.

Q. Yes. Now, I think the reply, there was a reminder then I think on the 31st of March, 1989, from your solicitors to Mr. Haughey; isn't that correct?

A. 1999.

Q. 1999, I beg your pardon?

A. It is just:

"Dear Mr. Haughey, I refer to my letter of the 10th inst., copy enclosed herewith, to which you have not responded.

I would be obliged as a matter of urgency if you would be good enough to deal with my letter without any further delay".

That was sent by your solicitors; is that correct?

A. Correct.

Q. I think then there was a response dated the 16th of April, 1999, from Messrs. Ivor Fitzpatrick's & Company on behalf of Mr. Haughey; isn't that correct?

A. That's correct.

Q. It is addressed to your solicitors, Messrs. Frank Ward & Company of Equity House, Upper Ormond Quay, Dublin 7, "Re: Our client Charles J. Haughey".

It reads: "Dear sirs, we act for Charles J. Haughey of Abbeville, Kinsealy, County Dublin who handed us your

letters of the 10th and 31st of March, 1999.

In your letter of the 10th of March, 1999, you state that you "Act on behalf of the Fianna Fail Party" (and that your "Client has been considering the public deliberations of the Moriarty Tribunal").

To enable us to respond to your letter please indicate in this connection precisely for whom you were acting, whether it is the Fianna Fail organisation of Aras De Valera, 13 Upper Mount Street, Dublin 2; the Fianna Fail parliamentary party, or some other branch of Fianna Fail? Yours faithfully, Ivor Fitzpatrick & Company". Is that correct?

A. That's correct.

Q. I think your solicitors were then instructed to respond to that by letter dated 21st of April, 1999. It is addressed to Messrs. Ivor Fitzpatrick & Company, Solicitors, and it is Re: Your solicitor client, the Fianna Fail Party. And it refers to their client, Mr. Charles J. Haughey, and it reads:

"Dear sirs, with reference to your letter of the 16th inst.. Whilst I do not understand the basis of your query, for the record, I act on behalf of Fianna Fail as defined by its constitutional rules, with which no doubt you are familiar. I would be very much obliged if you would be good enough to deal now with the substantive issues as raised in my letter of the 10th ult. addressed to your client. Please let me hear from you without any further

delay. Yours faithfully, Frank Ward & Company".

I think that was sent and you are aware that that was sent,
yes?

A. That was sent.

Q. Now, I think the next document in the series of
correspondence is again a letter from your solicitors to
Messrs. Ivor Fitzpatrick & Company, dated 7th of May, 1999?

A. That's correct, Chairman.

Q. Again it is headed "Re: Your client, Charles J. Haughey.
My client, Fianna Fail".

"Dear sirs, previous correspondence refers, I note that
your client has still not replied to my letter of the 10th
of March and I await hearing from you in this record.

I enclose herewith for your attention a schedule received
from the Moriarty Tribunal listing various payments made
out to Allied Irish Bank accounts made out of an Allied
Irish bank account (account number 30208-062) being an
account in which the party leader's allowance was lodged.

These payments were made during periods between February
1982 and November 1992. In relation to the aforesaid
payments I would be obliged if you would give me the
following information:

1. For what purpose or purposes were these monies paid?
2. Please identify why a significant number of the

payments are for rounded figures?

3. Please identify the number person or persons to whom such monies were paid?

With regard to the aforesaid account, I would be obliged if your client could furnish us with any documentation that he has in relation to that account. The account in question appears to have had lodged to it funds other than the leader's allowance. I would be obliged if your client could indicate the following:

(A) The source of the other monies which were lodged and (B), the purpose of the lodging of such funds to the said account.

As there is some urgency attaching to this matter I would be obliged to hear from you as soon as possible. Your early reply is awaited. Yours faithfully, Frank Ward & Company".

I think queries were being raised here as a result of queries being raised with the Fianna Fail Party by the Tribunal arising out of the information which had come to the Tribunal, which again had arisen from the permission Fianna Fail had given to the Tribunal to examine all bank accounts; isn't that correct?

A. That's correct, Chairman.

Q. And I think the response to that letter was dated the 13th of May, 1999, from Ivor Fitzpatrick & Company, and it is

addressed to your solicitors, and again it is Re: Their client, Charles J. Haughey and your solicitor's client, Fianna Fail.

"Dear sir, we refer to your correspondence dated 7th of May last and to our replies to your previous correspondence, dated 16th of April and 28th of April last.

We note that you are now in correspondence with the Moriarty Tribunal. Please let us have copies of all documents furnished by the Tribunal to you together with all documents furnished by your client to the Tribunal together with any correspondence by you to any third party or body concerning matters raised by the Tribunal on this issue, together with any replies thereto.

Please let us have copies of all cheques front and back detailed in the schedule supplied by the Tribunal.

As some of these matters may be considered to be matters of urgent public importance, we would appreciate a response by Friday the 21st of May next. Yours faithfully, Ivor Fitzpatrick & Company".

They then wrote a reminder on the 14th of May, 1999; is that correct?

A. That's correct.

Q. "Dear sirs, we refer to your letter of the 13th of May last

and note that you do not refer to our letter of the 28th of April last. We enclose a copy of this letter for your reference".

Sorry, the next matter is then, sorry the enclosure that came with that letter that I just opened and it is a copy letter from Messrs. Ivor Fitzpatrick addressed to your solicitor, dated 28th of April, 1999, and reads:

"Dear sirs, we refer to your letter dated 21st inst. As regards the matter raised in this correspondence, and in particular your letter of the 10th of March, it appears that these matters may be the subject of an inquiry by Mr. Justice Moriarty under the Tribunal of Inquiries (Evidence) Act 1921 to 1979.

In these circumstances it would be inappropriate to comment on these matters until the Moriarty Tribunal is completed".

And then I think the sequence of correspondence then finishes with a letter finally from your solicitors to Messrs. Ivor Fitzpatrick on the subject, and it is dated the 9th of June, 1999, and it reads:

"Dear Madam, I refer to your letter of the 13th ult..

I note your request for documentation and correspondence as set out in your letter. A copy of your said letter has been forwarded to the Moriarty Tribunal. The position of

my client is that any documentation furnished by it to the Tribunal or received by it from the Tribunal has been exchanged in confidence, in confidentiality. Similarly, any correspondence with any third party or body concerning matters raised by the Tribunal and any replies received from such third parties or body constitute confidential communication.

All such correspondence and communication engaged in by the Fianna Fail Party (through these offices) has in due course been furnished to the Tribunal which is charged with investigating certain matters of urgent public importance relating to your client, Mr. Charles J. Haughey, and in addition, Mr. Michael Lowry. Thus, all of the documentation and correspondence sought by you in this matter is in the possession of the Moriarty Tribunal.

As far as the Fianna Fail Party is concerned, it is a matter for the Moriarty Tribunal to decide the timing and circumstances of the furnishing of documentation - available to it - to you and to your clients. If the Tribunal directs Fianna Fail to make such documentation directly to you or your client then we will comply with that direction. However, insofar as you at present seek such documentation I suggest that you write directly to the Moriarty Tribunal, which in the circumstances is the appropriate body from whom to seek the same.

Yours faithfully".

I think that was the series of correspondence that flowed from the solicitors to the Fianna Fail Party to Mr.

Haughey, trying to get information in the absence of appropriate or relevant records?

A. Yes Chairman, that was the full sequence from March up until to date.

Q. And I think, is it correct that from that correspondence that you got no explanation from Mr. Haughey, or information?

A. Absolutely none, Chairman.

Q. And is it still the position that as far as you are concerned that Mr. Haughey has not proffered any explanation in relation to the use made of the sum of €25,000 lodged to the credit of Guinness and Mahon Bank?

A. No information.

Q. And I think in the absence of records your limited documents, you are relying mostly on memory; is that right?

A. From all of this period other than the limited documents, it is on memory of a few people who were involved.

Q. Yes, yes. Now - now, I think you also furnished an addendum to your memorandum, and I think you have informed the Tribunal that since furnishing the original statement in this matter Messrs. Frank Ward & Company, Solicitors, have been in receipt of further documentation from the Tribunal relating to the leader's allowance and the account through which it was administered; isn't that correct?

A. That's correct.

Q. The Tribunal inquired in respect of six specific cheques drawn on the leader's allowance account and copies of which were sent to Frank Ward & Company, Solicitor, by letter dated 25th day of June, 1999; isn't that correct?

A. That's correct.

Q. And that having perused these cheques it is noted that two of them are made out to Allied Irish Bank, three payable to cash and the sixth is payable to Celtic Helicopters; isn't that correct?

A. That's correct, Chairman.

Q. And I think, I think you say that "before referring to each of the above cheques it is important to set out the context of the operation of the account into which the leader's allowance was lodged on a monthly basis.

The account with Allied Irish Bank, Baggot Street, 20308062 is a current account. Cheques were drawn on that account to pay research staff and other expenses. There was a significant degree of activity on the account, thus, by way of illustration, during the period from February 1984 up to and including February 1992 a total of 1,615 cheques were drawn on that account. Signatories on the account during the period were Ray McSharry, Bertie Ahern and Charles J. Haughey. The volume of cheque transactions on the account also reflected the level of funds lodged to the account".

And you say that "thus, for the same period set out above the total lodgements to the leader's allowance account

amounted to approximately €100,520,000, and during the same period the amount received in respect of the leader allowance from the Department of Finance was approximately €100,050,000".

Now, I think you say, "That as previously explained there was a practice of presigning of cheques". These were presented from time to time by Eileen Foy and you would sign the cheques. "Thereafter Ms. Foy would arrange to have the details of the payee and amount inserted into the cheque and it would be countersigned by Charles Haughey. Ms. Foy was first employed by Fianna Fail in 1977, and attended to administration of the leader's allowance and the above account under both Mr. Jack Lynch and Mr. Charles Haughey".

