

THE HEARING RESUMED ON THE 15TH OF OCTOBER, 1999, AS

FOLLOWS:

CHAIRMAN: Good morning everyone. Mr. Healy?

MR. HEALY: Yes, Sir. As you know Sir, for practical reasons which couldn't be overcome, it wasn't possible to refer to the evidence of the next few witnesses in the Tribunal's last opening statement which was made, I think, Wednesday the 6th of October.

Now, the main evidence with which the Tribunal will be, will be dealing today, and perhaps over the next day or two, is that of Ms. Eileen Foy, and also to some degree with evidence from a witness associated with the EBS.

Ms. Foy has already given evidence to the Tribunal, and she has been continuing to provide assistance to the Tribunal since she last gave evidence before the summer break. She has now provided further information to the Tribunal concerning the operation of the Leader's Allowance Account.

It is the intention of the Tribunal to extend its examination of the account in the course of Ms. Foy's evidence by dealing with a large number of transactions on the account, in addition to dealing with some of the narrative information which has been provided by Ms. Foy.

In order that the relevance of the evidence will be

understood, I think it should be put in the context of the matters referred to in the opening statement made last Wednesday and in the context of the overall interest that the Tribunal has in this particular account.

Now, if I could return once again to a cheque which has been mentioned repeatedly in the course of the Tribunal's sittings. That is the cheque in the sum of £25,000, payable to cash, drawn on the Leader's Allowance Account and dated the 16th of June of 1989. This cheque, as you will recall, was lodged to an account of Amiens Investments in Guinness & Mahon. It came to the notice of the Tribunal in the course of examining accounts in Guinness & Mahon under the control of the late Mr. Traynor.

The Tribunal was unable to obtain any information or any narrative information from anyone concerning this cheque. And it took the view that, in the circumstances it was appropriate to examine the Leader's Allowance Account from which the cheque came. The examination of the account was relevant to the Tribunal's Terms of Reference, Term of Reference B, and also in part to Term of Reference A, and has led, as you are aware, Sir, to attention being focused on Term of Reference C in the context of evidence given by Mr. Ellis last week.

Term of Reference A is the Term of Reference that deals with payments made in the circumstances described in that

subparagraph; Term of Reference B deals, or concerns, accounts in the name of or held for the benefit of Mr. Haughey and other people as described in that Term of Reference. And Term of Reference C applies to payments made to the holders of public office from the various accounts of the kind described in Term of Reference B.

Now, evidence has already been given of what would appear to be payments from the Amiens account. That is the account that was being examined by the Tribunal when can it came across the €25,000 cheque from the Leader's Allowance. Evidence has been given of what would appear to be payments from that account to the bill paying service operated by a firm of Haughey Boland for Mr. Haughey. That account, therefore, the Amiens account, appeared on the evidence to be one which was operated, at least to the extent of the material that was produced in evidence, for the benefit of Mr. Haughey. Establishing the source of funds in that account and the extent to which that account was used for the benefit of Mr. Haughey is one of the tasks on which the Tribunal is engaged.

Because, as I said, the payment into that Amiens Account included a payment from the Leader's Allowance Account, then the Leader's Allowance Account is an account which also fell to be examined, in particular in the context of the question "did it come within the ambit of the Tribunal's Terms of Reference?" It was an account to which

the Tribunal was lead by way of a money trail from the Amiens Account.

It is an account held in the name of Mr. Haughey, and on the face of it, therefore, within Term of Reference B but it is also an account on which a number of transactions were carried out which appear to have been for the benefit of Mr. Haughey.

In addition to the €25,000 transaction which first drew the attention of the Tribunal to the account, the Tribunal has now come across a number of other transactions which merit further examination. Some of those transactions have been mentioned in the evidence to date; for instance, you will recall the evidence given in relation to a lodgment of €50,000 to the account in 1986 by way of a cheque drawn on the Irish Permanent Building Society, followed by a further payment later on in that year of another cheque in the sum of €50,000 drawn on the Irish Permanent Building Society. Each of those payments, amounting in all to €100,000, were made in a year in which there appeared to have been no political activity warranting support by way of political donations.

When the Tribunal came to examine the Leader's Allowance Account, it became clear that the records of the operation of the account, which appear to have been kept by Ms. Foy, were no longer available. There were no cheque stubs available, no cheque journals available, no ledgers or any

other books of account available indicating how this account was operated. It isn't simply that there were no documents available dealing with how the account was operated, say in the early 1980's when Mr. Haughey came to power, but there are no documents of any kind dealing with how the account was operated right up to the time that Mr. Haughey left office with the exception, I think, of what I might call a discarded cheque book which was handed over in 1992. There were no invoices available which would have enabled the Tribunal to examine the purposes of debits to the account.

The Tribunal was therefore driven to endeavoring to draw a picture of the account relying on what is effectively archival bank material. It has had to rely on the tedious assembly of bank documents, bank statements, internal bank documentation, much of which is available on microfilm or microfiche only.

What the Tribunal has been dealing with is an account which contains, or which appears to contain mixed funds. It certainly contains funds made available by the Exchequer; that is the Leader's Allowance funds themselves provided out of public money. It appears to contain the other monies that I have just mentioned a moment ago. I gave examples of payments from the Irish Permanent Building Society which, although made out to Fianna Fail, appear to have ended up in this account. There was another payment

of €40,000 also mentioned in the evidence last week which also fetched up in this account, although apparently made out in favour of Fianna Fail.

What the Tribunal has had to do and what it is still trying to do is to disentangle the various sources of funds to this account to try to see how much of this account represents the operation of the account for the purposes for which it was intended; that is to say, for the purposes for which public funds were made available to the account. Those purposes have been described, I think, by Mr. Ahern in the course of a Dail debate as the payment of personnel and the usual supports associated with running a parliamentary political party office.

In the absence of documentation and in the absence of evidence from any person with a comprehensive memory of how the account was operated, the only way open to the Tribunal to try to form a picture of the account is to examine all of the transactions on the account; at least is so far as is practicable to examine those transactions. It is only by examining the transactions on the account, how the account was operated, the manner in which it was operated and by whom it was operated, that the Tribunal can hope to form a picture of the account to see how much of the available funds were used for the contemplated purposes and how much of the funds were used for other purposes, and to see whether those purposes are purposes which would warrant

findings to be made by you at the end of the day, Sir.

Now, for the purposes of the evidence to be given by Ms. Foy today, a number of transactions on the account have been drawn to Ms. Foy's attention. The Tribunal will be referring to 11 cheque payments over and above a number of cheque payments which have already been mentioned in evidence. In the course of its examination of the available material concerning this account, the Tribunal has, to date, unearthed a number of returned cheques drawn on the account in 1990 and in 1991; mainly in 1991. By examining the operation of the account in that year, the Tribunal may be able to form some impression of how the account was operated in other years, but that ultimately will have to await the conclusion of the evidence.

Those 11 cheques included the following: Firstly a cheque Sir, dated the 20th of December 1990, drawn on the account at 1 Lower Baggot Street. Dublin 2, in favour of Adare Manor in the sum of €2,403.40. That is a cheque which was signed by Mr. Haughey and signed by Mr. Ahern. The Tribunal will wish to establish what information there is available from witnesses concerning how the cheque was written; what information there is concerning how the cheque was signed or co-signed; what information the signatory and co-signatory of the cheque had concerning the purpose for which the cheque was being drawn; What recollection has Ms. Foy as the person who operated the

account; What recollection has she concerning the purpose for which the cheque was drawn?

The next cheque is a cheque in the sum of €3,183.95. This is dated the 21st of February of 1991, payable to Celtic Helicopters and signed, in the same way. The same queries arise in relation to this cheque, though the Tribunal has obtained some information in that Celtic Helicopters have informed the Tribunal that the cheque was in respect of flying hours.

The next cheque, Sir, is a cheque in the sum of €4,532.81, dated the fourth of April of 1991, payable to Le Coq Hardi. This cheque gives rise to the same questions that I mentioned a moment ago, but, as will become apparent when I come to some of the other cheques, there were a number of cheque payments to that particular restaurant in that year, and a question will arise as to, in the ordinary way, how such a large sum of money came to be written out of the account in favour of one restaurant?

The next cheque is a cheque payable to AIB and from the evidence given to the Tribunal by Ms. Foy in the past concerning cheques payable to AIB, it seems likely, subject to any further light Ms. Foy may be able to throw on the matter, that this was a payment for some form of bank draft or cheque or other payment being made by AIB.

The next cheque, in the sum of €4,106.08 dated the 8th of

June, 1991, is again in favour of the restaurant Le Coq

Hardi.

The next cheque is a cheque payable to Allied Irish Banks.

It may fall within the class of cheques payable to Allied

Irish Banks which I mentioned a moment ago, but in addition

falls within the class of cheques which has been mentioned

in evidence given in earlier sittings, in that it is a

round sum cheque. You will recall that evidence was given

of a significant number of round sum cheques, some of them

in extremely large amounts, in respect of which the

Tribunal has to date been unable to obtain any

information.

The next cheque is for œ2,027.94 on the 26th of September

of 1991 is again payable to Le Coq Hardi.

The next cheque is also a cheque payable to Celtic

Helicopters, and once again the Tribunal has been informed

that this is in respect of flying hours. The question is

what the various signatories and co-signatories knew about

the cheque and about the purposes for which it was being

paid. That is to say. The purposes for which flying hours

were being contracted?

The next cheque dated the 29th of October of 1991 is

another cheque payment in favour of Le Coq Hardi and, as

you will see, in that year alone a considerable sum of

money appears to have been paid to that payee. In fact the

total comes to €15,084.44. The aggregate of those cheques, I suppose more than any of the individual cheques, is what requires some explanation.

The next cheque is a cheque for €1,000, a cheque again within the class of round sum cheques, this time not payable to AIB, but payable to cash.

The next and last cheque is the final Le Coq Hardi cheque payable in that year and which brings the total of payments to that restaurant to the sum I mentioned a moment ago.

Now, in a supplemental statement to the Tribunal, Ms. Foy has responded to a number of queries addressed to her by the Tribunal concerning items which have arisen in the course of evidence. She has commented on some of that evidence, but in doing so has drawn the attention of the Tribunal to the fact that she is relying largely on her memory in dealing with queries.

She has informed the Tribunal that when the name "Charvet" was drawn to her attention she recognised the cheque payments which were made for the purposes of purchasing international drafts, or international cheques, payable to Charvet. She did not recall, or she had no specific recollection of, the actual transactions involved.

She assumes, however, that they were made on foot of invoices. She has also informed the Tribunal that she has

no specific recollection of the invoices and she has, in addition, stated that as the co-signatory of many of these cheques would have presigned the cheques in blank, she would not have brought any of these invoices specifically to his attention. From that I take it she means, though this will have to be pursued in evidence, that if this cheque, made payable to AIB for the purpose of purchasing bank drafts payable to Charvet, was a presigned cheque, then the purpose for which the cheque was being made out would not have been brought to the attention of the co-signatory.

In response to queries concerning the cheque for €30,000 drawn on the account of Celtic Helicopters and dated the 13th of June of 1989, Ms. Foy has informed the Tribunal that she has no recollection of the cheque. She cannot recall how the cheque was dealt with, but accepts that, if the cheque was cashed by her, it would probably have been done at AIB Baggot Street. You will recall, Sir, that evidence was given that this cheque was certainly presented at AIB Baggot Street but that there appears to be no evidence that it was lodged to an account at that bank. The evidence so far appears to be that that cheque was cashed, that is, that cash was obtained for it.

Ms. Foy has also commented on the cheque in the sum of €25,000, drawn on the Goodman International Account and signed by Mr. Goodman, which was mentioned in earlier

evidence in the Tribunal. She has stated that she has no specific recollection of dealing with this cheque, but accepts that, as it appears to have been lodged, she is the person who must have lodged it.

She has also commented on the question of the identification of donors to the fund set up to defray Mr. Brian Lenihan's medical expenses. You will recall, Sir, that evidence was given by Mr. Paul Kavanagh that he obtained a list of those donors from Ms. Foy, together with a list of the amounts of money contributed by those donors. Ms. Foy says that whilst she has no recollection of providing that list, she accepts that if Mr. Kavanagh's recollection is that he got it, then she must have provided it.

She has no recollection of the Irish Permanent Building Society cheques amounting, as I have already indicated, to €100,000 in 1986 and to a smaller sum of €40,000 in 1991.

Where Mr. Ellis is concerned, Ms. Foy has informed the Tribunal that she was aware of Mr. Ellis's financial difficulties and the fact that he was threatened with bankruptcy. She says that as she was the person who administered the Leader's Allowance Account, she assumes that she would have obtained cash and given it to Mr. Haughey, though she would not have had any direct dealings with Mr. Ellis. She also has informed the Tribunal that, assuming that the cheque used to obtain the cash for Mr.

Ellis was itself made out to cash, she would have been aware of the purpose and would have recorded this on the cheque stub and in the account ledger.

Of course, Sir, one of the questions that will arise is, if that cheque used to obtain those funds was made out to cash; whether in other words somebody collected cash for those debits?

Ms. Foy has also drawn the Tribunal's attention to the fact that as she puts it, given Mr. Haughey's position he regularly received requests for assistance of various kinds. While she would not necessarily have been aware of all of them, if a financial donation was being made, the funds would probably have been paid from the Leader's Allowance Account.

She gives an example that after the release of the Guildford Four, a number of the ex prisoners visited Mr. Haughey and he arranged for them to be given new suits at a menswear shop in Dublin. This attracted considerable publicity at the time, and she says she thinks it was even mentioned on TV, and so forth.

She says that apart from the payment made to Mr. Ellis, she is not aware of payments having been made specifically to stave off bankruptcy; that is to say, that she is not aware of other payments, but thinks that there would have been others in the nature of small payments. She mentions a

payment which was alluded to by Mr. Kavanagh in the course of his evidence - a payment being made through Mr. Tom Kitt to assist with the purchase of a car for a disabled driver.

This payment again appears to have come out of the Leader's Allowance fund.