I think you also inform the Tribunal that so far as you were concerned you never signed the cheques made payable to the cash in the amounts of €5,000, €10,000 or €7,500.

While you have no specific recollection of signing his name you have no recollection of signing your name on the six cheques referred by the Tribunal, the only logical conclusion to be drawn is that they were probably cheques which were signed as part of the practice of presigning referred to in the early statement that you furnished to the Tribunal.

And with regard to the cheque made out to Celtic

Helicopters, you again have no specific recollection of that cheque. Is that correct?

A. That's all correct.

Q. Now, we might just for the purpose of, if you could just identify, if it is your signature on the cheques? We will put the cheques up. That's the first one made out to Allied Irish Banks, that's your

A. Yes Chairman, that's my signatures.

Q. We will do this fairly rapidly. Again that's the second one?

A. My signature.

Q. Yes.

A. That's my signature too.

Q. Yes.

A. That's my signature. Yes, that's my signature. Yes, that's my signature. (Cheques shown on screen).

Q. Thank you. I think you have informed the Tribunal that the first occasion that you became aware of any anomaly in the operation of the leader's allowance account was in the Autumn of 1998; is that correct?

A. That's correct.

Q. And that it was at this stage that you first became aware of the banking history in respect of a cheque made out for €25,000 which you dealt with in your first statement, that's the one that went into Guinness and Mahon?

A. That's correct.

Q. At no stage during the period that you were the signatory

on the leader's allowance account and up to the end of February 1992 were you aware or had any reason for suspicion that collateral use, if such be the case in fact, was being made of the funds?

A. That's correct, Chairman. That was the first time that 25,000, that I had any reason to have any doubt.

Q. Yes. In February 1992 at the conclusion of the tenure of office of Charles J. Haughey as leader of Fianna Fail, and upon his replacement, Mr. Albert Reynolds - his replacement by Mr. Albert Reynolds, a new procedure was introduced and that this would be dealt with, the actual mechanics of it would be dealt with by Mr. Fleming I think; isn't that correct?

A. That's correct, Chairman. In 1992 we changed our procedure. Up to that stage it was done the way ascribed, as that it was controlled totally by Fianna Fail headquarters and audited separately, but the same auditors as the accountants.

Q. It has been audited by a reputable firm of accountants?

A. Yes.

Q. I think you informed the Tribunal that a practice of presigning cheques was one carried out for administrative convenience, "it was believed to work in the proper fashion, but with the benefit of hindsight, and depending on the information unearthed by the Tribunal, it may transpire to be an inappropriate practice, although one widespread in the community at that time and indeed up to

today", that's your view?

A. That's correct.

Q. Looking at it with the benefit of hindsight?

A. Benefit of hindsight, I have no doubt, Chairman, the practice operating in most offices and establishments, but as we can see perhaps it creates difficulties.

Q. Well, a Tribunal always has to look at matters with the benefit of hindsight and be a guide to the future. I think you are prepared to acknowledge and appreciate that that is a practice which looking at it now, you wouldn't endorse?

A. No, because with the benefit of hindsight I think things could have been picked up.

Q. Yes, and I think you have informed the Tribunal that the Fianna Fail Party has introduced a new control system since 1992 which preclude the possibility of any use being made of the leader's allowance other than for bona fide payments, and the account is now audited by Messrs. Coopers and Lybrand?

A. That's correct.

Q. And I think you have informed the Tribunal that since the issue of the cheque for €25,000 was brought to the attention or, your attention, and of the Fianna Fail Party through its lawyers, sorry - the Fianna Fail Party through its lawyers has addressed deficiency in the statutory framework in connection with the use and application of the leader's allowance, and that the party has instructed its legal team, having considered proposals that they have to

make in the matter, to make recommendations to this Tribunal with regard to legislative changes that may be necessary when we come to the recommendatory stage of the Tribunal's business; is that correct?

A. Yes Chairman, because I think looking back on hindsight nobody believed that there was anything wrong, of course you have to wait to the conclusions of this Tribunal, but while there was no audit and while the records were kept as they were from the 1938 legislation and as amended by 1973, there was no obligation to do other than what we did, because it was left once the party leader's fund was given and it was administered, it was left for the party leader's discretion as per rules set down by the party. The Fianna Fail Party took the view in those years that having administer, the administrative account was sufficient.

Prior to 1992 when we changed for administrative purposes, we took the view that it should be a separate account and should be audited. And now we present, well at the next meeting we actually present it to the trustees, that's a procedure we believe perhaps now should be looked at, to making it on a statutory basis.

Q. Right. Now, if I might just ask you a few questions for clarification purposes, Mr. Ahern, arising out of the memorandum, memorandum of evidence you furnished to the Tribunal, and in light of your appreciation that inappropriate safeguards probably existed by reason of the presigning, I suppose, of blank cheques.

Was that a matter which was discussed in 1992 when the new system was being introduced under Mr. Fleming?

A. No, what was in 1992 was when we were, Eileen Foy had gone so the administrator who looked after the account from 1977 was leaving, our accountant Sean Fleming believed that there was nobody in Mount Street, or nobody in headquarters that would be able to deal with that matter. For duplication of our accounts it made far more sense to bring it under the control of headquarters. In 1992 we had the difficulties that the party wasn't exactly in a very good financial position and we were trying to control our expenditures as best we could, and to make sure that whatever resources we had were efficiently used and controlled in a way that we would know monthly just how we were doing. It was for that reason, there was no discussion about the presigning. I think maybe even the presigning might have went on under the changes after that, but it was for a different reason.

Q. Yes. But, I suppose one could understand for administrative convenience that cheques may be presigned, and probably goes on all over the place, but in the absence of an audit at the end of the day it's possible that the accounts could be in some way used, to use your own expression, for some collateral reason?

A. Yes, I think it was the absence of the audit.

Q. Yes.

A. The fact that there was no audit, while it was not at that time in breach of the law, because in

Q. No, there is no suggestion of that.

A. The 1938 act was clear, but quite frankly my other profession other than as a politician was an accountant.

I think any money should be audited.

Q. Yes.

A. And I think the decisions or the issue raised by our accountant in 1992 was correct. It was administratively better, but from a control point of view and an audit point of view it is far better, and it removes the risk, however likely or unlikely of anything untoward to happen and collateral use, for that reason I think the moves that we made in 1992 were the proper moves.

Q. The key is to have the auditing of the accounts?

A. Auditing accounts by an outside agency in any organisation I think, it really is a modern day imperative.

Q. And I think you know from your own experience of dealing with accounts that a cheque made out for œ25,000 to cash would jump up and hit any accountant, wouldn't it?

A. Straightaway.

Q. Yes. Now, dealing with your recollection of Ms. Foy administering the account and seeking your signature; we know that there were occasions for administrative convenience when you would have presigned them, on other occasions she would have come to you, perhaps not with all the invoices but might have a list or give you some

explanation of what they were for?

A. Yes. My long experience of Eileen Foy is that she would probably give you more information than you particularly want.

Q. Than you want to be taking in?

A. But she would certainly give you I think more than a reasonable explanation why she wanted a cheque.

Q. Can we take that, other than writing or signing a cheque made out to cash which would be for a petty cash purpose or something insignificant like that, you would have recollected if you had signed cheques in significant round sum figures as we have discussed here if they were made out to cash?

A. Yes is the answer, other than if there was, maybe there was some for 5,000 or 7,000 - if there was a clear explanation given by Eileen Foy. I would have to say my experience of being party leader for four and a half years, those kind of circumstances don't seem to arise.

Q. Yes. I think that was her own understanding as well of things. That there would have to be a reason or an explanation that, the explanation for making cheques out to cash if she did, and she doesn't have a clear recollection of doing it, that the instruction wouldn't have come from you but from somebody else?

A. It certainly would not have come from me. I don't think it would be easy to put that passed Eileen Foy either, without reason.

Q. Well, dealing with large round sums, because we asked Ms. Foy about this, this is the Tribunal looked at this, and this was for the operation of the office and the functioning of the office; do you recollect ever signing cheques for large round sums? Most of the drawings when we looked at them, were normal, normal type of office payments which were for uneven figures and might have included pensions or matters of that nature. Do you have any recollection of signing cheques over the years for large round sum figures?

A. The only round sums figures I think Eileen Foy made this point, at times when we were behind in our payments, which were regular enough in a political party, Chairman, we would pay on account.

Q. Yes.

A. But other than that, I would not, but they would not be for cash, they would be paying for A, B and C.

Q. To a supplier

A. Yes.

Q. of goods or services?

A. But not for cash. I can only go from recollection, the answer is I do not, and looking at more recent times in the four and a half years of my own jurisdiction, as I said earlier the biggest cash cheque would have been €1,000.

Q. €1,000. Yes. Yes, we have looked at the, or we put up a schedule when Ms. Foy was giving her evidence of a number of round sum figures, they were only picked out because

they were significant or appeared to be significant round figures. I remember at the bottom of the first page, say take the fourth year, 1986, for example, you can see there are some, fairly large, 10,000, 20,000, 10,000, 25,000 and there is another one on the next page for 10,000, about £75,000 drawn out of the account. Now, we haven't been able to get access to any banking documents on this, but would you have any recollection or could you assist the Tribunal as to what those might signify?

A. I couldn't, Chairman, but I would not like to assume they were all cash, because some of those would have been on account.

Q. I appreciate that, and the Tribunal isn't assuming they were all cash, we were just hoping to get assistance from those involved with the running of the account in some way to assist the Tribunal?

A. Well maybe to assist the Tribunal if I said I think there would be a number that would have been paying accounts, but I think any of the ones that the Tribunal would cover made to cash I would not be able to offer any explanation because I do not know why we would have been doing that.