The other witness who will be giving evidence today is Mr. Tom Green, who is an audit manager of the Educational Building Society. His evidence will be concerned with an item which has already been mentioned in the course of the Tribunal's sittings. That is a cheque for €10,000 drawn on the account of Celtic Helicopters, Dublin Airport, and made payable to cash. That was the cheque which, as you will recall, Sir, was associated with a payment into the account of a sum of €10,000 by way of a cheque drawn on the Irish Permanent Building Society.

The cheque drawn on the Irish Permanent Building Society was made out to Mr. Haughey and judging from the cheque stubs kept by the Irish Permanent Building Society, appeared to have been by way of a political sub. The cheque was lodged to Celtic Helicopters account and subsequently this cheque was written on the Celtic Helicopter's account. You will recall that evidence was given by Mr. John Barnicle, with which Mr. Ciaran Haughey, his co-Director in Celtic Helicopters agreed, to the effect that this cheque out of the account could only have been the result of the cancellation of a prepayment or a block

prepayment of flying hours. You will recall that evidence was given of two payments into Celtic Helicopters for which this explanation has been proffered by Mr. Barnicle. This is the second such payment.

The cheque drawn on the Celtic Helicopter's account appears ultimately to have been lodged to an account at the Educational Building Society, an account in the name of Mrs. Maureen Haughey. Mr. Green will give evidence concerning the reception of that sum into the account.

Lastly, Sir, because of the fact that, as I have said at the outset, some material has become available to the Tribunal in circumstances which prevented the Tribunal from disclosing all of it at an early date, it may be necessary to make further short opening statements over the following days or weeks as more material becomes available in a form which will enable it to be lead in public.

CHAIRMAN: Thank you Mr. Healy.

MS. O'BRIEN: Mr. Tom Green, please.

MR. MURRAY: I appear for the EBS, instructed by LK Shields, I would apply for limited representation.

CHAIRMAN: I think, Mr. Murray, what I will do for the time being, it does seem at the moment that it is a rather far fetched hypothesis that anything disadvantageous to Mr. Brown or the Building Societies could arise. I am anxious,

even though I have specified in granting limited representation on earlier occasions that this is no guarantee of any eventual adjudication of costs, I am nonetheless anxious to try and limit the amount of grants of limited representation and I think what I will do for the time being, Mr. Murray, is simply note your presence, and if it transpires that after Mr. Green's brief examination by Miss O'Brien that there is some necessity, involvement on your part, then of course we can address that.

MR. MURRAY: I am very much obliged.

MS. O'BRIEN: Thank you. Thank you Mr. Green.

TOM GREEN, HAVING BEEN SWORN, WAS EXAMINED BY MISS O'BRIEN AS FOLLOWS:

CHAIRMAN: Thanks Mr. Green, please sit down.

Q. MS. O'BRIEN: Thank you Mr. Green. I think you are the internal audit manager of the EBS Building Society?

A. Correct.

Q. And you have been asked to assist the Tribunal in relation to a particular cheque, which was a cheque drawn on the account of Celtic Helicopters at Dublin Airport Branch in the sum of €10,000 and dated the 7th of November of 1990.

I think the Tribunal brought that cheque specifically to your attention?

A. That's correct, yes.

Q. And I think in that connection you have provided the Tribunal with a memorandum of your intended evidence, and I wonder if you have a copy of that before you?

A. I do indeed.

Q. I think, Sir, that is at divider 24 of the book. If I could take you through that, Mr. Green. I think you state that you are the internal audit manager of the EBS Building Society and that you have been working in that function for approximately 18 years.

A. That's correct.

Q. I think you state that prior to commencing employment with the Society, you had worked with Ernst and Young as part of their external audit team. I think you state that the Tribunal brought to the Society's attention a cheque dated the 7th of November of 1990, in the sum of €10,000 payable to cash, and I think the front of the cheque is now on the overhead monitor. You can see there, that it is dated the 7th of November of 1990. It is drawn on Bank of Ireland, Dublin Airport Branch, account of Celtic Helicopters and it is payable to cash, and I think it appears to be signed by Mr. John Barnicle and Mr. Ciaran Haughey. In fact the Tribunal has heard evidence to that effect.

A. That's correct, yes.

Q. And I think that the Tribunal also provided you with the reverse side of this cheque. Perhaps if we could have that on the overhead monitor? I think that there are a number of notations on the reverse side of the cheque which the

Tribunal brought to your attention. I think if we just turn the cheque on its side to start with, it appears that the cheque is signed "M Haughey".

A. That is correct.

Q. And I think if we turn it back around again there appears to be two stamps, a stamp on the reverse side of the cheque of the 9th of November of 1990?

A. That is correct.

Q. I think that appears to be a EBS Building Society stamp?

A. Yes.

Q. I think there is then the handwritten series of numbers:

131516?

A. Correct.

Q. I think that on the face of the cheque I apologise 13131516. I think if we could just have the face of the cheque again. It appears to be been negotiated at National Irish Bank. I think the position is that National Irish Bank were your clearing bank?

A. For that branch.

Q. For that branch. I think you have informed the Tribunal that these three indications, that's the marking of the front of the cheque, the EBS Building Society stamp, the account number, and the apparent endorsement of the cheque by Mrs. Haughey, are consistent with the cheque having been collected by the Society and credited to the account of Mrs. Maureen Haughey, whose account number was 13131516?

A. It is consistent with that, yes.

Q. I think you said that it appears that the sum of €10,000 was lodged to Mrs. Haughey's account on that day, that is on the 9th of November of 1990. I think we have a copy an extract copy from Mrs. Haughey's account statement on the overhead screen. You see the top, it is an EBS account. I think right at the very top on the left-hand side you can see the account number which is 13131516. I think the other words beside that indicate the type of the account it was. It was a "share account" and below that is the name of the account holder and the address, Ms. Maureen Haughey, Abbeville, Kinsealy, Malahide, County Dublin. Then there is just one transaction on that account statement which is shown and that is a credit transaction on the 9th of November which is described as a lodgement on the account statement of €10,000?

A. Correct.

Q. If we just return to the reverse side of the cheque again, I think you would agree, would you not, that the probability is that it was the proceeds of this cheque that were lodged to Mrs. Haughey's account?

A. Yes.

Q. And I think, I assume that is because of the fact that it is endorsed by her, the Society's stamp is the 9th of November and her account number is written on the reverse side of the cheque?

A. Correct.

Q. But I think you have, in fairness to you, also stated that

you cannot be absolutely certain that the proceeds of this cheque were lodged to the account?

A. I cannot.

Q. But nonetheless I think you will agree that the probability is that it was?

A. Correct, I do.

Q. MS. O'BRIEN: Thank you very much Mr. Green.

CHAIRMAN: Thank you. Anybody got anything arising out of that? Thank you very much for your assistance, Mr. Green, and the time you have put into checking out these matters.

A. Thank you very much.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Ms. Foy please.

EILEEN FOY, HAVING BEEN ALREADY SWORN, RETURNS TO THE WITNESS-BOX AND IS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thanks for coming back to the Tribunal, Ms.

Foy, and of course you are already sworn. And please take your time in dealing with the matters that Mr. Coughlan may put to you and if you want to take a break for a glass of water or something like that, please do so.

Q. MR. COUGHLAN: Thank you Ms. Foy. I think you have continued to assist the Tribunal and you've furnished a further supplemental statement; isn't that right, or Memorandum of Evidence?

A. That's right.

Q. And I think that in that you have informed the Tribunal that on the 12th of May of 1999 you provided the Tribunal with a detailed Memorandum of Evidence, together with a supplemental statement in relation to your former employment as private secretary to Charles J. Haughey, and in particular your role in the administration of the Leader's Allowance; isn't that correct?

A. That's correct.

Q. And I think that was the original memorandum and the supplemental statement which were the basis of the sworn evidence you have already given to the Tribunal; is that correct?

A. That's correct.

Q. And I think you say this statement now is provided supplemental to your original memorandum and statement and to the evidence which you gave to the Tribunal at its public sittings on the 14th of July of 1999; is that correct?

A. That's right.

Q. Sorry Ms. Foy, I think we had the same problem on the previous occasion you gave evidence, could you move a little closer to the microphone. The stenographer has a difficulty?

A. If I speak up a bit louder, when I move in to it my voice bounces back at me.

Q. Bounces back at you.

A. So .

Q. If you just keep your voice up perhaps for the moment and we will just see if that facilitates the stenographer.

Now, I think this statement, this is the statement, the basis of your current evidence is in the form of responses, insofar as you have been able to provide responses to specific queries raised by the Tribunal subsequent to you giving evidence?

A. That's right.

Q. And I think you say that it should be borne in mind that the events to which these queries relate all occurred up to ten years ago, and your responsibilities in relation to the administration of the Leader's Allowance formed only a small part of your overall responsibilities; is that correct?

A. Correct. That's right.

Q. And I think you say that as you mentioned in paragraph 15 of your original Memorandum of Evidence, you are again largely relying on your memory to deal with queries,, is that correct?

A. That's correct.

Q. And that therefore you do not have a specific recollection of many of these matters, but have attempted to provide answers to the best of your ability, is that correct?

A. Correct.

Q. And that further, the nature of your employment as the private secretary to a leading political figure was such

that at any given time there was a considerable number of things of varying importance involving a variety of people happening, so that the unexpected or unusual was in fact normal and unremarkable in that context, is that correct?

A. That's correct.

Q. Can we take it that what you are informing the Tribunal and now giving in evidence, that an awful lot of hectic events occurred in your life, matters dealing with important people?

A. We moved from one thing to another very fast.

Q. Yes?

A. So when you are looking for details on a specific item, I can't remember.

Q. Yes well we will see as we go along we may be able to assist your memory. Things may come back to you or you may be able to throw further light on matters for the Tribunal.

And I think that in the context of unusual or unexceptional or unremarkable matters occurring, you give, for example, the time during which payments were being made into and out of the Leader's Allowance Account in respect of the medical expenses of the late Mr. Brian Lenihan TD, coincided with a general election, and the making of payments into and out of the account for the purposes of that election, is that correct?

A. That's correct.

Q. Now, I think dealing with the specific queries, if we could

at this stage and I will come back subsequently to deal with other matters of if that is all right with you Ms. Foy? I think the first query that was raised with you and I wonder do you have a copy of the Tribunal's letter to you, to assist you dealing with these matters now? If not I can get you a copy.

A. Which?

Q. I think it is- this is the first letter I think it is the answer to queries raised by letter dated the 27th of September, 1999.

A. Okay.

Q. It is at tab 12 of the book of documents?

A. No, I am sorry. I haven't got that particular one.

Q. I will just give you a copy. (Handed to witness) So you can deal with this in that way. I think the first matter which you were asked to deal with which was called Charvet cheques; isn't that correct?

A. That's correct.

Q. And the Tribunal or solicitor to the Tribunal asked your solicitor for your knowledge of the international cheques dated the fourth of February of 1991 for 61,605 French Francs and the 18th of September 1991 for 63,000 French Francs, which appear to have been funded by the cheque for œ 8,332.32, dated the fourth of February of 1991 and œ7,500, dated the 18th of September 1991 and drawn on account No. 30208062. That is the Haughey Ahern McSharry account?

A. That's right.

Q. I think you responded to that "I have already informed the Tribunal at paragraph 12 A and H of my Memorandum of Evidence my then belief in the likelihood that these cheques, that is the two Irish cheques which were drawn on that account, were used to purchase foreign drafts. Which I now understand to be the case. On being informed of the name Charvet, I recognised it but I do not have any specific recollection of the transactions involved. " I think on the second query that raised with you, was on the question of Charvet cheques was your role in the transmission of French Franc cheques to Charvet or your knowledge of the manner in which they were transmitted; is that correct?

A. That's right.

Q. And your response to that is that you have no specific recollection of the transmission of these cheques to Charvet. However, if the payments were being made on foot of an invoice, I presume that I would have sent the French Franc cheque by post to the address on the invoice"; is that correct?

A. Correct.

Q. The third query which was raised on what I describe as the Charvet cheques was your knowledge of the invoices in respect of which these payments were made, or the purchase for which they were made, specifically your knowledge of whether these invoices were brought to the attention of any

co-signatory of the cheques used to purchase the international cheques. And your response to that is; you presume that these payments were made on foot of invoices "but I have no specific recollection of the invoices in question. As set out in paragraph G of my Memorandum of Evidence, sorry, paragraph 9 I beg your pardon, of my Memorandum of Evidence, the co-signatory would have presigned a number of blank cheques and I would not have brought these or any other invoices specifically to his attention, nor the fact that the cheques were being used to purchase international cheques";

is that correct?

A. That's correct.

Q. And then the final query which was raised in correspondence relating to the Charvet cheques was whether you know of any other payments to Charvet and if so the detail of such payments, including the date, amount, and the manner in which they were funded. And I think your response to that is that you have no specific recollection of any other payments to Charvet; is that correct?

A. That's correct.

Q. If you wouldn't mind now Ms. Foy if we could halt there for a moment and deal with these two transactions that is the international cheques which were purchased.

I think you have already informed the Tribunal that in the normal course of events that you would have gathered

together any invoices which required payment, made a list of them and in the normal course of events would have brought, at least, the list to the attention of the co-signatory if he was available, but that would you always have brought the list and the invoices together with the cheques made out to Mr. Haughey for his signature; is that correct?

A. I would need, I would really need a copy of the first statement I made.

Q. I will get that for you. I am not trying to catch you out Ms. Foy?

A. It is just that it doesn't quite sound correct.

Q. I see. Well, perhaps we will take it step-by-step so. You, in evidence previously, have said that in the normal operation of the Leader's Allowance Account, you would receive invoices; isn't that correct in the normal operation of the account?

A. That's correct.

Q. Of course there were wages and salaries also to be paid out of it and you would have been aware of what those particular figures were, the wages and salaries; is that correct?

A. That's right.

Q. But apart from those, you would receive invoices for the supply of goods or services?

A. Yes.

Q. You have also of course told us in evidence that there were

occasions on which you were, you may have been instructed to fill in an amount on a cheque and you would only have done that on the instruction of Mr. Haughey, isn't that correct?

A. Yes.

Q. So those are the three categories?

A. Yes.

Q. Whereby you drew cheques in the operation of the account; is that correct?

A. That's right.

Q. Now, can you tell us for the purchase of these international cheques which, undoubtedly, appear to have resulted from drawings on the account, isn't that correct?