Q. Yes. Now, in the addendum to your memorandum, you draw attention, and I presume you have had an analysis done of the amount of money that went through the account from '84 up to 1992, which is one and a half million odd pounds, and that the payment from the Department of Finance was £100,050,000, so there was about a, more or less a half

million pounds in excess paid into the account over that period. Were you aware that they were monies being paid into the account other than the leader's allowance money?

A. I wasn't aware of any details, but in my discussions with Eileen Foy on a regular basis, where she would be delaying payments, because she was literally short of money, and I can remember many examples where she would quite frankly be under pressure, she was the front line person that the creditors rang, she would say the account is short, and it was my belief that from time to time that the account had been topped up by contributions from outside.

Q. Yes.

A. Which I assume had been raised by the Finance Committee or perhaps maybe Charles Haughey for the party would have to raise these funds, but I was never privy to any of the details or did I ask.

Q. She did tell us there were occasions she might even borrow money from Fianna Fail headquarters and that would be paid back, that may form part, obviously does form part of the one and a half million that went through the account, but she would have adjusted that accordingly?

A. Yes that still happens, because there are tighter regulations now in the last few years of what you can pay. You can't just pay anything under a party leader's account, you can't pay election bills, it is has to be research or staff relating to that. In those days I think some of the bills would have been paid from headquarters

and then accounts refunded, but I am not sure to a significant extent.

Q. She was just racking her brain as an example of how things would happen when she might have a little cashflow problem on it. But you don't, you knew that there must have been some other money going into the account but you didn't know anything about the details?

A. No, I didn't know anything about the details.

Q. And did you know that, as Ms. Foy has told us, that money raised for the assistance of the late Mr. Brian Lenihan went through the account?

A. No I did not know that. It surprises me because I thought I would have recollected paying those bills.

Q. Yes.

A. And I don't recollect that. I am not saying I didn't sign those cheques, perhaps I did, but I do not recollect signing those. Of course I knew there was an effort being made by members of the party in an effort to assist the medical treatment, but precisely how that was done?

Q. One thing you were concerned about, did you not know it went into the leader's allowance, into that account?

A. I did not know it, I did not.

Q. And even allowing for privacy or confidentiality or dealing with somebody who was ill, do you think that this could have been achieved by opening a separate dedicated account by someone, rather than putting it through the leader's allowance?

A. I assumed that's what happened. I know people were, I recall one aspect of that, I recall people making arrangements for travel and I know that when that was done confidentially, I remember the effort being made, I assumed, and there was one named individual, one named businessman mentioned last week I knew was involved in trying to assist in this, but I think it was separate.

Q. And, but you don't have any recollection and you are not being tied to this, Mr. Ahern, you don't have any recollection of actually signing cheques for the payment of bills specifically?

A. That's what I cannot recall, but if it went through the party leader's account

Q. Yes?

A. and if the payments went through the party leader's account, and if it was in that case bona fide payments, I would have suspected that I would have signed, there is no reason why I wouldn't, and we are talking about 1988, '89, so I could well, I could well be wrong, maybe I did sign those, I am sure they were made out, but I don't recall this.

Q. Could I ask you this way, and again nobody is holding you to this, you can always come back to the Tribunal if other matters occur, but do you have any recollection of well first of all let's be clear about one thing, if money came through the account it could only come out with two signatures on it, that's for sure?

A. That's correct, in 1989.

Q. And the two signatures had to be yours and Mr. Haughey's?

A. That's correct.

Q. And Ms. Foy, if she was administering the account and was dealing with, as she has told us, dealing with the payment of bills, do you have any recollection of her bringing it to your attention in the normal course of explaining what payments were for?

A. I have no recollection. As I said earlier, if Eileen Foy had brought it to me in the normal sense and said we were paying this, I would have willingly signed it.

Q. Of course.

A. I just don't recall, I just don't recall that.

Q. It was a fairly significant time in the life of the Fianna Fail Party, wasn't it? This was an important member or a loved member of the party who was ill?

A. Certainly was. I do remember the travel end.

Q. Yes.

A. I remember clearly arrangements being made to, because it was quite complicated and Mr. Lenihan was quite sick at the time, I remember very vividly those arrangements, I just do not recall the bills, the account - now, if they were all straightforward and Eileen Foy brought them to me, I - of course I would have signed them. I just don't recall that.

Q. What I am really pressing you about, Mr. Ahern, is this; it was such a significant thing, that it is something that if it did happen, I suggest to you that you would recall?

A. Well I would hope I would, but I couldn't, I couldn't be sure of that. But I would have to say having seen the, you know, seen what Eileen Foy has stated, that the money went into the account and presumably the payments were made from that account, then I can only assume I would have signed them.

Q. Well, could I ask you, could they have been, if payments were made, and if cheques bear your signature, could they have been in the category of presigned cheques do you think or would there have been any specific need for that in those circumstances?

A. I would have thought in those circumstances there wouldn't have been a need because it would have been straightforward and it wouldn't be a matter of paying them urgently.

Q. Yes.

A. But perhaps for confidentiality reasons it was thought otherwise.

Q. Yes. Sorry, I better, Mr. Healy just draws my attention that I had said to you that Ms. Foy, that she did tell us that there were occasions she might even borrow money from the Fianna Fail headquarters and would then pay back, and I think you agreed, in fact I better get this fairly straight, I think the record is that she said that she would have lent Fianna Fail some money, Fianna Fail headquarters and got it back?

A. Yeah, it would have been two way transactions, it would have been straightforward. It depended which account was

in funds and if there was an urgent bill to pay.

Q. Right. All right.

A. And that crossing between the party leader's account and the account still occurs to this day.

Q. I would like to ask you something just momentarily about something you said in the Dail on the setting up of this Tribunal, and it is not the function of the Tribunal to get involved in the parliamentary toing and froing in Dail Eireann, so I am not going to ask you about the context in which any question was asked of you or the context in which you answered it, but what I wanted to ask you about was, in the course of that debate you informed the Dail and the people that you had made certain inquiries of Ms. Foy; isn't that correct?

A. That's correct.

Q. And again I have blown up just part of your particular response, you can have it.

(Handed to witness). What I am really coming to, what I would like to inquire into is the nature of the inquires, because at that time you were of the belief that she had an excellent recollection of the operation of the allowance and the account, isn't that right?

A. That's correct, if on that particular period this is part of the text of what I stated when I was moving in the Dail?

Q. Yes.

A. The setting up of this inquiry, this was a part of it.

But when I was - because certain political figures raised the issue of the Fianna Fail leader's account in opposition. When I was preparing for the debate or dealing with matters I felt it was right that I should just check back my recollection with Eileen Foy about what used to happen. So shortly after I was appointed Taoiseach on the 18th of July, 1997, I instructed Eileen Foy to meet me so we could go back, and we did meet on the 18th of the 7th, 1998, 18th of July, two years ago, in my office and we went through my recollection, which is how the party leaders went and she, her recollections were the same of how the account worked and how it operated, and of course I was not going through individual items.

Q. No, no.

A. It was August/September 1998, over a year later, when I found out particularly, so we were going through the procedures about how she got the cheques, how I presigned, how she ran the account, how she did payroll, how she helped out in the, all the matter. I went through all of that and our recollections were the same. So when I was referring to that particular matter in the Dail that's what I was talking about.

Q. I think you say as far as her excellent recollection goes, I think you were not operating from any records at that time?

A. We had no record, we were talking about the procedures.

Q. The procedures?

A. The suggestion was being made politically, that perhaps there was misappropriation.

Q. Well, very good, Mr. Ahern, but I think the Tribunal doesn't really wish to get involved in matters that should be perhaps discussed in Dail Eireann?

A. That is why I was addressing that particular but can I say we were not talking on the 10th of July, 1997, about individual cheques and

Q. Yes.

A. we were talking about the system.

Q. The system. Well, were you aware at that time that the records - sorry, let me ask you first, as far as you knew did any records exist at that time?

A. At that time I am not, I think we must have known it was very limited records.

Q. Right. Would you have been aware as of that time, that she was a conscientious bookkeeper and would have kept ledgers and filled in the cheque stubs and would have had invoices filed away?

A. I would have been, because I have to say to you, to be absolutely fair to Eileen Foy; that I have worked with, because of my professional involvement I have worked with many bookkeepers but Eileen Foy had a very demanding and busy job; because not alone did she do this but she obviously, and in the private office of Mr. Haughey, she was administrator for the staff, all the staff. I don't want to guess a number, but a significant number because

every member of the Dail has a secretary, so she had all of that work, and she was an extremely conscientious person. She would work late into the evening, and I think probably did not get overtime for that. She was a very, very conscientious person, so I would have taken her judgement on these matters as one hundred percent.

Q. Yes, but I think you would have been aware that she would have kept appropriate records?

A. Absolutely, she would keep anything I think that has been ever been

Q. Yes, and on that occasion when you spoke to her can I take it you hadn't gone to look for any records, you weren't or were you aware that the records did not exist at that stage?

A. I am not certain, but I think at that stage we were probably aware that there was very limited records available.

Q. And can I ask you this then; can I take it that whilst the cheque, the leader's allowance cheque is made payable to the leader, nowadays, and you say that before the auditing of that account commenced in 1992, that there were rules, Fianna Fail rules as to the application of the monies; is that correct, or guidelines or

A. I think they were just "custom and practice".

Q. "Custom and practice". Very good. Well, I take it that the money was viewed as being the Fianna Fail, it was to be applied whilst paid to the leader it was to be applied

for the Fianna Fail Party?

A. It was. I mean the principle was followed, because I have looked at this to try and find out where the principle would have started, we know where it is from 1992 but where it was laid down in 1938, it said the Minister of Finance of the day, it said the leader will naturally decide in what manner the money is going to be disbursed and we are not going to interfere with the discretion, and that approach was apparently followed. What arrangements in regard to the management, as expended, were made between the leader of any parliamentary party and his or her party.

Now, what happened in Fianna Fail was that there were normally three signatories, that the account was administered by a staff member, but never audited and that was the system that Fianna Fail applied until Mr. Fleming's report in 1992.

Q. What I was really trying to establish or inquire into was how was it, was this money viewed as Fianna Fail money by Fianna Fail?

A. In Fianna Fail terms we would have understood that the money would have been disbursed for the benefit of Fianna Fail.

Q. That it was Fianna Fail money?

A. Precisely.

Q. And the term "party leader's allowance" is used, its made payable to the party leader and it was understood by Fianna

Fail that it would be disbursed for the party?

A. Well maybe the best way of answering that, Chairman, is what presently happened, normal signs. I have taken over, and I know from Albert Reynolds' time, the cheque probably never even gets to us, our secretaries would see "the party leaders" and it would go straight to the accountant. So in those terms it is used totally for the party and audited for the party. Now the accounts go to the trustees.

Q. That seems to be in accord with the correspondence which took place between your solicitors and Mr. Haughey's solicitors?

A. Yes.

Q. You were looking for information about what you understood to be Fianna Fail money?

A. Precisely.

Q. And for that reason, could I ask you to - the records which Ms. Foy maintained in respect of the allowance and the account were Fianna Fail records; isn't that correct, as far as you could ascertain?

A. Correct.

Q. Now, we know that only some of them got to Mr. Fleming eventually, isn't it very, very limited number of records got to

A. Very, very limited number of records and none of the ledgers.

Q. None of the ledgers significantly, no ledgers, no invoices and no cheque stubs?

A. I could understand perhaps the invoices not being held but the ledgers and the stubs, or at least the ledgers.

Q. At least the ledgers. I take it you can confirm that from inquiries made and searches made, that they certainly are not in the possession of Fianna Fail, and as far as you can ascertain were not since 1992 in the possession of Fianna Fail?

A. We have no records from that era other than the records which we have furnished.

Q. Furnished to the Tribunal. Yes. Could I ask you, do you know - sorry perhaps you won't know the answer to this, but I just raise it and it may be something that we could take up with your lawyers, would you have any idea as to the accuracy of the Fianna Fail Party records, that the Tribunal might be able to come at? Any loans to or from the leader's allowance from Fianna Fail, that we might be able to eliminate some of these round sum payments?

A. Any of the transfers?

Q. Yeah, now if you don't know how accurate for that period the Fianna Fail accounts or records are themselves, it is something

A. We are talking about to what period, back to 198

Q. '84 perhaps?

A. I think the records from headquarters and from 1984 would be good.

Q. Well, it is something - it is something I just raise with you. It may be of assistance to the Tribunal?

A. I think, Chairman, if it would be helpful, if any loans we would have had; if I understand the question correctly, any loans we would have had or transfers between the party leader's account and the

Q. Yes. Could explain some of these?

A. Any of the details that we have we will make available to the Tribunal, if there are some.

Q. If there are some, yes. Thank you very much indeed, Mr. Ahern.

MR. CONNOLLY: I have no questions, Chairman.

CHAIRMAN: Any matters, Mr. Brady?

MR. BRADY: No. I will come back to that question of documentation. I have no questions for this witness. In due course I would like on behalf of the Fianna Fail Party to make submissions to you concerning recommendations about changes to the law relating to the leader's allowance, specifically providing for disclosure obligations as to the use of the funds; and secondly, the creation of specific statutory offences for the non bona fide use of those funds, but I will deal with that at a point in time perhaps more convenient.

CHAIRMAN: I would be grateful for that. Obviously we haven't reached the recommendatory stage yet and you might take the opportunity of discussing with Mr. Coughlan and Mr. Healy as to whether perhaps some written intimation

might be more cost and time efficient.

MR. BRADY: That will be canvassed, Mr. Chairman.

CHAIRMAN: Only one very small point that occurs to me in collusion, Mr. Ahern, that relates to something you touched on early in your evidence and that was also dealt with by Ms. Foy last week. Am I correct in taking it for granted that the role of Mr. Ray McSharry, the third signatory on the account, was largely because of his appointment to Europe both very slight and very short lived?

A. Yes, I think after he would have been - originally the account was in the names of Haughey, Colley and Moore and then it was in the names of Haughey, McSharry and Ahern. And then when Ray McSharry went to Europe, which I think was the 2nd of November 1988, he would have ceased, even though his name remained on, he would not have signed anything.

CHAIRMAN: Yes. And Ms. Foy's memory is that she did quite little business with him, even in the time he was here?

A. I would think so.

CHAIRMAN: Thank you very much for your attendance.

THE WITNESS THEN WITHDREW

MR. BRADY: Thank you, Chairman. I believe this witness will be able to deal with requests in relation to

documentation which My Friend referred.

CHAIRMAN: Thank you Mr. Brady.

MR. HEALY: Mr. Sean Fleming.

SEAN FLEMING, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Fleming. You have provided the Tribunal with a Memorandum of Evidence, and I just wonder do you have a copy of that together with a copy of your supplemental memorandum in front of you to assist you?

A. I have both in front of me.

Q. I think having listened to Mr. Ahern you are familiar with the procedure I propose to adopt. I am going to take you through the memorandum, and then if necessary we can deal with any matters that require clarification?

A. That's fine.

Q. You are now a TD, but your first involvement - well, I suppose your first official involvement with the Fianna Fail Party was as an employee and ultimately as a senior executive with the party; is that right?

A. That's correct, I was employed by the Fianna Fail Party since August 1982 as a finance executive in Fianna Fail Head Office, 13 Upper Mount Street, Dublin 2.

Q. Up until 1997; is that right?

A. Yeah, after the general election.

Q. You say that Albert Reynolds became the leader of the

Fianna Fail Party in November of 1992?

A. That's correct.

CHAIRMAN: February.

Q. MR. HEALY: Sorry in February of 1992, of course yes. You say that about that time you proposed to the new party leader that the party leader's allowance should be administered by Fianna Fail Head Office and that Albert Reynolds approved this proposal?

A. That's the position correctly.

Q. You say that Fianna Fail headquarters maintained separate books, records, bank accounts, financial accounts in respect of the party leader's allowance. The finance statements were audited by Coopers and Lybrand for each financial period up to December 31st in each calendar year, the only exception to this was when Mr. Reynolds resigned as party leader, a financial statement up to the date of his resignation was prepared and audited by Coopers and Lybrand. That would seem to make sense because it was now passing on to a new party leader?

A. That was exactly the position.

Q. "A separate bank account was opened in Bank of Ireland, Lower Baggot Street, the bank to which the party leader's allowance cheque was lodged each month. Financial statements which were prepared and audited included the above account, together with a separate bank account as follows:", and you mention the bank account of the trustees

of the parliamentary party, current accounts, Bank of Ireland, 34 College Green, Dublin 2.

You say, "Prior to 1992 some members of the parliamentary party had a long-standing arrangement to make statements by bank standing order to this account". When you talk about "to this account", do you mean the party account, this is nothing to do with the leader allowance account; is that right?

A. That was to the trustee parliamentary party account in College Green.

Q. Yes, nothing whatsoever to do with the leader allowance account kept prior to that in Baggot Street?

A. Well, I didn't call it the leader's allowance account, it was in the name of individuals not the leader's allowance account. The account was in the name of individuals, it wasn't

Q. I fully accept that. I just want to be clear about one thing, you say, "Prior to 1992 some members of the parliamentary party had a long-standing arrangement to make payments by bank standing order to this account".

A. That's the account in College Green.

Q. Yes, not what we call for short "leader's account"?

A. Well the account to which the leader's allowance cheque was lodged, because there was other lodgements to that account.

Q. I see. Can I just ask you then so I am absolutely clear about it, in the period prior to the leader's allowance

account or the account in the name of three members of the party into which the leader's allowance was paid, prior to that account moving to College Green and during the period in which it was in AIB Baggot Street, were there any monies going into this by way of standing order in the manner you have just described?

A. Forgive me now, but you have lost me.

Q. That's precisely why I am confused. You say a separate bank account was opened in Bank of Ireland, Lower Baggot Street, the bank to which the party leader's allowance cheque was lodged each month.

A. That was a new account opened after Albert Reynolds became leader.

Q. Right. "Financial statements were prepared and audited and included the above account, together with a separate bank account as follows: Bank account, name, trustee, parliamentary party"?

A. Yeah that was an old bank account that was in existence and I continued to operate that account in conjunction with the new account that I had opened up.

Q. Right. And the, so you had a new account for the party leader's allowance in Bank of Ireland?

A. Baggot Street, that's correct.

Q. You say that prior to 1992 some members of the Parliamentary Party had a long-standing arrangement to make payment by bank standing order to this account?

A. That's the account in College Green and the name of that

trustees parliamentary party account, Bank of Ireland.

Q. "This account was incorporated with the main working account in the overall financial statements. One set of financial statements were prepared and incorporated both accounts.

The name of the main account was called

Reynolds/Flynn/Ahern account, and the address was Bank of Ireland, Lower Baggot Street, Dublin 2". And you give the account number?

A. That's correct.

Q. And you say that the cheque from the executive in respect of the party leader's allowance was lodged to Lower Baggot Street by a member of staff of Fianna Fail headquarters each Monday. "The level of financial activity was substantially higher when the party was in opposition as opposed to when the Fianna Fail Party was in government. This was because the amount payable in respect of the party leader's allowance is weighted in favour of the opposition parties"?

A. That's correct.

Q. You say that in 1995, €37,166.67 that's €37,166.67, was lodged to the above account in respect of income from the exchequer for serving Oireachtas committees?