A. Right.

Q. And that was your view at the time you previously gave evidence, and you now seem to be confirmed in that view; is that correct?

A. Yes.

Q. Now, the cheques were made payable to Allied Irish Banks; isn't that correct, the two cheques which seemed to result in the purchase of the international cheques?

A. Yes.

Q. And can I just ask you in that regard whether the payee is in your writing?

A. It is, it is.

Q. And the amount and the figures they are in your writing?

A. They are in my writing.

Q. And the date is in your writing?

A. That's right.

Q. Can we take it that you can confirm the two signatories as being the appropriate signatories to the account?

A. Yes, I can.

Q. Mr. Ahern and Mr. Haughey. Can we take it that this particular cheque does not appear to fall into a category of cheque which would be for the purpose of paying wages or salaries?

A. It is obvious.

Q. I am asking you for?

A. To me it is, yes.

Q. To you it is obvious?

A. Yes.

Q. Can we also take it that it does not appear to fall into the category of cheques whereby you may have been instructed by Mr. Haughey to fill a cheque amount out- fill a cheque out for an amount but to leave the payee blank, it doesn't fall into that category of cheque?

A. Sorry, say that again.

Q. I think you have said on a previous occasion that there may have been occasions on which Mr. Haughey asked you to fill out a cheque for an amount but that the payee may have been left blank?

A. This one looks like it was an application for a draft, therefore I would have filled in the AIB

Q. Sorry, if you just bear with me Ms. Foy and just listen to

what I am asking now, I am trying to put it into a category. You have indicated there were three categories, broad categories?

A. Um hum.

Q. Of cheques drawn on the account.

A. Right.

Q. Which you operated. Wages and salaries,?

A. Uh hum.

Q. Ones in respect of which you had invoices and there may have been, you said on a previous occasion, have been occasions, when you would have filled in the amount on a cheque but left the payee blank but that you would only have ever done that on Mr. Haughey's instructions and you would have left that cheque with him; isn't that correct?

A. That's right.

Q. Well, you have excluded this from the category of wages and salaries?

A. Yes.

Q. Can we exclude it from the category of one where you filled in the amount on the instruction of Mr. Haughey and left the payee blank and left the cheque with him; can we exclude it from that category?

A. Right.

Q. Can we?

A. Yes.

Q. So, therefore, does it fall into the category whereby you would have had an invoice which would warrant the drawing

of the cheque?

A. Yes.

Q. Very good. And in that regard I take it you would have had an invoice, would you have prepared your list along with the bundle of invoices you had for payment, is that correct to bring to the attention of the signatory in this case Mr.

Haughey?

A. It would appear so.

Q. Yes it would, that would be your general way of operating?

A. Yes.

Q. And was this in a period when you had presigned cheques by the first signatory on the cheque, can you say?

A. Yes.

Q. That is your recollection is it?

A. Yes.

Q. But that when you went to Mr. Haughey with this cheque you would undoubtedly have had invoices or an invoice and it may have formed part of a series of cheques that were being written and you would have had other invoices for other purposes and a list made out of payments, a typed list; is that correct?

A. That's correct.

Q. Now, what particular aspect of this cheque makes you believe- and I accept that you are operating on memory, but what particular aspect of this particular cheque makes you believe that it was one of the presigned cheques, that is presigned by Mr. Ahern?

A. I think if you check back on the previous statement that I made, you will find I think Bertie Ahern presigned one of the cheques.

Q. Yes?

A. I haven't got a copy actually.

Q. I want to- I want to take it and there is nobody again trying to catch you or anybody else out. All I want to do is take this slowly to see if your recollection can be jogged.

You are undoubtedly of the view and Mr. Ahern has given sworn evidence about pre signing the cheque for €25,000 and the other cheques which you saw when you gave evidence which were made payable to cash, isn't that correct?

A. Uh hum.

Q. And Mr. Ahern has clearly given sworn evidence that he has in recollection of ever signing cheques made out to cash and that his only recollection himself, even in his own time I think, as party leader, was perhaps signing a cheque for cash to the extent of about €1,000 which might be cash which would be drawn down around Ard Fheis time where there may be need for some cash for, I suppose- I don't remember- entertainment purposes but this is a cheque which is made payable to Allied Irish Bank. It is for the fourth of February of 1991.) It is in an uneven sum. Is there anything about the cheque that you can now remember that assists you in your belief that this fell into the category of presigned cheques?

A. I have absolutely no reason to believe that it would have been anything other than a presigned cheque. We were dealing with people who were very busy.

Q. Yes, yes?

A. And it was normal procedure to have presigned cheques.

Q. Yes, yes. That's fine and you were in the way of having a number of presigned cheques, is that correct?

A. Yes.

Q. Is that your recollection, that is all I am trying to?

A. That is what we have had in the previous statement.

Q. Yes, I appreciate that. I am asking you know specifically about it, this cheque now and that's your understanding of it; is that correct?

A. Yes.

Q. Now, if you had, as you believe you must have, had an invoice for the purpose of purchasing a foreign draft, I take that that invoice must have come to you in some way?

A. Exactly.

Q. Can you recollect, and this is not a facetious question, can you recollect whether the Leader's Allowance or the use for which Leader Allowance funds were put, had any particular purpose of purchasing any goods or services from the firm Charvet in Paris?

A. The only thing that I remembered when I saw that is the name "Charvet".

Q. You said that you recollect the name?

A. The name and that may have been just from filling in the

application for the draft.

Q. Did it mean anything to you?

A. Well, I just looked at it and said " Charvet, I remember that", but I had no idea of what Charvet was.

Q. But you must have had an invoice?

A. No, I am talking about my recollection now.

Q. Oh, yes, yes but if we could- you must have had an invoice?

A. I am sure I must have had an invoice.

Q. And you see what I am trying to ascertain from you is if this was an invoice which would have arrived in the office in the normal course of business, as your stationary supplier's invoice might have arrived, in the ordinary course of business, at the office, is that correct?

A. When you say " ordinary".

Q. Ordinary?

A. Oh ordinary, right. How the cheque arrived, how the invoice arrived with me, I don't know.

Q. Well, can I take it that for the normal goods of services, if you were purchasing stationary, having matters printed, hotel bills were one that you mentioned you might have had to deal with, and in fact you speculated in respect of these two particular foreign drafts, although we didn't have the actual drafts at the time but?

A. I had no idea.

Q. They may have been in respect of hotel expenses abroad?

A. I just speculated the purchase of foreign drafts put me but beyond that I couldn't go.

Q. Could we take it that in the ordinary course of business, that type of invoice would arrive in the office in the mail?

A. It could have arrived in the office. It could have arrived at Mr. Haughey's home.

Q. No. I am not talking, sorry, I am talking about the ordinary?

A. The ordinary ones yes.

Q. They just arrived in the office?

A. Yes.

Q. Like any business; isn't that correct?

A. Yes.

Q. Now, again what I am trying to ascertain from you is this; do you ever recollect and what I am trying to ascertain is if you understand this particular invoice related to the ordinary workings of the party Leader's Allowance or the office, in other words, was it for the purchase of goods or services for office purposes?

A. I honestly don't remember.

Q. Well?

A. I really don't remember.

Q. Well, could you help us now by your view on it Ms. Foy?

A. My view on it now?

Q. Yes, yes doesn't it seem unlikely to you Ms. Foy that an invoice

MR. NESBITT: Mr. Chairman, perhaps I could intervene at

this period. This invoice is getting, to the excitement of the media it is an invoice that I have never seen. As I understand it, it is an invoice of the Tribunal have no idea what it looked like and my client is now being asked to speculate about this invoice in a way that really doesn't bear on the evidence that is available or her recollection of it and it is unfair that this be happening because it will be the subject matter of comment where there should be no such comment. She is able to answer questions about things she knows shall she is not able to answer questions about things she is unable to recollect and it is very tempting to speculate what invoices might look like but it is unfair.

CHAIRMAN: I think the view I will take of it is this; that I will not press Ms. Foy to express a view based on hindsight or what she may have learned in recent weeks but I, nonetheless, accept and I am very mindful of the need of the Tribunal to probe carefully into the various payments dealt with in the statement but I think in the circumstances Mr. Coughlan, I will not proceed with a basis of inviting her to comment based on hindsight

MR. COUGHLAN: May it please you. .

Q. Now, the one thing you seem to do, you do believe or have an understanding of is that you must have had an invoice; isn't that correct?

A. Yes.

Q. And that if that invoice did not arrive in the normal or ordinary course of the Tribunal's or, sorry, the office business, where could it have come from?

A. You see again, I am only operating on my memory. And when I think I have come to a solution on something I get another heap of papers from the Tribunal and then I have to change my views on everything again so it is constantly moving. As I said, it may have come into the office, it may have come into Mr. Haughey's home. But I am only speculating. I don't know where it came from.

Q. Well, Ms. Foy, you see you are in the best position of all to assist the Tribunal because you were the one who actually administered the office?

A. I know but I wish I would be well out of here if I had a wonderful memory of what happened 10, 12, 13 years ago.

Q. Yes?

A. I don't

Q. I beg your pardon?

A. I don't want to be here. That is why I wish I had a good memory.

Q. But this was only eight years ago. Hum?

A. I really, I don't see how I can help when I don't know.

Q. Well, may be this will assist in jogging your memory. For the purpose of purchasing the international draft made payable to Charvet, you would have had to, you would have had to comply with exchange control regulations, you would have had to give Allied Irish Banks sight of an invoice?

A. That's right.

Q. To enable them to draw the international draft, isn't that correct?

A. That's right, that is why I assume I had an invoice.

Q. On that basis you do, so you now, you had to have an invoice; isn't that correct?

A. But.

Q. You had to have an invoice?

A. What you want me to say is where I got the invoice from.

Q. No, no I am not. I am trying to establish that you had an invoice in the first instance. You would have had to give Allied Irish Bank sight of an invoice to purchase an international draft; isn't that correct, isn't that right?

A. That's right.

Q. Do you remember that?

A. When I don't remember the specific period when in order to purchase a draft you had to produce the documentation, the invoices. I am assuming that that is one of those cases.

I don't at the time

Q. Just how many foreign drafts did you purchase?

A. Well, when you when you think back to 1989 and the Brian Lenihan.

Q. Mr. Lenihan- you were purchasing dollar drafts there is no doubt about that. I will come to those in due course?

A. Yes, yes.

Q. You would have had to had exchange control approval in respect of them?

A. Yes.

Q. And you would had to have furnished invoices to the bank and have them stamped; isn't that correct?

A. That's right that is why that comes to mind.

Q. You know that about Mr. Lenihan's period. Was there any other period when you would have purchased foreign drafts other than Mr. Lenihan's which were all addressed to the Mayo Clinic or the Methodist Hospital or wherever it was and they were all dollar and we know now of these two international drafts, were there any other occasions when you purchased international drafts?

A. I honestly don't remember.

Q. Ms. Foy, just think about it. Just think about it. Were there any other occasions when you purchased foreign drafts?

A. I don't know what to say to you.

Q. Are you saying there may have been?

A. No. No. I don't remember regularly purchasing on other occasions purchasing drafts. And each time I say that you ask me the same question again.

Q. Well, you do know or do you accept that you are the one who did purchase the two drafts in question here?

A. Yes.

Q. Sorry, if we put up the other Irish cheque and you might just confirm. Now that is slightly different isn't it, in that it is made payable to cash. Whose writing is that?

A. Oh, that is my writing.

Q. Including the cash?

A. Yes.

Q. And that also appears to have used to purchase the second foreign draft, isn't that correct, the French Franc draft?

A. Apparently, there was an element of cash involved in that.

Q. There was an element of cash withdrawal in that as well; isn't that correct?

A. Yes. At this moment I can't remember whether it was Irish or what kind of cash it was.

Q. Would you ever remember an instant whereby you purchased a foreign draft and obtained some cash at the same time?

A. Specifically no, I don't.

Q. Specifically no, but do you remember generally so?

A. I don't.

Q. Apart from your lawyers and the Tribunal, have you discussed these two particular transactions with anyone else?

A. Yes, Paul Kavanagh.

Q. With whom?

A. Mr. Paul Kavanagh. Yes.

Q. Very good. Now of course it is understandable that you would try to get information to help you. Was Mr. Kavanagh the only person you spoke to?

A. He was the only one I felt I could talk to about this because I knew I couldn't talk to anyone else apart from.

Q. Your own lawyers of course?

A. Yes apart from legal, that was all. I was trying to find

somebody I could talk to who was around at the time and could remember particular things going on.

Q. Yes?

A. And after I heard that Paul came in I said- right, so I spoke to him. We have had quite a few meetings.

Q. You had quite a few meetings with Mr. Kavanagh; is that correct?

A. Yes, particularly if you want to the occasion of the "dorm section" (inaudible).

Q. I think that specifically related to the Mr. Lenihan donations?

A. That's right.

Q. Turning now to the Celtic Helicopters cheque for €30,000, if I may?

A. Um hum.

Q. I think the cheque was dated the 13th of June of 1989, and I think the first question that was raised with you by solicitor to the Tribunal was the person from whom you received this cheque, isn't that correct?

A. That's right.

Q. I think you have informed the Tribunal that "I do not recall receiving this cheque which was more than ten years ago". The statement of Mr. Allen Kelly and Miss Mary O'Connor, both of AIB, indicate that was cashed or lodged to an account other than the Leader's Allowance Account"?

A. That's right.

Q. I think it gives the number?

A. That's right.

Q. " Bearing in mind my reply to A, I can only respond to the subsequent queries as follows" and I will deal with those queries now. I think you were asked for any explanation which you might give in relation to the ultimate source of these funds, the identity of the person by whom they were donated and the purpose for which they were given. You were asked the identity of the person who provided you with such explanation, and you were asked your knowledge as to the manner in which this cheque was dealt with and the application of it's proceeds. And you were asked to bear in mind that cash may have been obtained for this cheque over the counter at Baggot Street Branch of AIB; isn't that correct?