A. That's correct.

Q. You say that €12,121. 81, was lodged to the above account in respect of income received for expenses incurred in respect of the Forum for Peace and Reconciliation in 1995?

A. Yes.

Q. And you say that, "In 1995 also €9,166.67 was lodged to the above account in respect of payments I received as an allowance for the party whips and assistance whips payable in respect of the main opposition party"?

A. That's quite right.

Q. In 1995 you say, "Also receipts from private sources of €40,000 which were also lodged to the above account. These funds were privately raised to enable the account operate to the level considered appropriate to enable Fianna Fail to provide the full service of the main opposition party"?

A. That's right.

Q. "In 1996 amounts were received and lodged to the above account in respect of the various headings that are listed for 1995"?

A. That's right.

Q. "Payments in respect of matters relating to the party leaders account were generally made by cheque from the main operating account. Payments were analysed under the following headings: Personal, travelling, office, and other expenses" and so on, the usual thing you expect with running a sort of small service facility.

"Invoices were approved for payment on a regular basis. A list of payments would be typed up in Fianna Fail headquarters. This list would accompany the cheques which would have been drawn up to correspond with the list and would be submitted to the party leader for signature and cosigned by the second cheque signatory".

A. On certain .

Q. "On certain occasions senior politicians were not available to sign cheques when they were required to be issued, in these situations party headquarters in Mount Street issued cheques from the head office account. This practice also happened when there were cashflow difficulties in respect of the party leader's account.

In due course a schedule listing the payment issued by the Fianna Fail Head Office would be drawn up and issued to the party leader. A cheque would then be prepared on at party leader's account and signed payable to the Fianna Fail Party to reimburse Fianna Fail Head Office in respect of the payments that had been made on behalf of the party leader's account".

So do I take it that this practice operated from the time that, as it were, you took over in 1992?

A. Yes, everything that you have read relates from 1992 to the current time.

Q. So that there was no reason from 1992 onwards because of the system that you put in place, to operate the perhaps unsafe practice of presigning cheques?

A. I never asked anybody to sign a presigned cheque or a blank cheque, never do it.

Q. "The staff in Fianna Fail Head Office wrote up full books and records. Financial accounts were prepared at the end of each financial period and Coopers and Lybrand audited

them. All books and records were maintained to a proper standard and kept in appropriate files in Fianna Fail Head Office. These records were inspected by Cooper and Lybrand in the normal manner during the course of their audit. All records in respect of the party leader account since 1992 are maintained in the Fianna Fail Head Office.

Whilst Charles J. Haughey was leader of the Fianna Fail Party Eileen Foy was administrator in respect of the party leader account. After Mr. Haughey resigned Ms. Foy proceeded to wind down the party leader account in an orderly manner. She paid a number of outstanding invoices and payments in respect of staff payroll before handing over records to Sean Fleming", that is to you, "in Fianna Fail headquarters"?

A. That's correct.

Q. She visited the Fianna Fail headquarters and met with you presumably for that purpose?

A. For that specific purpose.

Q. "Ms. Foy presented certain documents and bank statements in relation to the closing of the various accounts in respect of accounts in operation when Mr. Haughey was party leader", and you say that that information has already been furnished to the Tribunal.

"Eileen Foy also presented Sean Fleming with tax and payroll information and tax deduction cards etc. in respect of two employees, Niamh O'Connor and Denise Kavanagh, paid

by the party leader's account", and also gave the relevant documents necessary for the PAYE returns for current tax year to you.

You drew up a number of letters for signature for Ms. Foy to various financial institutions that had accounts relevant to the old leaders account these letters were signed by Ms. Foy and were sent to the various banks requesting them to close the accounts and transferring the closing balances to the new account opened in the name of Reynolds, Flynn and Ahern in the Bank of Ireland, Lower Baggot Street branch"?

A. That's correct.

Q. No further records were given to you or left with Fianna Fail headquarters by Ms. Foy in respect of the leader's allowance account in respect of the period when Mr. Haughey was party leader?

A. That's correct.

Q. No books or records or old bank statements or paid invoices or any other relevant information in respect of the party leader's account during Mr. Haughey's period were presented to you?

A. That's correct.

Q. The entire records given by Ms. Foy to you are outlined, the ones you have just outlined, and they presented a very small quantity of records and were handed by Ms. Foy to you. You say that you have made a thorough search of

every location in Fianna Fail headquarters, 14 Upper Mount Street, Dublin 2, to establish whether records were left in the party head office in respect of the leader's allowance account operated during Mr. Haughey's time, and this search confirmed no records were left in Fianna Fail headquarters and there is no trace of such books or records?

A. That's correct.

Q. You have made another statement, and I will come back to that supplemental statement later. If I just clarify one or two things about this memorandum. If I could just take you to one of the points you make at the very beginning when you describe how you proposed to Mr. Albert Reynolds in February of 1992 that the party leader's allowance should be administered by Fianna Fail Head Office and that Mr. Reynolds approved of this.

Can I just ask you, what prompted you to make that proposal to Mr. Reynolds?

A. In February 1992 Mr. Haughey had retired as party leader and he was replaced by Albert Reynolds, at that time and up to that time Eileen Foy had been the administrator on the party leader's account in the office in Government Buildings or in Leinster House, I was the finance executive for the Fianna Fail Party organisation dealing with the Cumann constituency in Fianna Fail headquarters, and I had no dealings with the leader's account, that was in respect of parliamentary leader's account.

Eileen Foy retired from her post shortly after Mr. Haughey went as party leader, and it was, clearly the situation had to be addressed of who was going to take up the job that she was doing at that stage, and I knew from my limited contact with her over a period, that the volume of activity in that account wasn't that large. I knew we were dealing with some, both of us were dealing with similar creditors and there was often an element of the duplication invoice going to my office as opposed to her or visa versus, and I was also aware of the fact that working in Fianna Fail Head Office we had resources to take on the job at no extra cost to the party.

I, in a memorandum dated 27th of February, 1992, given to the Tribunal on the 3rd, on the - with the letter from Frank Ward & Company, Solicitors, on the 3rd of June, 1998, a copy of which I have here, I proposed to the party leader, the incoming party leader that we should administer the account from Fianna Fail Head Office, that is a memo in writing at the time, based on the reasons I have given, totally based on administrative purpose. I was an employee of the party strictly in an administrative role. I am a TD now several years later, and I had no function other than from the administrative point of view. That's why I proposed it, and it was approved by Mr. Reynolds immediately.

Q. And at the time you made that proposal, were you, had you any impression of how the party leader's allowance had been

administered prior to your making the proposal?

A. I had no knowledge whatever, other than the information I have just given to you, that now and again I might get an invoice from a courier that should have gone to the party leader's account or vice versa. I would have been aware from chitchat that there were often cashflow difficulties in her office, as we experienced in our office too. Beyond that, the nature of - she did her job in a confidential manner and I knew the lady, I didn't ask her any questions because I knew, you know, it wouldn't have been correct to ask her those questions because it wasn't my job to ask her.

Q. And you weren't in anyway concerned that the allowance had been operated in a manner which wasn't in accordance with best practice, you had no such ideas in your head at the time?

A. I had no knowledge of that whatever, and no inkling of that.

Q. And at the time you took it over there was no question then in your mind but that it had been operated absolutely properly in accordance with best practice?

A. I had no opinion on the matter at all, I only took responsibility for the account in the time Albert Reynolds became leader, and I had no records to draw a positive or negative influence as to what happened in Mr. Haughey's time and made no inquiries because I knew it was her role to do it, that it wasn't my role to seek to question how

she did her job. I had no opinion on the matter and I didn't seeking to be - I sought to take over the account A, start afresh with a new party leader and move on.

Q. When you put that proposal did you have the documentation in relation to the operation of the account up to that time in your possession?

A. No, sure until I got approval to go, do it from Fianna Fail headquarters, that only gave me the authority then to request the information from Eileen Foy at that stage. If Mr. Reynolds said no, which he was entitled to say no, that he was going to get somebody to administer in his office, it would not have come to Mount Street. I made the proposal, it was his decision to accept it.

Q. So it was only after he approved the proposal that you went to Ms. Foy and asked her could you get the documentation?

A. The question which would be first for the hand over, I didn't ask for documentation in respect of the previous period, I only asked her for the documentation that would be necessary for me to operate the account from there on in.

Q. What documentation would you need to operate the accounts from there on in?

A. I needed to know the closing balances on the bank accounts.

Q. Yes.

A. And I needed, the only other matter I needed were the current payroll and tax records in respect of the current employees, that's all I needed to start afresh from Fianna

Fail, because there was no outstanding liability or invoices that she was transferring me to pay on her behalf. All I needed were just, I was opening up a new bank account which was in the memorandum, and all I was arranging with her was to close the old accounts and transfer the closing balance and give me a copy of the closing statements, and also the current PAYE.

Q. So you didn't concern yourself with being in a position to continue the account she had been operating at all?

A. No, I am very clear about this. I remember at the time having a cursory look at the legislation, I was conscious it was a party leader's allowance and payable directly to the party leader. I took this, being a chartered accountant, that when Mr. Haughey went that account closed with him, and it was up to the new leader to open up a new account in respect of his leadership. I never saw any continuation between the old account and the new account. We were separate, similarly as already highlighted in the memorandum of the date Albert Reynolds resigned, we closed the books on his leadership and did an audit up to the date of his resignation and we started afresh when Bertie Ahern became leader. My interpretation was a leader's account, it went with the leader.

Q. And when Mr. Reynolds', if you like, association with the account was terminated and Mr. Ahern became in your eyes the person as it were, I suppose nominally was responsible for the account, what did you do with Mr. Albert Reynolds'

records?

A. Every one of them are still in Fianna Fail headquarters, all the audited account, all invoices, all bank statements;

I think we have already supplied to the Tribunal all bank statements on the account until the day, from the day

Albert Reynolds became leader up to the present day.

Q. But you didn't give the documents to Mr. Reynolds, Fianna Fail retained control?

A. No I maintained them, they are still in the Fianna Fail Head Office and are still there.

Q. You regard them of course as Fianna Fail records, although the cheque is made out to the party leader?

A. I want to make a subtle distinction, which is important, if I may? I regard the accountings as the property of the Fianna Fail leader in respect of the, his parliamentary activity, because when I looked at the legislation at that time when I was proposing to Mr. Reynolds the fund, the legislation was very brief and I am speaking from recollection, but it just says the fund is to be used in respect of the parliamentary activity, that's why in my memo, and I subsequently maintained a separate account bank account and separate set of audited accounts for the party leader account, I didn't propose at any stage to lodge the leader account in with the total Fianna Fail account, because I maintained the Fianna Fail Party organisation as in the constituencies and running election is one thing, I felt the legislation implied the leader account was for

parliamentary activities specifically, and that's why I maintained it as a separate account. In fact it would have been easier for me from an administration point of view to lodge into the Fianna Fail account and then I would have only had to maintain one payroll system and bank account system, so I did still leave a little bit of extra separation of work by maintaining two separate sets of financial statements for separate audits, I believe they have a separate purpose in legislation. That's my opinion.

Q. I know, it seems to me to be a very sensible way of approaching it, if I may say so, but what I was trying to focus on was not your understanding, which seems to me to be a commendable way. The account should be kept separate, but rather of the fact that you nevertheless, and this seems to me to be reasonable, regarded the documentation which is all at this stage the Tribunal is interested in as Fianna Fail documentation, as documentation you should retain in your custody, and when Mr. Reynolds ceased to be party leader of course his association with the account as the party leader was terminated but you still have all the documentation, it is all readily available, I am anxious to know why when you took over in 1992 in 1992 you didn't seek to, as it were, obtain possession of or custody of the pre-existing documentation?

A. Well, I hope I have explained why I didn't and I would like to clarify that, because I believed it was an account payable to Mr. Haughey as party leader and he had his own

administrator and I had no right or authority from where I stood to seek the records in respect of the period when he was party leader because he had his own staff dealing with it, and it was for him and his staff to do so. What I would, I might help you

Q. Could I just clarify that, Mr. Fleming, you are hardly suggesting to me that it would have been open to a party leader after he left office to take all the documents, bring them home and throw them in the bin? You are not suggesting that, are you?

A. No, I am saying it is an allowance paid to the leader in respect of the parliamentary party activity, and he has full discretion in relation to that and records relating thereto, that would be my opinion, he has discretion as, the same as Albert Reynolds and Bertie Ahern has.

Q. A discretion as to what he does with the records?

A. Or what level of records he kept in the first place. I am speaking as an accountant, I know what records I kept from 1992 onwards, but I don't know anything about prior to that.

Q. Would you approve of a practice whereby a Taoiseach might decide, I am not saying any Taoiseach has decided, that when he leaves office he would take all the records with him and won't let anybody have access on the basis that it is within his discretion to see how the one would you approve with that practice, leave your accountancy hat out of that, would you approve of that practice?

A. I wouldn't approve of it at all. I believe there should be audited accounts for every calendar year, that has been my practice and that's what I believe should be done.

Q. Yes. When did you discover that the documentation in relation to the period during which Ms. Foy administered the account was, I think to put it, as you stated yourself, very small or a very limited quantity of material; when did you first learn that that was the position?

A. I learned the day we met to arrange to hand over the records, like I had an appointment, she visited me in my office in 13 Upper Mount Street, Fianna Fail headquarters. She wouldn't have had a quantity of records in her hand or briefcase, the quantity was quite small, quite limited.

Q. Can we just go over to be clear, you said you got bank statements?

A. Yes bank statements, we got bank statements, there was three or four different bank accounts, all been documented and the evidence has been given in to you, we got the payroll records and tax deduction cards in respect of the current employees and that was necessary for taxation purposes, and I also got the current cheque book which was currently being used, and that as we all know had approximately four presigned cheques by Bertie Ahern, and she gave me that cheque book and various passbooks in relation to some deposit accounts and bank statements, the quantity was quite small and quite limited, literally a handful.

Q. Were you surprised that that was all the documentation you got?

A. I would have been very interested in getting a lot more, you know, out of - but I didn't get any more. It was important, I was taking over from that point on. It was like somebody retiring and somebody else moving on from that point on. I had sufficient to start my job from there on in, I wasn't seeking to go back.

Q. But you were to some extent continuing on something that had been started by somebody else. You had employees, for example, they didn't have a new employer, did they?

A. No, they didn't and the new party leader continued to employ them.

Q. Yes, but they didn't have a new employer?

A. No, we kept the same PAYE registration and everything like that.

Q. Let's look in the sense that, it operated from the point of view of the employee, they continued to do the same work, get the same pay, continued effectively to have the same boss, which was Fianna Fail in a general sense, and they continued to report presumably to the party leader of the day, whoever that happened to be?

A. That's right.

Q. So there was that degree of continuation. You got cheque books and bank statements, you are an accountant, and in addition to that you have had the benefit now in the witness-box of having read or at least read the evidence of

Ms. Foy, and you certainly

A. I have only seen media reports.

Q. You have seen her statements I presume?

A. Yeah.

Q. And she described how she kept a system which seems to be quite a good record system, she had a ledger, kind of a cheque journal in which she recorded each cheque, in the same way I suppose a business would keep cheque journals recording cheques written. She kept the cheque stubs of her cheque books, and I presume she could reconcile those with her bank statements or with her cheque journals or all three together. She also kept invoices against which she would have written cheques, that she kept those in files, and certainly that is in one sense all of the information you would need in the ordinary way if you were going to conduct an audit of how money was spent in any particular account over any particular period, isn't that right, it is the basic information an accountant conducting an audit would look for?

A. Of course.

Q. And while if an account is operated over many, many years you might have a lot of documentation, that doesn't strike me as a lot of documentation, a couple of ledgers, I suppose you wouldn't have every cheque stub book, you might have the last four or five, over the years you might have lost some and might only have files of invoices for a year or two, that doesn't seem like a lot of information. You

got nothing, you are sure about that, of that kind?

A. Absolutely nothing, and I never saw a ledger, and her evidence about books and ledgers, it is the first I knew that she had books and ledgers, I had no reason to assume she had or hadn't. I don't know to what extent of ledgers she ever kept, until recently it came to light.

Q. But you are a professionally qualified accountant, all I am saying is when you got the documentation, were you not surprised that you weren't given a ledger book of some sort of narrative account of how the account had been operated, even in the previous year, which is perhaps the only time that would really have interested you?

A. No, in truth I want everybody it is well-known now and it was then, the leader's account was operated on a very tight confidential basis, and Eileen Foy didn't discuss anything in the leader's account with anybody, I presume other than the party leader or the cheque signatory, she never discussed with me, operated on a need-to-know basis. I didn't need to know, I might like to know but I didn't need to know.

Q. You just said something that I am not sure that anybody has certainly indicated to date, Mr. Fleming, you say the party leader's allowance is operated on a confidential basis, surely that wouldn't apply to the people who are paid out of it, their cheques would be, they would certainly be aware of some of the payments on it?

A. Yes.

Q. When you say it was operated on a confidential basis, are you saying that only certain people would have access to it, to information concerning it?

A. Eileen Foy was the sole administrator.

Q. That's surely not still the position?

A. No, I am talking about prior to 19 yes.

Q. It was operated on a totally confidential basis?

A. Yes by Eileen Foy, prior to Albert Reynolds becoming leader, since then the system changed.

Q. When you describe the operation as being on a need-to-know basis, perhaps you would just amplify that for me, what do you mean by that?

A. Well I keep saying the records she gave me were adequate for me to take over the level of continuity of the account needed in terms of employee, the current employees. I got no tax records in respect of employees formally employed but no longer employed. Maybe they were the employees of the party leader's allowance account several years earlier. I only got records relating to the current employees. I needed that information.

Q. So that when you got what was clearly a very limited amount of records from Ms. Foy, the fact that you didn't get any other records from her was consistent with your impression that the account was operated in a totally confidential way?

A. Absolutely. I wasn't surprised, you know as I have said I would have liked and been interested in getting more but I

wasn't surprised that's all that was given.

Q. But the reason you weren't surprised that, that your impression was that up to that time it had been operated in a totally confidential way, obscure from examination by other people?

A. Yes, bear in mind I was working in Fianna Fail Head Office for ten years at this stage and I had no knowledge.

Q. Of how it was operated?

A. As to how it operated, so I wasn't surprised it wasn't going to be given at that point either.

Q. You may have been, your impression may have been that the account was operated in a completely confidential and on a need-to-know basis from the time you came into Fianna Fail up until 1992, and that therefore may explain why you weren't, and I am not suggesting you were in anyway trying to mislead the Tribunal, that's your explanation for why you weren't surprised, and while I understand that you weren't surprised, did you at least ask for any books?

A. The meeting I had with Eileen Foy that day, I have no recollection of the detail exchanged, but it was just a very short brief business like meeting. I asked her for the records and that's what she was giving me, I went through it with her. I knew it was adequate. She was offering no more. I knew I was getting no more. I was interested in getting what was

Q. I can understand all of this, you are an accountant and I take it that accountants like it or not, perhaps even like

lawyers, have an automatic way of responding in certain situations; here you were taking over an account and somebody gives you the documents and you get, let's face it, a pathetic bundle of documents which to any accountant must have been surprised, it may well be the case that it is easy to understand, why there weren't any more documents, what I don't understand is why you didn't ask why there weren't any more documents?