A. That's correct.

Q. And you responded "I do not recall any explanation I may have been given in relation to this cheque, if it was given to me, it's donor or the purpose for which it was given. I do recall whether I was given, I do not recall whether I was given any such explanation and cannot at this stage in the absence of records advise as to whether or not the cheque related to an invoice" and then your reply to C is " as B above". You then go on to inform the Tribunal that you cannot, at this stage, recall how this cheque was dealt with. "I have been furnished with a copy of it but I cannot recollect as to whether the cheque may have been lodged or cashed. I accept that if the cheque were cashed

by me I would have probably done so at AIB Baggot Street";

is that correct?

A. That's right.

Q. Now, I think you are aware, you are aware that this cheque was drawn on the account of Celtic Helicopters?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And can I take it that you are also aware that Mr. Haughey issued a public statement in respect of this particular cheque?

A. That's right.

Q. This summer. And are you also aware that Mr. Haughey stated that this was a cheque drawn resulting from an inadvertent lodging of €30,000, comprising €20,000 and €10,000 furnished by the Irish Permanent Building Society which had been lodged to the account of Celtic Helicopters. Were you aware of that?

A. I am.

Q. I think you are also aware that the €20,000 in question was intended to be a donation for the late Mr. Brian Lenihan's fund and that the €10,000 was a political donation to Mr.

Haughey himself; isn't that correct?

A. That's right.

Q. We know from your own evidence that you were the person who made the lodgements?

A. That's right.

Q. In respect of the Leader's Allowance Account at Baggot Street; isn't that correct?

A. Yes.

Q. Did you ever make a lodgement and I stress a lodgement, to the account of Celtic Helicopters at Dublin Airport?

A. Never.

Q. Never?

A. Never.

Q. You may have made payments?

A. I paid invoices.

Q. You paid invoices. You may have made payments to Celtic Helicopters; isn't that correct?

A. That's correct.

Q. But that the payment would have been designated as being to Celtic Helicopters on any payment you made?

A. That is so. Yes.

Q. That, and can we be certain so that you if this money was inadvertently lodged to Celtic Helicopters in Dublin Airport that certainly was not done by you

A. I never lodged money to Celtic Helicopters, never.

Q. Now, if this particular- we know that this particular cheque was presented at Allied Irish Banks, Baggot Street?

A. Yes.

Q. Isn't that correct?

A. That's right.

Q. And the evidence, so far, would appear to indicate that it was not lodged to the Leader's Allowance?

A. That's right.

Q. Account, isn't that correct?

A. That's right.

Q. And the evidence which has already been given by Miss Mary O'Connor is that the probability is that this cheque was cashed?

A. I saw that, yes.

Q. Yes. Do you have a recollection of ever cashing a cheque for €30,000?

A. I don't but that doesn't mean I didn't. I just do not remember cashing it.

Q. €30,000 would have been fairly bulky, I would imagine, no matter what denomination note you were talking about?

A. We went down that road the last time.

Q. We did. You have no recollection?

A. I haven't. I haven't.

Q. Well, if you were getting €30,000 in cash, I am just trying to see if this would assist your memory, it is unlikely to be a sum of money that would just be counted at the counter, I suggest.

A. You yes. You are right on that because when I cashed- do you remember I explained to you I used to cash Mr.

Haughey's monthly cheque.

Q. Yes, his payment cheque?

A. And despite the fact that I had somebody with me that wasn't counted out at the desk.

Q. You went into a room?

A. I would hand in the cheque and I would hand in and I would go up and I would say, "you put that in that" and I would bring it back to the office. I hated money being counted out at the counter. If I was cashing an amount like that it certainly wouldn't have been counted out at the desk.

Q. Are you saying that you wouldn't even check the cash at the bank?

A. No. Whoever would put it into the envelope, would give it to me and I would take it back to the office and then check it.

Q. I am just wondering, being fair to you, are you sure about that because the bank would have no way of covering itself in a situation like that, are you sure that that always happened?

A. I know it happened with Mr. Haughey's cheques because inevitably they were at the end of the month and the banks were busy.

Q. Yes?

A. They would go off and there was never they would go off and it was never wrong.

Q. Well, in any event you have no recollection?

A. No.

Q. Of cashing this. Could it be that you didn't cash it, that you didn't cash it?

A. The possibility is there.

Q. Is that a possibility or is that what you think?

A. Mr. Coughlan, at this stage I honestly don't know what I

think because every time I think something I get another big sheaf of papers and I start all over again.

CHAIRMAN: Well, Ms. Foy, I am aware that this is a distressing business for you and that you have had a lot of queries addressed to you, but it is the case that your evidence has become an important part of what is an increasingly crucial part of the Tribunal's inquiries and that is why I am afraid it just has to be gone ahead with.

Mr. Coughlan may gently and quietly take you through these matters. There is no intention to distress you.

A. It is just where I can't answer, where I can't give a definitive answer. I am sorry but I can't.

MR. COUGHLAN: Very good

CHAIRMAN: I think on one very neutral matter I may have asked you a question on your last attendance about security, thinking that the particular branch of the bank was at the canal end of Baggot Street. I think, in fact, your only hazard would have been that Doheny & Nesbitt's - wasn't it next-door to that, isn't that right?

A. It was literally five minutes from the office. .

Q. MR. COUGHLAN: Well, can I ask you this, if you did get cash for it who would you have given the cash to?

A. Mr. Haughey.

Q. And Mr. Haughey only?

A. I have- the only person I can ever remember giving cash to would have been Mr. Haughey if I cashed it.

Q. Any time, can I just say any time you got cash, any time you got cash and in fact you didn't get petty cash, isn't that what you told us?

A. That's right.

Q. Any time you got cash you gave it to Mr. Haughey?

A. It was for a purpose.

Q. Yes?

A. And if it was for somebody may be, somebody was coming in looking for money, they wouldn't come in to get the money from me, they would come in to see Mr. Haughey and he would be the one to hand it out.

Q. That is why I just want to can we establish this, any time you got cash, at Allied Irish Banks, Baggot Street Branch, referable of course to cheques drawn on this account in the first instance, you always gave the cash to Mr. Haughey; is that correct, is that your recollection?

A. I would feel fairly sure, yes.

Q. If we might move on for the moment then to the next cheque. This was drawn to your attention and the query which was raised was under the headings "Mr. Laurence Goodman's cheque, €25,000" and you were asked whether you had any dealings with Mr. Goodman in relation to the manner in which this payment was made, that is by cheque payable to Fianna Fail (Leader's Allowance Account) and I think you have informed the Tribunal that you have no recollection of meeting Mr. Laurence Goodman at all, "although it is likely that you did so at least with the purpose of showing him in

and out and say that, you say that "I have no recollection of meeting Mr. Laurence Goodman at all, although it is likely that I did so at least for the purpose of showing him in and out of Mr. Haughey's office. There was a constant stream of people visiting Mr. Haughey's office and I would not recall anyone I had met only in this context. I had no personal dealings with Mr. Goodman in relation to this cheque"?

A. That's correct.

Q. And I think the next query which was raised with you was your role in the lodgement or negotiation of this cheque at Allied Irish Bank, Baggot Street and you have informed the Tribunal that you have no specific recollection of lodging or negotiating this cheque. However, if the cheque appears from the bank records to have been lodged "I accept that I would have lodged it". Now I think evidence has already been given which you may be familiar with about the tracer number and indicating that this particular cheque appears to have been lodged to the account?

A. That's right.

Q. So can we take it that if this cheque was lodged to the account, that you were the one who would have lodged it?

A. Correct.

Q. And the lodgement you may see on the monitor there, it seems to have formed part of the €36,000 lodge lodgement there, so?

A. Oh, yes.

Q. You see that it has the tracer number, 812 on it. And can we take it that in making lodgements, particularly around this time, I think when there were donations being sought for Mr. Lenihan and other matters, that it would not have been unusual to lodge a number of cheques at the same time; is that correct?

A. That's what I am assuming the balance of that lodgement.

Q. But it wouldn't have been out of the ordinary to have a number of cheques to lodge?

A. That's correct.

Q. The third query that is raised in respect of this particular cheque was the manner in which the cheque was negotiated, that is whether the proceeds were lodged to account No. 3020862 or whether the cheque was certified and I think you have informed the Tribunal that you have no specific recollection in the manner in which the cheque was negotiated. I think evidence has overtaken that situation now hasn't it and I think it appears to be from the evidence given, that you would?

A. That was part of the lodgement.

Q. That you would think that that was part of that lodgement.

A. I think it was the statement of Alan Kelly that pointed that out in great detail Mr. Kelly and Miss O'Connor, I think.

Q. Only Miss O'Connor has given the evidence but I think you would be confident, I think, from the information which is available to you now; isn't that correct?

A. Yes.

Q. And I know you have told us on the previous occasion you gave evidence about donations to Mr. Lenihan's medical expenses, that they tended to be given to you by Mr. Haughey and then you lodged them; is that correct?

A. Having spoken to Paul Kavanagh.

Q. Yes?

A. On that, I think I part of that may not have been correct.

Q. Well, there is no difficulty about that?

A. Paul said he gave them to me.

Q. Yes Mr. Kavanagh has given sworn evidence that he gave you cheques?

A. Um. Now that does not automatically dismiss the fact that Mr. Haughey could have given some to me as well.

Q. Absolutely. I don't think there is any necessary inconsistencies there?

A. It is only as I am get getting more, the only people I am getting information from is you and then Paul Kavanagh, and just trying to put it together then when it arrives, but Paul says that he brought me in the cheques and I issued acknowledgments and lodged them.

Q. Yes. I think the evidence that we have just- we will just take his evidence. He said that he gave you cheques, cheques he raised?

A. Yes. Yes.

Q. Now this particular cheque, as I understand from Mr. Kavanagh's evidence, is one which may have been solicited

by Mr. Hanley?

A. That's correct.

Q. Now, but that he thinks that Mr. Hanley may have given him the cheques or some cheques, at least?

A. Um hum.

Q. But it may be that Mr. Haughey may have also given you cheques; is that correct?

A. Yes.

Q. Now Mr. Kavanagh gave evidence that when he gave you cheques he understood that you would issue receipts in respect of them?

A. Yes.

Q. Did you ever issue receipts or an acknowledgment in respect of any of them

A. It would be normal procedure to issue an acknowledgment letter to whoever made the donation.

Q. But do you remember doing that?

A. I don't remember specifically doing it but I would assume that I would do it because it would be a normal thing to do.

Q. Yes?

A. I assume I did.

Q. Can you remember Mr. Kavanagh said he gave you some cheques; did Mr. Hanley ever give you any cheques can you remember or do you remember?

A. I don't think I ever had any dealings with Mr. Hanley.

Q. With Mr. Hanley?

A. With Mr. Hanley, no.

Q. I think Mr. Haughey may have given you some cheques?

A. You see it could have been that Mr. Hanley brought them in and gave them to Mr. Haughey and Mr. Haughey gave them to me.

Q. Yes. Do you ever remember- now do you ever remember any cheques and I mean you mentioned there may have been one or two smaller donations, but do you ever remember any cheques of this size or significance arriving at the office by post?

A. Um, you see a lot of that time there was the election so

Q. Well, anticipating Mr. Goodman's evidence, I think we do have a memorandum where he seems to believe that it was sent by post. Do you

A. I would have thought that he would have dropped in with it but then when I saw his memorandum that he sent it by post,.

Q. You would have thought Mr. Goodman would have dropped in but when you seen his memorandum he seems to believe?

A. That he posted it so I accept that he posted it. Then the posting and then with the posting and the date of the lodgement.

Q. Well, if it arrived in by post you had no dealings with Mr. Goodman at all yourself personally in respect of this.

Your only dealings were ever to show him in and out of Mr. Haughey's office in the normal course?

A. If I did that, if I did that. But no, I had no dealings with him.

Q. But somebody would have had to know that that cheque, made payable to Fianna Fail Party Leader's Fund was for the purpose for which it was intended?

A. You see, the chances are again- why do I do this to myself- I am surmising again if that was addressed it was addressed to Mr. Haughey and it would be " Mr. Charles J. Haughey TD etc.". And may be marked " Private and Confidential".

Q. I see?

A. So it would have gone to maybe his private secretary, who may or may not have opened it or who may have or may not have given it directly to Mr. Haughey.

Q. But it wouldn't have been something that you would have opened in the normal course?

A. I wouldn't imagine so.

Q. But for lodging purposes it would have been given to you and would you

A. Yes, it would have been given to me.

Q. Now, dealing with the Brian Lenihan fund?

A. Um hum.

Q. I think you have informed the Tribunal sorry. Just going back to the question of the €30,000 cheque from Celtic Helicopters, made payable to cash, which was presented at Allied Irish Banks, can I take it that you performed a reconciliation in respect of the account on a regular basis?

A. I did, yeah.

Q. And if €30,000 had been lodged to the account and it wasn't showing on the account statement, it was something that you would be seeking an explanation for?

A. But it wasn't lodged on the account.

Q. No. No, what I am saying is Mr. Haughey has made a public statement which has been confirmed to the Tribunal that it was?

A. Yes.

Q. If €30,000, which you believe had been lodged to an account, didn't show up or didn't appear on the statement; would you query that with the bank?

A. You are asking me that and this is ten years later.

Q. I know.

A. But if I didn't have, if I hadn't seen the cheque.

Q. Yes?

A. At the time and if it wasn't lodged.

Q. Perhaps you are being a little bit unfair to yourself, in the normal course of your work you would have gotten the bank statements, and checked the lodgements and the drawings; isn't that correct?

A. Yes. Yes.

Q. To see what the state of affairs were. If you had lodged €30,000, a significant sum of money?

A. Um hum.

Q. Then you got the bank statement at the end of the month or the next month and the €30,000 wasn't showing, it is

something you would notice and you would take up with the bank; that is all I am asking you; isn't that correct?

A. Yes.

Q. On that, just on that, the statements, whilst the account is in the name of Haughey Ahern McSharry

MR. NESBITT: Could we perhaps take just a short break?

MR. COUGHLAN: Perhaps, yes.

CHAIRMAN: We will take five minutes. I think, just to utilize the time, I am conscious there may be one quite brief application by the State in the afternoon sitting and I don't want to interrupt continuity, we will take a ten minute break now and then maybe at most another 20 minutes before lunch. Would that be all right Ms. Foy?

A. Thank you very much.

THE HEARING THEN ADJOURNED FOR A SHORT RECESS AND RESUMED AS FOLLOWS:

CHAIRMAN: Are you all right now?

Q. MR. COUGHLAN: Now, I think the next series of queries which were directed to you which were of assistance to the Tribunal related to your role in the administration of the funds collected for the benefit of late Mr. Brian Lenihan?

A. That's correct, yes.

Q. And the first matter which you were asked to deal with was your role in the reception of invoices from the Department

of Foreign Affairs, the obtaining of US cheques, US dollar cheques and the transmission of those cheques to the Department; isn't that correct?

A. That's right.

Q. And I think you have informed the Tribunal that: "I have already given a general account of my involvement in the administration of the funds collected on behalf of Mr. Lenihan in my supplemental statement of the 12th of May of 1999, and the answers provided to the Tribunal's queries in this section should be read in conjunction with that account.

As indicated in paragraph 4 of that statement, invoices in respect of Mr. Lenihan's treatment and related expenses came to the Taoiseach's office and were passed to me to arrange payment. I now believe that the sum expended was considerably less than that mentioned in the paragraph. I do not have a specific recollection of the source of all of these invoices, but I accept that some of them came from the Department of Foreign Affairs. Payments were made from the funds collected on Mr. Lenihan's behalf and lodged in the Leader's Allowance Account by the purchase of bank drafts in US dollars.

I organised payment of the various invoices when they arrived by the purchase of these drafts in Allied Irish Bank Baggot Street and the forwarding of the drafts to the appropriate address. I assume I would also have done this

in respect of invoices from the Department of Foreign Affairs, but do not specifically recall transmitting the cheques to the Department".

Well, could I just ask you about that, did you yourself ever receive invoices from the Department or were the invoices handed to you in the office?

A. I have a vague memory that some invoices came directly to the office, but these may have been minor ones.

Q. Yes?

A. I don't know, I can't be very clear on that.

Q. Well I think, could you be mistaken about that? Evidence has been given by the Secretary General of the Department who was then the Ambassador?

A. Oh, yes. I have read through that and I you know, it seems perfectly in order.

Q. Yes. Well, you were not the person named by the Secretary General in his evidence as being the person?

A. Who

Q. Who seemed to be the liaison from the Taoiseach's office and the Department?

A. That's right.

Q. But .

A. But I ultimately ended up with the invoice, but what went on in the meantime I don't know.

Q. And I think in any event the invoices came to you to be dealt with?

A. The invoices ended up with me.

Q. With you?

A. Exactly; and I paid them.

Q. And can I take it that you took those invoices to Allied Irish Bank at Baggot Street, and purchased, showed them the invoices and purchased the US drafts?

A. Yes.

Q. Made payable to the Mayo Clinic; isn't that correct?

A. Yes, it is.

Q. And I think we have actually seen those and they were furnished to you; isn't that right?

A. They were, yes.

Q. And can you confirm that those were the invoices, or those were the drafts which were purchased by you?

A. Yes.

Q. Made payable to the Mayo Clinic?

A. Um hum.

Q. And do you know what you did with the drafts yourself? Did you give them to anybody or give them to the Department of Foreign Affairs or did you make the payment yourself directly; can you remember?

A. It looks like the majority of them went to the Department of Foreign Affairs.

Q. Through Foreign Affairs. Now, because the full content of paragraph four of your original, or your supplemental, your original supplemental statement was not given in evidence, I think it would be appropriate that we would give all of that in evidence now.

I think in the original supplemental statement given on this particular matter, paragraph 4, in paragraph 4 you inform the Tribunal that during the same period and for some time afterwards invoices for Mr. Lenihan's medical treatment would "come to the Taoiseach's office and were passed to me in order to discharge payments were the sums lodged in the account used to administer the leader allowance"; isn't that correct?

A. That's correct.

Q. I think you also informed the Tribunal "that I paid these invoices as they arrived. I cannot specifically recall how they were paid, but it is likely that the sums were paid by bank draft in US dollars"; isn't that correct?

A. That's correct.

Q. I think specifically this sentence was not given in evidence on the previous occasion, in that supplemental statement you inform the Tribunal that you believed that the total sum involved to have been around €200,000; isn't that correct?

A. That was guesswork on my part, very early on.

Q. Yes.

A. When I would say, maybe a year ago, and Paul Kavanagh is of the opinion that I was wrong, but that he estimates that he set the target, the target was for around 150, but he didn't achieve that.

Q. Yes?

A. So, I accept I must have been wrong.

Q. Well, did you arrive at a figure of €200,000 because the account for the Leader's Allowance Account for that year seemed to have in excess of €200,000?

A. No.

Q. Over and above what would have been paid by the Exchequer?

A. No.

Q. How did you arrive at the figure at the time of €200,000?

A. It was something so simplistic and unscientific. I think I recollected from the time when Brian Lenihan was going for treatment, the figure of €200,000.

Q. Being mentioned?

A. Was the figure being mentioned and maybe that's where I maybe made my mistake.

Q. Yes; and it is because of something that Mr. Kavanagh has said to you that your recollection is now that it must have been €150,000 or less; was the target set and less was collected; is that right?

A. He said, he was spearheading the fundraising and he reckons they achieved maybe something in the region of 200 or 400 (sic). Now, I know the account ran over, because I spoke to Mr. Haughey about it, that the expenditure had gone over the mark. Now whether this was when Brian was, Brian Lenihan, the late Brian Lenihan had come back for his check up or whether it was after that, I don't know. I can't remember. But when I spoke to him I said "we had gone over the mark" and the reason I said it to him was in case Brian

would have to go back again and money wasn't there. And he said he would talk to Brian about it.

Q. I see. Well, what I want to ask you is, you made the lodgements to the account; isn't that correct?

A. Yes.

Q. These lodgements were not isolated or designated in anyway; is that correct?

A. No. They were done in a hurry, everything regarding that was done in a hurry and I was just told to leave that account.

Q. Yes; and in that year there was 220 odd thousand in excess of payments made by the Exchequer to that account; isn't that correct?

A. Um hum.

Q. And was it your understanding that when you gave evidence on the last occasion that that more or less represented what had been collected?

A. No.

Q. And what other explanation would there be for monies in the account to the extent of that?

A. The figure I mentioned in relation to Brian Lenihan bore no relation to the excess in the account.

Q. Well, what other explanation is there for the excess in the account so, Ms. Foy, can you remember, can you remember?

A. There was an election on.

Q. I know there was an election. I am asking you can you remember what other monies went into that account? You

know that the monies from the Exchequer went into the account because you made those lodgements. You know that Brian, monies collected for the late Mr. Lenihan's medical treatment went into the account; isn't that correct?

A. Yes.

Q. What other monies went into the account, do you remember?

A. Have you taken into account the transfers from the deposit account.

Q. Yes?

A. You have.

Q. Yes?

A. Okay. Then there is the Irish Permanent Building Society, those three cheques that you've sent me.

Q. Sorry, perhaps - and again just for your assistance and don't rush into it, the two cheques for €50,000 amounting to €100,000, from the Irish Permanent Building Society made payable to Fianna Fail were in 1986 and the €40,000 cheque in the Irish Permanent Building Society made payable to Fianna Fail, which appears to have gone into the account was in 1991.

A. Right; you are specifically talking about .

Q. About 1989.

A. Okay, sorry.

Q. Can there be any other explanation that you can think of?

A. It could only have been fundraising for the election, that is the only thing I can think of.

Q. What fundraising for the election do you ever remember?

A. The funds, I should say funds for the election.

Q. Well do you actually, do you remember that?

A. No. Not specifically.

Q. But you can remember monies for Mr. Lenihan going into the account?

A. Yes.

Q. And you can remember the monies from the Exchequer going into the account?

A. Yes.

Q. MR. COUGHLAN: I wonder if that might be the appropriate time to break?

CHAIRMAN: It is just about a quarter to one. So we will resume at two o'clock. Thank you Ms. Foy.

THE HEARING THEN ADJOURNED FOR LUNCH.

THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

CHAIRMAN: Good afternoon.

Before resuming Ms. Foy's testimony, am I correct in thinking Mr. Clarke may wish to raise some brief matters?

MR. CLARKE: Yes, Sir. I have two matters I wish to raise. The second, to which I will come in a moment, is the question of the Terms of Reference that arose out of the content of Mr. Coughlan's opening of this phase of the Tribunal on the 6th of October.

As I indicated on that occasion, I might have some brief

submissions on that topic to which I will return in a moment, however, Sir, the first matter I wish to address, arises out of an impression that may have been given in a newspaper article earlier this week to the effect that you might have initiated contact with the Attorney General or other persons in relation to the possibility of constraints on you being able to deal with certain matters effecting CRH, that might or might not come up in the course of your Inquiry.

I have been asked by the Attorney General to put the factual matters pertaining to that issue on the public record. I would like to do so. They are obviously in the main matters of which you are aware, Sir, and the Attorney feels, and we respectfully agree it is a matter that should be clarified publicly.

The first point to make, Sir, is that it would be wrong to accept the impression given in that newspaper article, that you had initiated any contact. Such contact as occurred was on the initiation of the Attorney General himself, and it was done in the context of a resolution currently standing for consideration before the Dail in the name of the Deputies of the Labour Party, dated the 12th of October, which touches on the business of this Tribunal.

In the context of that resolution the Attorney General was asked to tender certain legal advice, and felt it

appropriate to contact you for the purposes of ascertaining the viability of the course of action that was proposed in that resolution, at least insofar as it concerned your own role in matters.

The Attorney General did so, and I want to make it absolutely clear that the contact was initiated by him and solely for the purposes of dealing with the resolution that stood before the Dail.

On foot of that contact it is correct to state that the Attorney General initiated consultation with the parliamentary leaders of each and every registered political party represented in the Oireachtas, for the purposes of ascertaining their views, and for the avoidance of doubt, I should say that those contacted were the Taoiseach, the Tanaiste, and Deputies Bruton, Quinn, Sargent, Higgins and O'Caolain. And each of those instructed by the Attorney General has indicated his agreement to you proceeding as far as you can with any inquiry that properly arises within the Terms of Reference, without prejudice to the individual views on broader questions of the Terms of Reference which each of them hold.

I am instructed by the Attorney General as Counsel for the Public Interest, to make such a formal submission, and with that backing to you, to the effect that the Tribunal should proceed as far as it is lawful, without constraining itself

from dealing with any matters in particular, and that there are no, at this stage, no constraints upon you so proceeding.

I should say of course, Sir, that to make any specific submissions about how you might be able to proceed in any particular set of circumstances will necessarily be premature, and they could only be made in the light of such evidence as the investigative phase of the conduct of the Tribunal might have revealed.

In much the same way as I will in a moment be able to make submissions relating to the Terms of Reference question arising out of Mr. Coughlan's opening of this phase of the Tribunal, I am sure that if we don't know at this stage, we don't wish to know, whether any information has come to the Tribunal's attention, that would lead it down any particular road at all, but if any such information did come to the Tribunal's attention which it wished to, which it felt should lead it into a particular area of inquiry, and if any, if there were perceived to be any difficulties about that, then and only then would be the time when it would be possible to make detailed legal submissions in the light of the circumstances as they were then known.

But subject to that caveat which has no practical application at the moment, I do, Sir, formally submit to you that the views expressed to the Attorney General by the

parliamentary leaders are ones which are not only politically correct, in the non colloquial sense of that word, but also legally correct; that it is appropriate for you at this stage to continue as far as it is lawful with any areas coming to your attention that fall within the four walls of the Terms of Reference given to you.

Obviously also, Sir, it would be necessary to note that if any particular circumstances arose, then there might well be other parties who might have the right to be heard in those circumstances, but again, until practical circumstances arise that situation doesn't exist.

The other matter, Sir, concerns the question of, question of the interpretation of the Terms of Reference of the Tribunal, and I suppose with particular reference to certain payments to Mr. Ellis, which were referred to initially in the opening address of this phase by Mr. Coughlan on the 6th of October, as recorded at page 30 of the transcript, and which were then the subject of certain evidence tendered by Mr. Ellis thereafter. And as Mr. Coughlan pointed out in the course of his opening, they raised the question of whether a payment to a TD may come within, a particular Term of Reference C, in the sense of whether the phrase "Public Office" is sufficiently wide to encompass TD and not merely the holder of ministerial office?

I think it is important to note, Sir, that that subject was

at least to some extent debated in the courts in the proceedings brought by Mr. Haughey, in which you, Sir, were named Defendant, and the Attorney General was the Second Named Defendant, and were the subject of certain findings in the High Court by Mr. Justice Geoghegan, but I think it is important to note that the Supreme Court expressly declined to make any findings as to the interpretation of the Terms of Reference, and indicated that at least at the first instance they were a matter for each Tribunal, and it was on foot of those findings that I think you, Sir, met as the Tribunal and gave an initial indication of your interpretation of the Terms of Reference, subject of course to the fact that they might always need to be clarified or redefined in the light of circumstances as they might evolve, and that is the process with which we are involved here.

It seems to me, Sir, looking at the Terms of Reference as a whole, that it is important, as it were, to attempt to derive certain general principles about what the Terms of Reference are about before attempting to apply those to the precise language of each of the individual terms. And if I might echo something I said in a different context in submission to you some months ago; it seems to me that in broad terms the Terms of Reference require, or are in two parts; they require you firstly to identify certain, what I might call "qualifying payments", payments that come within

part of the definition, and they then require you to identify whether on foot of those payments, some element of the public decision making process may have been affected.

It is that second aspect that gives the Tribunal its public face. The mere fact that payments were made from one person to another person is not a legitimate matter of inquiry or public interest. If they were made in circumstances that might give rise to an inference that some public decision making process was affected by them, then it very clearly is a matter of legitimate public inquiry and legitimate public interest.

And it seems to me that all of the Terms of Reference, with the exception, I suppose, of those that are peculiar to the Revenue Commissioners, are designed towards that general end, identifying payments and identifying whether the public decision making process was affected by those payments or might have been affected. And therefore in my view, the question in interpreting the wording of the Terms of Reference is to identify that public decision making process. And I would say therefore, Sir, that the test as to whether an office might properly be regarded as a public office in the sense in which that word is used in Term of Reference C is, is it an office which is capable of exercising or significantly influencing the public decision making process. That's the test.