A. Okay, I think I understand where you are coming at now.

Q. As an accountant?

A. As an accountant, as I said I had a cursory look at the legislation dealing with the leader's allowance account, it said the fund was to be for the leader's allowance parliamentary activities, as in activities in Leinster House. I was not employed at any stage, I was employed by the Fianna Fail Party organisation reporting to the National Executive dealing with constituency and the various Cumannns throughout the country and election funds, I had no role or responsibility I felt it was not, there was no reason why I should have been given the information. You know, there was nothing.

Q. I quite understand that, Mr. Fleming, I quite understand that Ms. Foy might have said, and you would have had to accept, based on the understanding of the legislative position, if she said "I am not giving you more information", what I don't understand and find hard to believe, and an ordinary person with the knowledge of the

way accountants would behave, when you throw them a few poultry cheque books is, I don't understand why you didn't say to her "Where are the books? Is that all you are giving me?"

MR. BRADY: My friend says he finds it hard to believe, it is a question of fact of what was said. If he wants to put it he didn't ask for this, so-be-it, or he did, I think he can do it in that way.

Q. MR. HEALY: I do want to put it is hard to believe, I think it is fair?

A. Right

CHAIRMAN: Can I perhaps see if I can just truncate a little of this. Mr. Fleming, you had both a professional accountancy hat and political hat?

A. Yes.

CHAIRMAN: As I understand you were saying that you felt you had to concede a retiring leader some space or leeway because of the personalised nature of his dealings as leader and because of the legal view you had formed, that the monies had been paid to a retiring leader in his capacity as head of the parliamentary party?

A. That's correct, and I would also like to say the change of leadership occurred at the beginning of February 1992. My memo to AlBert Reynolds was dated the 27th of February, I had at this stage already left three weeks space and I use

the phrase, an orderly wind-down, and in other words, I gave as much space to people to wind down the account in an orderly manner without putting any undue hassle or pressure, it would have been early March I am sure when I actually sat down with Eileen Foy which was a full month, there was no way, I wasn't coming with a heavy hand. There was a sense of political time, I was only proposing for the new party leader to take over the account, from there on in. I was certainly not attempting to revisit the past in view of the change of party leader.

CHAIRMAN: Taking that point on board, that you felt some leeway or reserve had to be allowed to a retiring leader, I am right nonetheless in taking it that as an accountant, it would be your clear preference that a retiring leader would make documentation available as Mr. Reynolds said?

A. As Mr. Reynolds did, it would have been absolutely my choice, but I was in no position to enforce that.

CHAIRMAN: Yes, I think we will break that until the usual time, ten to two.

THE HEARING THEN ADJOURNED FOR LUNCH

THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

SEAN FLEMING RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE

EXAMINED BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Thanks, Mr. Fleming. Would you mind coming

back, please.

MR. HEALY: Mr. Fleming. Thanks, Mr. Fleming.

A. Thank you.

Q. Now, just before the lunchtime break you were telling me what you got from Miss Foy and I was interested to know whether you had asked for any other documents and you say that in any case, and correct me if I am wrong, did you not ask for any other documents? You may not have used those words, I am summarising what I believe to be the effect of your evidence. If I am wrong in it, please correct me.

A. I asked for the records.

Q. Yes?

A. And that is what I was given.

Q. When you got those records, you certainly didn't ask for any books, ledger books or anything like that?

A. I asked her for anything that I would need and that is what she gave me. It is sufficient to carry on from there.

Q. When did you first discover that there were other documents that had not been given to you, when did that ever come to your knowledge?

A. Just as a result of this Tribunal.

Q. Were you

A. In very recent times.

Q. Yes. Just so you will have an opportunity of answering the question as completely as you might wish to do, were you aware of the correspondence that was sent to Mr. Haughey

concerning documentation and the use of the leader's allowance?

A. Yes, you are saying as a result of the Tribunal?

Q. Yes?

A. I am aware of the correspondence as it is going on because I was asked, as a result of the inquiry from the Tribunal, to assist the Fianna Fail Party in relation to the records that might have been available and we provided, I think it was on the 3rd of June, 1998.

Q. I am aware of all - I just want to concentrate on all the documents. That is the first you became aware that ledgers might have been in existence, but they were not then available?

A. I am only hearing about ledgers, actually, just in very recent days.

Q. I see.

A. Yes.

Q. All right. So it is only in really the last few days

A. Yes.

Q. Perhaps when you got notice of Miss Foy's statement, that you became aware of the existence of ledgers?

A. Exactly. I had never seen a ledger or was never aware of a ledger at the time, and in relation to I have no reason to be aware of it or wasn't aware of it.

Q. And now that you know that ledgers were kept?

A. Yes.

Q. And cheque stubs were kept and that files were kept, you

say that you have conducted a search in the Fianna Fail headquarters

A. That's correct.

Q. Trying to find any of those documents, and they are not available?

A. They are not there.

Q. They are not there?

A. They are not there or they were never there.

Q. Well, we know that they must have been in existence at some time?

A. Well, I am also saying they never came to Fianna Fail headquarters.

Q. They never came to you, in other words, in 1992, and you certainly didn't bring them to Fianna Fail, as far as you are aware. Your search has shown that nobody else brought them to Fianna Fail headquarters?

A. In addition to that, as a result of an inquiry from the Tribunal, our legal representatives have interviewed all senior staff who worked in Fianna Fail headquarters at that time and since and everybody has conducted an independent search of each other and we have all confirmed that they are not there.

Q. All right. Can I just ask you to clarify one thing for me; you refer to Fianna Fail headquarters and Fianna Fail staff, I just want to be clear, does that include the people who were paid out of the Fianna Fail leader's allowance prior to the headquarters department or

headquarters, I suppose, section taking it over?

A. What I am referring to is the people who were asked, to my knowledge, in recent times, as part of the assistance to the Tribunal, would have been the staff in Fianna Fail headquarters.

Q. Does that include Niamh O'Connor and Denise Kavanagh, for instance?

A. Not to my knowledge. The legal people would have to tell you who they spoke to, I couldn't tell you who they spoke to.

Q. I am sure we can get that clarified and I am sure Mr. Brady will clarify that for us. Are you saying that, therefore, your knowledge of the searches that were carried out are limited to Fianna Fail headquarters and does not cover, for instance, the office from which Miss Foy administered the account?

A. The search I am talking about relates to Fianna Fail headquarters, 13 Upper Mount Street, the party headquarters, but the office in which she administered the account beforehand was Government Buildings, Department of An Taoiseach, so certainly the Fianna Fail Party could not conduct any search in Government Buildings. It is not our building, so she wasn't working, she wasn't employed by Fianna Fail leaders to, at the time of the resignation at the resignation of Charlie Haughey she was a special advisor in the Department of An Taoiseach, that where she was operating the record would have been in the Taoiseach's

office, Government Buildings.

Q. Do you know what would have happened to those records in the ordinary way after a Taoiseach resigns?

A. No, that was a unique situation. I can only speak of when Albert Reynolds subsequently resigned. We have all observed those documents in Fianna Fail headquarters. They were administered and maintained in Fianna Fail headquarters during that time.

Q. I see. Did you have any conversation or did you ever request Eileen Foy since this controversy arose to tell you where she understood the records or the ledgers were?

A. No, I think that would have been through the legal representatives of the party, not by me as an individual.

Q. Now, the system that you have now put in place, as we mentioned earlier, avoids any needs for presigning of cheques, isn't that right?

A. Well, it could obviously still theoretically arise, but you have put in a backup, if you like, system, whereby if the party leader's account cannot be administered, Fianna Fail headquarters' account would step in and it would be reimbursed afterwards, that's the system we have put in place, not put in for that purpose at all.

Q. I see.

A. It was put in for administrative convenience, but the practice of presigning cheques is something that I never did or would never have asked any politician, to presign a cheque, but it has nothing got to do with it. I would

consider that just normal proper accounting procedure not to presign cheques.

Q. Yes. Were you aware of that practice of presigning cheques?

A. I became - the only time I became aware of it was when - yes, I was, because Eileen handed me the current cheque book which was then in use which had Bertie Ahern's signature on three or four cheques, I was aware of that then.

Q. At the time, did you ask what those presigning of cheques was intended for?

A. Well, I don't recall whether I did or I didn't, but it was obvious they were presigned when I was given the cheque book. They were there in front of me, I didn't need to ask, it was just clear they were there.

Q. What did you think they were for?

A. It was obvious he had presigned some cheques in advance.

Q. And although you didn't think that that was - as it was the best practice to follow, you weren't aware of any irregularities that had arisen from following that practice at the time that you set up your own different system?

A. You are saying in relation to the party leaders account in

Q. Yes?

A. I had no knowledge of it at all, of the account or of anything in relation to the account.

Q. Yes.

A. So I have no knowledge on that.

Q. Now, could I just come to the second supplemental memorandum which I prepared, Mr. Fleming. I am sorry, before I do that, I think the Tribunal has been furnished with another document which I think it would be appropriate to put on the overhead projector and to ask you if you see any reason to make a comment on it. It is a memorandum from you to the then Taoiseach, Mr. Albert Reynolds, dated the 27th of February of 1992, and effectively deals with the situation you described a moment ago about how you put this proposal to Mr. Reynolds. It is on the overhead projector and on the monitor in front of you, you may also have a copy?

A. I have, I have a copy, yes.

Q. It is from Aras de Valera, which is, I presume, the office from which you were working in Mount Street?

A. That's correct.

Q. It is to An Taoiseach from you dated the 27th of February. The subject is Parliamentary Party leader's allowance: "I refer to the Parliamentary Party Leader's Allowance Account, which was administered by Eileen Foy. This account deals with expenditure relating to the Press Office and other sundry items. The annual allowance is approximately €86,000 and was more than double that amount when we were in opposition.