Obviously - the most obvious and clear-cut case is ministerial office, because Ministers being the holder of the executive power of the State under the Constitution exercise public decision making on a daily basis, and they also significantly influence public decision making by having the power to present legislation with the support of the Government to the Dail, in the reasonable expectation that it is highly likely to be passed.

But I don't think, Sir, that that, that the term "Public Office" is confined in that way. And in my submission it is a matter that needs to be considered on the facts and merits of each case as you find them, as to whether the person at the time held an office which was sufficiently capable of influencing the public decision making process as to bring it within Term of Reference C.

I don't think it is possible to give any general list of those that qualify or don't qualify, but on the facts of this case we already have had the evidence which was tendered on the same day, I think the 6th of October, when Mr. Ellis was giving evidence and being questioned on behalf of the Tribunal by Mr. Healy, at Question 238 on page 79. It is quite clear that there is evidence that the circumstances at the relevant time had a very direct impact on whether the then government might or might not survive.

The question that was asked on the transcript on that occasion was: "Did you have any discussions or did he have any discussions with you or discuss the importance of the position of the government?" "Answer: He did, he said, you know this would lead to the Government falling if I were to be declared bankrupt".

It would seem to me to be irrational to construe the Terms of Reference in such a way that the Government Minister was necessarily the holder of public office, because he could make a decision, but someone who held another public office, the office of Teachta Dala, who kept that Minister in office and allowed him to continue to make decisions was to be totally excluded from the possibility of being considered to be the holder of public office.

Therefore, in summary I say two things, Sir: I say the question in principle of whether someone may be said to hold a public office is determined by whether there is a sufficient connection with the public decision making process to enable him or her to be properly so called.

And I will have no difficulty in agreeing and submitting that on the facts as we now know them, as has been brought to the attention of the Tribunal, and insofar as it has already been covered, lead in evidence, would lead me to the view that it would be entirely appropriate in those circumstances on the facts of this case, to hold that Mr. Ellis does hold sufficient public office to bring him

within the Term of Reference.

Clearly, like I said in relation to the other matter upon which I had to address you, if further circumstances of difficulty arise, it might be necessary to consider them in the light of whatever facts might emerge on that occasion.

I think it is the kind of matter that might have to be dealt with on a case by case basis. But I certainly have no difficulty in submitting that on the facts of this case those matters clearly come within the Terms of Reference.

I have no further submissions, Sir, unless there is any issue you wish me to deal with?

CHAIRMAN: Not really, Mr. Clarke. Thank you very much for your attendance. Mr. Coughlan, anything you wish to say at this juncture in relation to any of those matters?

MR. COUGHLAN: No, Sir.

CHAIRMAN: Three matters have been helpfully alluded to by Mr. Clarke in his remarks, on behalf of the public interest as regards most of the submission, and on behalf of the Attorney General, as regards the last of the matters.

Two of those matters pertain to the Terms of Reference of this Tribunal, and the third relates to a very transient and more ephemeral aspect which I will deal with in conclusion.

It is obviously imperative that any decisions or rulings

pertaining to construction of the Terms of Reference of the Tribunal be undertaken with the greatest care and circumspection, particularly in relation to the aspects touching upon the Cement Roadstone Holdings potential issues.

It seems to me that whilst of course I will note the matters that have been stated by Mr. Clarke in relation to the apparent views evinced by political leaders in the Oireachtas, and while I will act with appropriate speed in dealing with this aspect, it would be premature if I were here and now to give an ad hoc ruling on the matter.

There are aspects of confidentiality which are central to the Tribunal's dealings in all respects, and it would be quite wrong if I were here and now to say anything that might indicate or imply that the Tribunal in the course of its confidential inquiry either had or had not what might appear to be justifiable grounds for investigation in relation to any of the matters covered under that general nexus.

In addition, there are parties who it seems clear to me, as indeed confirmed by Mr. Clarke, would have to be given notice and an opportunity to be heard before any ruling were to be made on that aspect. Accordingly, whilst I will deal with this as a matter of urgency, it seems to me, that for those reasons, it would be precipitous and wrong

for me to give an ad hoc ruling here and now.

The lesser matter that arose in the context of Mr. Clarke's observations as to the Terms of Reference on behalf of the public interest, related to the phrase "Holder of Public Office".

I accept that in the course of dicta of Mr. Justice Geoghegan, in the High Court proceedings in the suit entitled "Haughey and Others against Moriarty and Others", that Mr. Justice Geoghegan expressed a preliminary view to the effect that a holder of public office would appear to him to be equated with a holder of ministerial office. As Mr. Clarke correctly reminds me, the Supreme Court indicated that it was preferable that no view be expressed by either court on construction of the Terms of Reference and that the matter be left in the first instance to construction in accordance with fair procedures by the Sole Member.

But without necessarily taking on board all that Mr. Clarke has submitted, although I do of course attach obvious and deserved weight to his observations (in relation to the criteria of the degree of nexus with the public decision making process being the primary criterion upon which to view the potential involvement of a particular office holder), I feel that as regards what has transpired thus far in the context of Mr. Ellis, and the circumstances in which his evidence came to be given last week, that the

Tribunal is justified as regards his involvement as a member of Dail Eireann, in proceeding with the reception of that evidence in relation to his involvement.

I accept, as submitted by Mr. Clarke, that other contingencies may arise down the road in the course of the Tribunal's further sittings, and should they do so, in accordance with appropriate procedures, the parties or the persons who may be affected will dually be heard, and a ruling can be given in relation to each particular contingency that may arise.

It is clear to me, and I do so find, that it is appropriate that the Terms of Reference extend to the contingency affecting Mr. John Ellis as set forth in evidence last week.

The last matter relates to an infinitely more trivial and perhaps personal matter, and I do not want to dwell long on it. Insofar as it relates to an article in one of yesterday's national newspapers. Mr. Clarke has correctly and properly indicated that in fact the only contact on his instructions, that was made with, by or on behalf of the Tribunal was through Mr. Michael McDowell as Attorney General, having contacted me in the course of a telephone conversation two days ago about the possible contingencies arising from the motion that had been brought before Dail Eireann in the name of the Labour Party by Mr. Brendan

Howlin, its Deputy Leader.

Apart from that telephone conversation with Mr. McDowell and a further telephone conversation, which I stress, was not initiated by me, but was made to me by Mr. McDowell, arising out of yesterday's national publication, I have had no dealings whatsoever with any leader of any political party, and I am at an absolute loss to understand how any journalist contrived to record that I was canvassing leaders of political parties.

I do stress, and I think Mr. Clarke you will confirm, that your appearance here today in that regard is not on behalf of any request of mine to you or to the Attorney General, it is resulting from the two phone calls from Mr. McDowell to myself.

It does not behove one holding this particular appointment to become thin skinned, and I do not intend to dwell upon it, but it does seem to me, it was an inaccurate and perhaps somewhat unpleasant reference that was made and I would be somewhat grateful if on this occasion the author of the article did see fit to correct it.

Very good. Thank you.

MR. COUGHLAN: Ms. Foy please.

EILEEN FOY CONTINUED IN DIRECT EXAMINATION BY MR. COUGHLAN
AS FOLLOWS:

CHAIRPERSON: Thank you very much Ms. Foy.

Q. MR. COUGHLAN: Thanks Ms. Foy. Now, I think before lunch, Ms. Foy, we had gone back over paragraph four of your original supplemental statement, wherein you had informed the Tribunal at that time that you believed that

A. Oh, yes.

Q. the total sum involved, that is involved in the Mr. Lenihan fund, was around €200,000; isn't that correct?

A. That's correct.

Q. That was your honest belief at that time?

A. That's correct.

Q. And is it only as a result of what Mr. Paul Kavanagh said to you that you have reason to question that belief?

A. Essentially, yes.

Q. Yes; and I think you very fairly before lunch informed the Tribunal that you were aware that into that Leader's Allowance Account went monies from the Exchequer, the normal money. You asked if the Tribunal had borne in mind money from the deposit account and the Tribunal has?

A. Um hum.

Q. You know that money for Mr. Lenihan went into that account?

A. That's correct.

Q. And you have no memory of any other money going into the account, no memory; isn't that correct?

A. Well, it is obvious that money went into it, it is just

that I don't remember.

Q. You don't, you have no memory - you do have memory. May I ask this - do you have memory of Exchequer money going into it?

A. Yes.

Q. And you do have memory of donations for Mr. Lenihan's treatment, but you have no memory of any other money going into it, no memory?

A. No.

Q. Now, I think before lunch also you made reference to the fact that you might have brought to the attention of Mr. Haughey at some stage that there was a shortage of funds. I think that is when, or was that when Mr. Spain from the Department of Defence was seeking recompense for some monies that had been discharged by the Department of the Defence in the region of 12 odd thousand pounds, or do you

A. I can't pinpoint the compact time when I pointed out that we had run short. It could have been, but I can't pinpoint it.

Q. Because I just want to be clear about this. When you referred the fact to Mr. Haughey that you were running short of funds, that means that the Leader's Account was running short of funds?

A. No. At that stage where I was talking to him about that, I was talking about the actual money, the contributions that we had received.

Q. But you thought it was €200,000?

A. No. No.

Q. Well, what do you remember now?

A. When we were talking, when I said to you €200,000, that was last July.

Q. Yes.

A. Right. That was the figure that was in my mind, but the actual figures at the time - when I had spoke to Mr.

Haughey about this, I had the actual figures, if I was placing it in actual figures.

Q. What were they?

A. I don't know - I have nothing to work on.

Q. Sorry. Can I come at it this way: When you say you had the actual figures when you spoke to Mr. Haughey?

A. Yes.

Q. Can we take it so that Mr. Haughey knew the actual figure?

A. He must have because I said how much we had spent and, in fact I thought we had gone over and he had known it.

Q. Well, how do you - does that mean so, I want to clarify this now, Ms. Foy. We have the Leader's Allowance Account statements

A. Yeah.

Q. for the period. And in fact I will - (Document handed to witness). Now, it is, the number is on the actual bank statement itself, the page number, do you see page 88 on the top of that one? And it relates to - the statement - sorry, the final entry is on the 2nd of May of 1989, and

that's showing a balance of €16,717?

A. Yes.

Q. And the statements prior to that are indicating that the balances were kept in or around 15 to 20 odd thousand pounds or, except for 1986, but the previous statements seemed to indicate that that was the kind of, the balances that were normally in the account and the Tribunal has been able to see credits to the account which are, appear to be indicative of Exchequer payments going into the account, the normal payment from the Exchequer. Sorry, you can just see that one there on that of 824 - is the 9,249.42 for example, I think 8 - 8,249.42, that would be indicative of the type of thing that was being paid at the time; is that correct?

A. Right.

Q. Now, Mr. Kavanagh has given evidence that he was asked to start fundraising on behalf of Mr. Lenihan over and above the fundraising he was doing for the election, and he believes that it must have been prior to Mr. Lenihan going to the Mayo Clinic, because of a conversation he had with Mr. Haughey which he recounted in evidence, that it was to raise money to "get Brian to the Mayo". Now, from the invoices we have seen furnished by Mr. MacKernan from the Department of Foreign Affairs, the first period of treatment or assessment in the US dated from the 3rd of May of 1989?

A. Yeah.

Q. So I ask you to bear that date in mind. If you continue on to page 89 of the statement you see that the balances continue in or around there, what might be considered their normal level, that's Exchequer money, isn't that correct?

And then they start to rise and rise significantly; isn't that correct?

A. Yes.

Q. And then if you continue on to page, pages 90 - you can see there that on the 20th of June or around the 20th of June, 1986, the balance was standing at somewhere in the region of £186,000; isn't that correct? Do you see that?

A. Yes I do, yes.

Q. And of course one must also bear in mind when looking at that balance, this other cheque for £30,000 which appears to have been cashed as well; isn't that correct?

A. Right.

Q. Now, you then continue on into page 91, and one can see on the 20th of July of 1989 a debit of £47,090.56?

A. Um hum.

Q. And I think you can take it that that has been identified as being one of the major payments to the Mayo Clinic, the major, in fact the major payment to the Mayo Clinic out of the account?

A. Right.

Q. And then on to page 92, which brings us up into August of 1989, the balance is still running at a reasonably high level, close to £100,000, and then into September of 1989,

again the balance is running high and there is, that's on page 93, there is a credit of another £25,000, and one can see under that what would appear to be the normal Exchequer payment to the account; isn't that correct?

A. Um hum.

Q. So the balances are running fairly high there, aren't they?

A. They are.

Q. We then go into, on to page 94, which brings us into October of 1989, and again the balances are running high; isn't that correct?

A. Sorry, yes it is.

Q. And then if we go to page 95 we are into November, into December of 1989, still with a fairly high balance; isn't that correct?

A. That's correct.

Q. And at the - you see the final debit on that particular page, that appears to correspond with the 12, but I will come to that in due course when I come to Mr. Ellis, but it appears to correspond to the £12,400 cash which Mr. Ellis was paid?

A. Right.

Q. All right? Then if you go, I beg your pardon I need a drink - if you go on to page 96, the balances are still running fairly high, and the only credits that appear to be going in are the normal Exchequer payments; isn't that correct?

A. That's right.

Q. Sorry, I should draw your attention to the second debit on that page, œ5,023.53, I think that has been identified as being a payment to the Department of Foreign Affairs. It is a reconciliation or a repayment to the Department of Foreign Affairs?

A. Yes, yes.

Q. Now, going to page 97, which brings us to the end of February of 1990, again the only credits which appear to be going in are the Exchequer credits, isn't that right, and the balance is still running fairly high?

A. That's right.

Q. Then if we go to page 98, we are now into March of 1990 on the statement, again the only credit appears to be the Exchequer credit and the five - you see halfway down there is a debit œ5,727.23 on the 27th of March, that has been identified as being representing the last payment to the Mayo Clinic?

A. Right.

Q. Now, the one thing that's certain, that's the last payment to the Mayo Clinic, I will come to one subsequent matter in a moment, and it is a matter that I think has been identified to you at least, it is the Department of Defence seeking 12 odd thousand pounds?

A. Yes.

Q. Isn't that correct? Now, looking at the fairly major increase in the balance in the account after the 2nd of May or thereabouts, perhaps after the 15th of May of 1989, and

you can only remember the Exchequer payments into it and the Brian Lenihan donations into it, and looking at the drawings which have been identified to you as being in respect of Mr. Lenihan's treatment?

A. Um hum.

Q. Can you say whether it was in the time frame of, we checked it as wide as May of 1989 up to the 7th of March of 1990, that you would have indicated to Mr. Haughey that you were running short?

A. I think, I am only surmising, it was much later than that.

Q. Much later? Very good. Now, at that time, that's on the 7th of March of 1990, there was certainly sufficient - sorry, I beg your pardon, there appears to have been sufficient funds in the account to meet all the payments which were being expended on behalf of Mr. Lenihan; isn't that correct, up to that date, and in fact as of that date, there was certainly sufficient funds in the account even to meet a further payment of 12 odd thousand pounds which ultimately had to be made to the Department of Defence; isn't that correct?

A. Right.

Q. Like, I put it to you this way, Ms. Foy; if you had received the bill in from the Department of Defence or somebody from the Department of Defence had contacted you and said you have to do an adjustment of 12 odd thousand pounds, (1) you clarified it was a correct payment to make, it is something you wouldn't have had any difficulty doing?

A. Can I ask you something?

Q. Yes.

A. When did we get a bill in from the Department of Defence?

CHAIRMAN: Well, I think just to recapitulate on the evidence, I think what Mr. Spain said was that there was some uncertainty about the actual finalising of the invoicing in the departmental travel agent and it may have taken until August or September.

Q. MR. COUGHLAN: That's correct, Sir, that's correct. Because I think we can ?

A. Of that year?

CHAIRMAN: Yes.

Q. MR. COUGHLAN: August or September of 1990. And you go to page 103 of the statements?

A. Yes.

Q. And you can go on to page 104 and 105. You can see that the credits in the Leader's Allowance Account are certainly depleted, and one can see over that period that there might have been difficulty in meeting the repayment to the Department of Defence of 12 odd thousand pounds, I think you would agree with that on the statements, wouldn't you?

A. Yes - that's

Q. So, you can take it that Mr. Spain has given evidence that it was around that time, and it must have been at that time that you brought it to the attention of Mr. Haughey that you were short of funds or that there weren't sufficient

funds?

A. It, it certainly appears that way.

Q. Yes.

A. Because when the late Mr. Lenihan, well, I can't remember whether it was before he went back to the Mayo Clinic or when, for the second time, or when he returned. I pointed out that we were short of funds then. And the reason I was saying that was in case he had to go back again.

Q. Oh, you wanted to - a potential build-up of

A. I was just making him aware that there were not, that the funds weren't there.

Q. Yes; but having looked through the statements now, you said you can see that?

A. I can see that that's, logically, where it falls into place.

Q. The whole thing falls into place now, doesn't it?

A. I don't appear to have paid the Department of Defence until February.

Q. That's correct, that's correct. Do you actually remember it or

A. No, I know the figure because I have been up and down through

Q. I know, it has been brought to your attention; isn't that correct? A lot of things have been brought to your attention but that has too?

A. This is my nighttime reading (this is).

Q. So, in fact looking at the balances in the account from

May, sorry, from the middle of May of 1989 and carrying them on through, and bearing in mind the other €30,000 which appears to have been cashed, there is nothing in the statements inconsistent, that's what I want to suggest to you, inconsistent with the original belief you had when you gave evidence originally, that around €200,000 must have been collected, isn't that correct? There is nothing inconsistent in the statements with that?

A. With that you are excluding then the general election and if funds went in for that.

Q. If now what, and this is what I specifically need to ask you carefully about, Ms. Foy, the Tribunal needs your assistance on this. You have told me that you remember money from central funds going into the account. You have told me that you remember donations from Mr. Lenihan going into the account; isn't that correct?

A. That's right.

Q. And you have told me that you have no memory of any other money going into the account; isn't that correct?

A. That's correct.

Q. And from an examination of the statements, from an examination of the statements it would appear that there was in excess of €200,000, in excess of €200,000 lodged to that account over and above Exchequer money; isn't that correct?

A. I haven't totalled it.

Q. €220,000 in fact?

A. Yes.

Q. And because what you do remember, you expressed a belief when you furnished your original supplemental statement that around œ200,000?

A. I gave a figure off the top of my head.

Q. Well now, I think last May when you furnished your original memorandum and your supplemental statement, you prepared those with the assistance of your solicitor and counsel; isn't that correct?

A. That's correct.

Q. So can we take it so that, being fair to yourself, that you are really in error when you say you gave a figure off the top of your head?

A. I think I was stupid, I - just to go back a little bit on this?

Q. Yes, indeed.

A. When I was in here originally I mentioned, I was asked to give a figure and I couldn't give a figure and just, just the same as what's going on now, I said, in or around œ200,000. And it went from there to paper.

Q. When did you first - I know you

A. You asked me did I suspect, did I think that I changed my mind because of my conversation with Paul Kavanagh.

Q. Yes?

A. Well, if Paul Kavanagh says that he, he did the fundraising and says that he didn't reach his target which was 150.

Q. You don't want to disagree with him?

A. No, it isn't a question of not wanting to. It seems to point to the fact that I was wrong.

Q. But what I am asking you now to do, and you are the expert in the figures?

A. I am not.

Q. You were the expert in the operation of this account, and Mr. Kavanagh, in fairness to him, Mr. Kavanagh in fairness to him, didn't know where the money went, he didn't know where the money was lodged. That's the evidence he has given. He had no idea where the money was lodged, but looking at the accounts and the statements, which you have done previously; isn't that correct?

A. Yes.

Q. Yes, you know that there was over €200,000 lodged to the account, over and above money from the Exchequer; isn't that correct?

A. Yes.

Q. And over and above money from the Exchequer, money lodged from the Exchequer, the only other memory you have, the only other memory you have of money being lodged to the account is Mr. Lenihan's?

A. Yeah.

Q. And no other money?

A. The only other memory I have

Q. Yes, yes?

A. but that does not, sure we have proved my memory is far from perfect.

Q. Tell me this, tell me this, Ms. Foy, when you gave evidence here on the last occasion I specifically asked you not to mention the figure in your supplemental statement; isn't that correct?

A. I didn't mention it.

Q. I specifically asked you not to mention it?

A. That's right.

Q. Because at that stage the figure had not been circulated to all people who had been considered appropriate; isn't that correct?

A. That's right.

Q. So apart from your own lawyers, the Tribunal, yourself and then subsequently the people to whom the statement was circulated, nobody else knew of the figure involved?

A. I never spoke to anybody about that figure.

Q. Did you speak to Mr. Kavanagh about that figure at any stage?

A. Very recently, within the last three weeks.

Q. Why did you speak to Mr. Kavanagh about the figure, may I ask?

A. I, I think it was after a report in the paper that he had been here and up until that

Q. What report in the paper had there been that Mr. Kavanagh was here?

A. Whether it was an article or whether it was a report, I just remember reading in the paper about Paul Kavanagh and the Tribunal, whether he was here or not I don't know, and

I decided to contact him.

Q. Yes?

A. And I said there was no one, absolutely no one I could talk to about it.

Q. Yes.

A. He was, "You were involved", "It says in this that you were involved in the fundraising", he said "Yes, I spear headed it". I said "Fine. Do you remember what you raised?".

And he said "I don't know, I think it was in the region of somewhere between 2 and 400,000" and he said that I gave him a list. He says I gave him a list, I accept that.

Q. Could we take

A. He has a figure in his mind, because when I gave him a list it wasn't totalled, that he totalled it.

Q. Now, I want to go back again and deal with this conversation you had with Mr. Kavanagh, if I may. You had, with the assistance of your own lawyers, furnished a memorandum and a supplemental statement to the Tribunal, and you had given sworn evidence; isn't that correct?

A. Given what?

Q. Given sworn evidence on certain matters?

A. Yes.

Q. And you did that honestly and carefully, as careful as you could be; isn't that correct?

A. At the time.

Q. Yes; and you honestly and carefully did everything and checked as much as you could to be sure that you were being

careful; isn't that correct?

A. I had very little, I had nothing to check on.

Q. I am asking you

A. Just let me finish.

Q. Yes.

A. I had nothing to check on. Nothing like the volume of paper that I have now. I meant, there was an - I made an awful lot of that on assumptions, guesswork and memory.

Q. Yes.

A. The only person I was able to speak to, well were my legal people.

Q. Yes.

A. And they at the time were not involved, were never involved with Fianna Fail.

Q. I am not saying

A. I don't know.

Q. That's

A. Who could I talk to at that stage? Paul Kavanagh never even came into my head.

Q. Ms. Foy, would you just listen to the questions now. When you did all of that, you were being extremely careful, and you knew when you furnished the supplemental statement that there had been in excess of €200,000 in the account over and above the monies from the Exchequer; isn't that correct?

A. Yes.

Q. And because you had no memory of any other monies going

into the account you in your supplemental statement used the figure of €200,000 as being attributable to donations for Mr. Lenihan; isn't that correct? Isn't that correct?

Isn't that correct?

A. I thought I had explained.

Q. Ms. Foy, Ms. Foy - listen to the question. Just listen to the question now. You knew when you furnished the supplemental statement that there was, we'll say in round sums, €200,000 lodged to the account over and above monies from central funds; isn't that correct?

A. Yes.

Q. And you, your memory was that the only monies that went into that account, and you lodged the monies, was money from central funds and donations for Mr. Lenihan; isn't that correct?

A. At that time that was correct.

Q. And that is still your state of memory; isn't that correct?

A. Yes, but you choose to exclude

Q. No, Ms. Foy, I will come back. I will come back. That is still your state of memory; isn't that correct?

A. Right.

Q. Now, in the meantime you have had a conversation with Mr. Paul Kavanagh; isn't that correct?

A. Yes.

Q. Why did you raise with Mr. Paul Kavanagh any issue about the monies lodged to the account for Mr. Lenihan when your memory was of the only monies you knew were lodged

MR. NESBITT: Mr. Chairman, I don't like to interrupt when My Friend is asking questions. On the last occasion when my client gave evidence, in fact I dealt with this period and asked her some of the credits that were coming into the account, and on page 84 of the transcript, I asked her about what was happening in relation to the times identified under pages 89 and 90 of the account, and we learned then that there was an election sometime in June, and in the run-up to the election monies would have been coming in, so I am sorry, there is evidence on the record which is given indicating that other sums of money were coming into the account, whatever she may be able to recognise now or recollect now.

CHAIRMAN: I will note that, Mr. Nesbitt, but I think the line of questioning is proper and should continue.

Q. MR. COUGHLAN: You spoke with Mr. Kavanagh?

A. Yes.

Q. And as a result of speaking with Mr. Kavanagh you raised as a possibility, is that correct, that there may have been other monies?

A. Yes.

Q. Only as a possibility?

A. But, no, no, that's not as a result - because I said before that there was an election at the time.

Q. Right. Right. Well let's go back and can you identify - now, Ms. Foy, your memory will have to get a little bit

better now, because you can remember monies from central funds, you can remember

A. They are obvious.

Q. Ms. Foy, you remember monies from Mr. Lenihan's, for Mr.

Lenihan, now let's see what else you remember going into

the account. Not a general speculation, what you remember

going into the account, tell us. Let's go back to pages

88 and 89 and we will painstakingly go through the

credits.

Page 88. I think it is €8,249.42, that's clearly

Exchequer money, isn't it?

A. Yes.

Q. The 25th of May, 1989, there is 25,042?

A. The 11th of April is

Q. Sorry? The 11th of April there is €5,000?

A. Yes.

Q. What is that?

A. I don't know.

Q. Right.

A. How can you .

Q. Why did you draw it to my attention so?

A. You said you were going back to go through them in detail.

Q. Right. Page 89 is the Exchequer money, sorry page 88 is

the Exchequer money. Page 89, now, you see this is when

fundraising is going on for Mr. Lenihan, the €9,288.63

probably represents Exchequer money; is that correct, or

does it, maybe not, I don't know, probably not, it should

be 8,000 or thereabouts?

A. Can we stop for just a moment?

MR. COUGHLAN: Perhaps we will rise for ten minutes or five minutes, of course.

CHAIRMAN: Five minutes.

THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AGAIN AS FOLLOWS:

CHAIRMAN: Thank you.

Q. MR. COUGHLAN: Are you all right, Ms. Foy?

A. I am fine thank you.

Q. Now, if we can go back to these various pages of the bank statements and look at the balances in the first instance and see them growing rapidly; isn't that correct?

A. That's right.

Q. And bear in mind your memory of what went into those, in the bank account?

A. Yes.

Q. Can you specifically point to anything else which would assist your memory, that any other monies went into the bank account, specifically?

A. Looking at it there I can't specifically point to all the monies.

Q. And you have no memory of making any other lodgements to the account; is that correct?

A. But what I was trying to say

Q. Am I correct about that?

A. Just let me answer.

Q. Sorry, am I correct first of all in ascertaining that you have no memory, you can then go on and explain? You have no memory of lodging any other monies to the account?

A. That is what I am trying to explain.

Q. Do you have memory?

A. It must be that there are election funds went into that when it brings it up to the amount that it's at.

Q. Why is that?

A. To me it is basic logic.

Q. But why, why is that basic logic, even if, even if and that wasn't your belief and you were very careful about your belief when you furnished your supplemental statement, but even if your belief as a result of talking to Mr. Kavanagh has altered, that there couldn't have been €200,000 raised, Mr. Kavanagh informed you that his target was €150,000 but that he thinks he fell short of that; is that correct?

A. Yes.

Q. So can we take it so, that bearing that in mind, at the very least there must have been close to €150,000?

A. He says it was in the region of 120, 140.

Q. Now, that's what Mr. Kavanagh has told you; is that correct?

A. Yes.

Q. That was not, that was not tendered in evidence by Mr.

Kavanagh, 120 to 140 is what Mr. Kavanagh told you?

A. In the region of.

Q. For Mr. Lenihan?

A. What he said was it fell short of the target of 150.

Q. Well, what other types of monies so could possibly be there, and of course Mr. Kavanagh never had the €20,000 which went to Celtic Helicopter's which ultimately came back in the form of the 30,000 cash cheque, is that right, as far as you know?