The account is still in the names of Charles J. Haughey, TD, Bertie Ahern, TD, and Ray MacSharry.

I feel it would be beneficial for the party and reduce any unnecessary duplication if this account was administered in party headquarters. This could be done without employing any additional resources and would result in savings as it was a key function of a special advisor in the Department of An Taoiseach.

Cheques etc. would be signed by yourself as party leader and one other person of your choice.

The records and the account would be separately maintained and audited each year. I understand there are no technical difficulties with the above suggestion.

I would be grateful if you would consider this matter".

There is no written response to that?

A. No, there is no written response from Albert Reynolds. I discussed it with him and he told me to go ahead.

Q. He told you to go ahead?

A. Yes.

Q. I see. And just before we leave that topic, of the ordinary day-to-day administration of the leader's allowance, you recall that Mr. Ahern was asked this morning about round sum drawings from the leader's allowance in the period from 1984 to 1992. Do you recall him being asked about some of those?

A. Yes.

Q. I can put them on the overhead projector so that you will

know precisely what I am talking about. Do you see some of them there, €10,000, €20,000, €5,000, all in 1994, another €10,000 in 1994?

A. Yes, I see them.

Q. Do you see those?

A. Yes.

Q. If you look at, for instance, 1984, you will see a substantial amount of round sum drawings on the account - €35,000, €45,000, €50,400 worth in 1984, do you see that?

A. Yes.

Q. In 1985 it looks like there is only about €10,000 worth, there may have been other ones but they would have been for smaller amounts. In drawing up this schedule, the Tribunal has concentrated on amounts of €5,000 and over. If you go down to 1986 you will see that there is 10, 20, 40 - sorry, 10, 20, another 10, that makes 40, and 25, 65, and there is another 10 on the next page, which we needn't come to at the moment, making €75,000. In your period of administering the account, would there ever be substantial round sum drawings of that amount off the account?

A. We submitted all the bank statements since 1992 to the current day down to the Tribunal. I personally, just in the last few days, haven't had an opportunity to review it, but I don't believe there would be anything like that at all. The only reason Fianna Fail would have ever issued a round sum payment in my time would be when it would be just a part payment on account to a creditor.

Q. Yes?

A. And it would be a specific - that is the only time I would ever issue, a large

Q. That is what Mr. Ahern said as well. I quite understand it you might keep a creditor at bay?

A. You might have a credit arrangement every so often.

Q. Here you have in 1986 that would have been nearly 40 percent of the entire leader's allowance for that year, which was in the order of €196,000, call it €200,000, and so that if €75,000 was going out, it was about 40 percent, am I right in that calculation?

A. I think so.

Q. That would be very unusual, wouldn't it?

A. It would, yes, very strange.

Q. Now, I want to come to your supplemental memorandum and the first item that you refer to in your supplemental memorandum is a €65,000 payment from Irish Permanent Building Society in June of 1989 and you say, "The Irish Permanent Building Society, in June of 1989, made a payment of €65,000 to the Fianna Fail Party in respect of its 1989 general election campaign. This money was received in Fianna Fail headquarters on or about the 7th of June of 1989 and an official receipt for this amount was issued on the 9th of June, 1989, and the proceeds were lodged to AIB Bank account". You give the bank account number and as part of a total lodgement totalling €447,510 on the 9th of June of 1989. You say that a copy, and the cheque is on

the overhead projector there. You say that a copy of the letter dated the 29th of May from Fianna Fail seeking funds for the election campaign, a copy of the letter from Irish Permanent Building Society which accompanied the cheque, a copy of the receipt from Fianna Fail headquarters and a copy of the bank statement showing the lodgement on the 9th of June are attached?

A. That's correct.

Q. The whole purpose of your providing that information to the Tribunal was to confirm that the €65,000 payment was, in fact, received and lodged to the account of Fianna Fail?

A. Correct.

Q. I think that what we have on screen is a document we have seen before, it is the letter soliciting the payment?

A. That was the standard payment.

Q. I am going to ask you a question now which you may not have the answer. It has just occurred to me, if you don't have the answer don't worry we can get it elsewhere. Can you recall what the Irish Permanent contribution was to the party in the previous election?

A. Not offhand.

Q. Don't worry.

A. It is readily available.

Q. I am sure that we will find that information. Yes, now, at the same time as that €65,000 payment was paid to the Fianna Fail Party, and I simply want you to confirm this for the record, there was another cheque made out by the

Irish Permanent Building Society to Mr. Haughey personally for the sum of €10,000 and no such payment was, as I understand it, received by or lodged to Fianna Fail's fundraising campaign by Mr. Haughey in that amount, is that right?

A. Well, all I know is he got a cheque, I don't know anything about the cheque.

Q. That is the only cheque that you received?

A. That is the only cheque, I can confirm that is the only cheque we got at that stage.

Q. The €10,000 cheque is on the overhead projector?

A. I don't know anything about that cheque.

Q. Yes. Yes, now, I want to go to the €25,000 payment from the Irish Permanent Building Society in October of 1990 in connection with the presidential election campaign. And again, rather than go through your statement, this again, your statement simply confirms that once again the €25,000 was received by the party and lodged through its campaign fund account?

A. That's correct.

Q. And I will simply put on the overhead projector the letter soliciting that payment. And again it is a fairly standard type letter which I presume went out to all potential supporters of the party around the time of the election?

A. Correct, yes.

Q. Now, the Tribunal is aware that another cheque was made payable by the Irish Permanent Building Society to Mr.

Charles Haughey at around the same time and so far as the information available to the Tribunal goes, the cheque stub relating to that cheque described it as Fianna Fail Party funds, and my question to you is to know whether you received any other cheque from the Irish Permanent Building Society for your election funds for that year?

A. No, that is the only cheque we received in Fianna Fail Head Office at that time.

Q. You go on in your statement to say that there was no payment from Fianna Fail headquarters, 13 Upper Mount Street, Dublin 2, to Celtic Helicopters in September of 1991 in the amount of €5,750. This is because you were asked to provide assistance to the Tribunal in connection with a cheque, in connection with a payment to Celtic Helicopters in that amount and which was entered into the books of Celtic Helicopters as potentially relating to Fianna Fail business, but there was no such cheque?

A. Not through Fianna Fail Head Office.

Q. Pardon?

A. Not through Fianna Fail Head Office.

Q. Not through Fianna Fail Head Office. And certainly Fianna Fail Head Office never got an invoice from Celtic Helicopters for that?

A. No, we have checked and verified all that. No, we didn't.

Q. Could I just ask you one last thing, Mr. Fleming. You sent your memorandum to the Taoiseach, the then Taoiseach, Mr. Albert Reynolds, on the 27th of February of 1992, and you

say also that you gave Miss Foy some time to wind down the old account?

A. Yes.

Q. Can you tell me when did the new system actually kick into operation - in other words, did the new system apply to the first installment of the leader's allowance that you got under Albert Reynolds' leadership or did you continue to operate some kind of ad hoc interim system?

A. We arranged - I can't put a date on it here and now. We can obviously put a date, in Fianna Fail records, the date the bank account was opened. I don't have that just off the top of my head.

Q. Yes.

A. But I remember at that stage it was an orderly wind-down because we didn't push the dates because staff continually had to be paid so I didn't push to wind it down by a certain date because I wouldn't have had the new cheque book by a certain date, so we just let it orderly wind down and I think we started the audited accounts probably from the 1st of March or something like that, you know.

Q. So during, from during - well, February/March, you don't remember the actual day Mr. Reynolds took over, do you?

A. I think it was the 8th of February, like, and this was several weeks afterwards, so in the intervening couple of weeks, Eileen Foy was continuing to keep, make payments out of the old leader's account until the full handover took place.

Q. And who would have signed those, would Mr. Haughey have been asked to sign them, you needed two signatories for that account?

A. I don't know.

Q. I quite understand you wouldn't have been asked this question or you didn't anticipate it and it only occurred to me in the light of what you have just said about the way the account operated in the meantime that perhaps I will put to you the matters that it might be worth looking into and you can look into them rather than ask you to answer them on the spot. What I would simply like to know is how was the account operated in the time between you took over with your new system from when Mr. Haughey ceased to be the leader of the party?

A. I am quite happy to provide that information, you know, when I have access to the records in Fianna Fail Head Office.

MR. HEALY: Thank you very much, Mr. Fleming.

MR. CONNOLLY: I have no questions, Mr. Chairman.

CHAIRMAN: Mr. Brady?

MR. BRADY: I have no questions, Mr. Chairman.

CHAIRMAN: Thank you very much, Mr. Fleming. You have referred on a number of occasions in your evidence to your misgivings about the potential pitfalls of the old system

of having blank cheques presigned and I suppose, from an accountancy standpoint, this would have reflected both, that there would not have been control over either the payee or the amount and also that there was no audit provided for.

A. Correct. It defeats the whole purpose of having two signatories to an account. If one signs in advance without knowing what the accounts are for it defeats the whole purpose.

CHAIRMAN: Thank you for your assistance.

MR. COUGHLAN: That, sir, is the evidence for the moment, and it will be intended that the Tribunal would give notification of any future sitting, either before August or in September, of further public sittings. We may be dealing with some matters relating to issues that have arisen in the last week or so, towards the end of this week and possibly, or the next week.

CHAIRMAN: Yes. Well, from the point of view of the public or people professionally covering the sittings, can it be said that it is not anticipated that there will be any sitting tomorrow and that an announcement will be made in very early course as to the limited degree of resumption for the remaining days of this month.

MR. COUGHLAN: That is so, sir.

CHAIRMAN: Thank you.

THE HEARING WAS THEN ADJOURNED.