A. Sorry, Mr. Kavanagh?

Q. The €30,000 cheque which appears to have been cashed. 20,000 of that appears to have comprised of a donation towards Mr. Lenihan's fund, isn't that right, from Irish Permanent Building Society?

A. I don't know how that was taken into account, I don't know.

Q. Taken into account by whom, by Mr. Kavanagh?

A. By Mr. Kavanagh.

Q. But Mr. Kavanagh never had it, did he? He couldn't have taken it into account. But anyway, so as a result of talking to Mr. Kavanagh you think that it may, it may be 120 to €140,000. Now, from an assessment of the drawings on the accounts the Tribunal has been able to identify €59,875.93 to the Mayo Clinic, that's in respect of which foreign drafts were produced. Approximately €10,000 to the Department of Foreign Affairs?

A. Um hum.

Q. That was in 1989 now, making a total of 69, close to

£70,000; isn't that correct?

A. That's right.

Q. So even if what Mr. Kavanagh told you is correct, there was certainly plenty of funds, I use it "designated funds", although they weren't so, available to discharge the £12,914.50 due to the Department of Defence which wasn't paid until the following year, isn't that correct, February 1991, I beg your pardon, not until February of 1991?

A. That is what, the way it appears on paper.

Q. Isn't that so, isn't that so anyway you look at it? Isn't that so?

A. It appears to be so.

Q. So as far as the drawings, an examination of the drawings on the account shows £81,000 approximately, and that is up to February of 1991, 81,000 approximately was expended on behalf of Mr. Lenihan from the account; isn't that correct?

A. That's right.

Q. So whether the sum raised was £120,000, £140,000 or £200,000, there was always plenty of money available to meet and discharge the bills which were presented; isn't that correct? There were sufficient funds, weren't there? You would have to read that, wouldn't you?

A. Yes.

Q. I want to make it absolutely clear, and you can confirm in your evidence that any drawings on that account, which you were instrumental in were on instructions; isn't that correct?

A. Yes.

Q. And from whom did the instructions emanate?

A. Maybe when you move down a little bit further in the statement it may be.

Q. Yes, very good. Very good. Now, Mr. Kavanagh in evidence, has informed the Tribunal that he began his campaign for Mr. Lenihan sometime around the beginning of May, and that it would have finished by the end of June, that's the end - you can take it that's the evidence he has given?

A. Yes, right.

Q. And in fact, and I have to take my colleague's word on this, if you calculate the credits to the account in that period over and above the Exchequer payments it is roughly, it is roughly 170, 000, 000, somewhere in that region.

Would you accept that?

A. I accept it.

Q. Just from the

A. But I think Mr. Kavanagh also said in conjunction with fundraising for Mr. Lenihan he was also fundraising for the election.

Q. There is absolutely no doubt about that, Ms. Foy. Mr. Kavanagh was one of the major fundraisers for the party for the election, but you may or may not be aware of his evidence, and I hope you have seen the transcript, that he was asked to carry this particular task out over and above the election, and his evidence was that he furnished these

payments to you and no others, that's his evidence; that it was, the monies collected for Mr. Lenihan were furnished to you. Mr. Kavanagh was a very cautious man as a fundraiser, wanting to know where money he had raised was going?

A. Yeah.

Q. And wanting receipts in respect of it, because he was conscious that people might make suggestions that money was going astray, he was an experienced man?

A. Right.

Q. Now, did Mr. Kavanagh, as he said in his evidence, carry out another campaign for a disabled driver and furnish money to you for that purpose?

A. I didn't remember anything about that until I had the conversation with Mr. Kavanagh.

Q. Yes?

A. And when he, he reminded me, then I remembered it.

Q. Yes.

A. The amount, I have no idea. He asked me to, had I any idea, I went off and I was thinking about it, I only again would be guessing.

Q. Yes, what's your best guess?

A. 12, 14,000.

Q. And do you remember receiving two dedicated cheques, as Mr. Kavanagh seems to remember, for that purpose?

A. I don't, I don't.

Q. Or from whom they came?

A. I don't remember where they came from. I just remember

the particular incident.

Q. And you, do you recognise the payment or the drawings on the account anywhere which show that is going out? You may wish to look through the statement, perhaps it is something we can come back to. You can't readily see it, can you?

A. Not, not

Q. So, perhaps we just, if we might take it a little bit slowly so. If Mr. Kavanagh had completed his campaign by the end of June, it must have come in before the end of June, between May and June perhaps. Now it could form part of some other lodgement, that is so, but do you see any drawings on the account which might assist you that such a payment was made out of this account, and in fairness, Ms. Foy - sorry, I should say in fairness, Mr. Kavanagh didn't know into which account any of this money went, he didn't know where it was going, so it may not necessarily have gone into this account?

A. Yes.

Q. At first sight anyway going through the statements it doesn't appear to be represented in this account?

A. It doesn't jump at me, no.

Q. Now, I think like his collection for Mr. Lenihan, he believed that the same system would have operated for the collection for this disabled driver, that when he furnished you with the donations he is of the opinion that you would have sent an acknowledgment or receipt or thank you letter to the donor?

A. That's right.

Q. And you think that that may have happened?

A. Anybody who provided money automatically got a letter.

Q. Well, in any event, and it is something we may come back to, you cannot see it going in or coming out of that account, can you?

A. I can't.

Q. You can't?

A. None of the numbers are jumping.

Q. Sorry, I beg your pardon?

A. Numbers are jumping up and down and I don't see it.

Q. I know, I appreciate it is difficult?

A. I don't see it.

Q. You don't see it. Well, let's move away from the figures for a few minutes so and go back to the queries which were raised by the Solicitor to the Tribunal in his letter to you?

A. Right.

Q. Or to your solicitors. I think you were asked at paragraph B "whether your client", whether you recalled the individual US dollar cheques provided for transmission to the Mayo Clinic which appear to have been funded by debit to the Baggot Street account, the details of these international cheques have already been provided to you, I think that's correct. You were asked to comment?

A. Yes.

Q. Your response is you do not recall the individual US dollar

cheques provided but you accept the copies and details

furnished by the Tribunal are correct?

A. Yes.

Q. I think you were then asked whether you recalled the US dollar cheques payable to the Calor Hotel and Gold Crown Limousine Service, each dated 7th of March, 1990, forwarded to the Department of Foreign Affairs for onward transmission, and appear to have been funded by debits to the Baggot Street account, and your response is you have no specific recollection of the two cheques mentioned. You do recall Mr. Lenihan returned to the US for further treatment in 1990 and that the further expenses incurred by him and his family in this regard were met from the Leader's Allowance Account; the two cheques appear to relate to travel expenses, and you assume the payment was made "in the manner described in the supplemental statement of May of 1988, and at (A) above". That is on foot of invoices; is that correct?

I think you were then asked whether you recall the following payments which appear to have been made to government departments to reimburse expenditure incurred in connection with the late Mr. Lenihan's treatment and review at the Mayo Clinic.

The first one was the 25th of July, 1989 - €2,489.90.

The second one is the 27th of September of 1989 for €4,933.59, which appears to have been funded by a debit to

the Baggot Street account on the 29th of September of 1989.

The third was on the 18th of December of 1989 for €5,073.53, which also appears to have been funded by a debit to the Baggot Street account on the 28th of December of 1989.

And the further was on the 15th of February of 1981 for €12,914.50 - 1991, for €12,914.50, which appears to have been funded by a cheque for that amount dated 12th of February of 1991 payable by Allied Irish Banks and negotiated at Baggot Street Branch on the 13th of February of 1991, "being the cheque referred to in your client's previous evidence", that's the Department of Defence payment; isn't that correct?

A. Yes.

Q. I think, "With regard to the payment referred to at the payments referred to at (D) above", that's those four payments, the Tribunal has been informed by the Department of Defence that this payment was received by way of reimbursement for the cost of airline tickets for the late Mr. Lenihan and his party from Dublin to Minnesota for his very review at the Mayo Clinic in January of 1990, and I think your response is that you have no specific recollection of the payments listed in this query.

However, you do recall dealing with both the Department of Defence and the Department of Foreign Affairs in relation to expenses incurred in relation to Mr. Lenihan's

treatment. That you specifically recall dealing with Mr. Brian Spain of the Department of Defence in this regard. You fully accept the account given on behalf of both Departments in relation to these payments and accept that you were the person who arranged the payments in question.

Further, it appears from the accounts furnished by the Department that these payments were made to cover the type of expenses that you had always understood to be met from the funds collected for Mr. Lenihan, on Mr. Lenihan's behalf; is that correct?

A. Yes, that's correct.

Q. I think you were then asked whether you do or do not agree that the above disbursements, that's the ones just dealt with, which appear to have been funded by withdrawals from the Baggot Street account, with the exception of the payment to the Department of Foreign Affairs of €2,489.90 on the 25th of July of 1989 or the total funds withdrawn from the Baggot Street account and applied for the benefit of the late Mr. Brian Lenihan. And your response is that you agree that "all of the disbursements above, with the exception noted by the Tribunal, represent total payments in respect of Mr. Lenihan's medical expenses and relate to travel and accommodation expenses funded by way of withdrawals from the Leader's Allowance Account".

However, it is your recollection that further cash payments were made to Mr. and Mrs. Lenihan at this time to assist

with the significant personal expenses incurred, and you are not aware of the amounts involved?

A. That's right.

Q. Now, from information furnished to the Tribunal, which evidence will be lead in due course, just to let you know, Mrs. Lenihan's only understanding is of a cash payment of œ200 to her?

A. I can't comment because I don't know.

Q. You can't comment, you don't know?

A. I don't know.

Q. You didn't, you didn't

A. No, I wouldn't have dealt with it directly myself.

Q. Well, can I take it that this is something that you would have perhaps heard from somebody else, that it is not something you yourself did?

A. Yes.

Q. And who did you hear that from, Ms. Foy?

A. Paul Kavanagh.

Q. Is this in the recent contact that you had?

A. Yes.

Q. Mr. Kavanagh?

A. I have only dealt with Paul Kavanagh in recent times.

Q. And it was Mr. Kavanagh who said to you that cash payments had been made to Mr. and Mrs. Lenihan; is that correct, as far as you know?

A. No, what he said to me was that Ann Lenihan had received cash payment.

Q. Ann Lenihan had received cash payment, that's what he said to you?

A. Yes.

Q. And that

A. I asked him did he think Brian himself had received a cash payment, because all along in my mind, but nothing, I had a feeling that the late Brian Lenihan had got a cash payment.

Q. You

A. I had nothing to base it on.

Q. You had nothing to base it on. You never gave Mr. Lenihan cash?

A. No, he wouldn't have got it through me. He would have got it through Mr. Haughey.

Q. What I am saying is you never gave Mr. Lenihan cash?

A. No.

Q. You never gave Mrs. Lenihan cash?

A. No.

Q. It was through Mr. Kavanagh you were informed Mrs. Lenihan had received cash?

A. Yes.

Q. And it was as a result of hearing that that you believed that that had happened; is that correct?

A. Yes.

Q. But you have no personal knowledge at all about that?

A. No.

Q. And was that something that was only told to you so in the last three weeks, that's when you first contacted Mr.

Kavanagh; is that correct?

A. I, he told me that the very first time I met him, to try and sort out some of this.

Q. When was that, about three weeks ago?

A. Yeah, I think it was about three weeks ago.

Q. There or thereabouts?

A. Yeah, there or thereabouts.

Q. But within a short time frame of today's date; is that correct?

A. Yes, because I had been going around in circles with this and getting absolutely nowhere.

Q. I appreciate that, Ms. Foy. But can I ask you this; you were the one who received the donations and lodgement; isn't that correct?

A. That's right.

Q. And you were the one who operated this account from an administrative point of view; isn't that correct?

A. Yes.

Q. You, I take it, did your work in a confidential way, would that be fair to say; that only the people who needed to know about your work knew about it?

A. Right.

Q. That is the people in your office, and your boss?

A. Right.

Q. Can I take it that prior to your discussions with Paul Kavanagh of recent times, you have never discussed the operations of this account with anyone outside the

appropriate people with whom it should be discussed?

A. I didn't even discuss it with Brian Lenihan.

Q. What I am saying is

A. The only person I discussed it with was Mr. Haughey.

Q. With Mr. Haughey?

A. Yes.

Q. You certainly never discussed drawings on this account with Mr. Paul Kavanagh, did you, prior to trying to piece things together?

A. Oh no.

Q. And did it come as a surprise to you when Mr. Kavanagh was able to say that there was money drawn on this account or that cash may have come, maybe he didn't say that, that cash was given to Mrs. Lenihan?

A. It didn't really come as a surprise to me.

Q. Well, how do you think he would have known anything about what came out of this account?

A. I don't know, I really don't. He was in constant touch with Mr. Haughey.

Q. Over recent times?

A. No, no. Right over the time of the fundraising.

Q. Yes?

A. Now, you may recall that - when the late Brian Lenihan came back from the Mayo Clinic and he was in great form, and he came into me and he asked me for a list of donors.

Q. We will come to that in a moment, yes?

A. Sorry, I was just doing this by way of explaining.

Q. Please do, we can go over it again in a moment?

A. He came in and asked me for a list of donors, I knew I couldn't possibly give him a list of donors because some of them didn't want to be identified. And the late Brian Lenihan was an absolute gentleman, and I just got around the situation and said, "Come on in, the Taoiseach will be delighted to see you", and brought him in and put him down in front of Mr. Haughey as to say "You deal with it". It was after that the Taoiseach apparently told Brian Lenihan to contact Paul Kavanagh, he could give him the details of what - Brian Lenihan, being as I said the absolute gentleman, he never came back to ask me anything about it because he knew that I was just caught in the middle.

Q. What do you mean by that?

A. That I couldn't give him

Q. What do you mean by that, Ms. Foy, "caught in the middle"?

A. I couldn't give him the information because the information I had been given was confidential.

Q. Confidential. And being a responsible person you would

A. When somebody sends in funds for a particular thing and they say they don't want to be identified.

Q. Yes; but what I am asking you is this; that you have no recollection, sorry, you can definitely say you never gave any cash to Mr. Lenihan or Mrs. Lenihan, you yourself?

A. I wouldn't have given, no it wouldn't have been for me to give them the cash and I wouldn't have given them

Q. And the first time this matter was brought to your

attention was a few weeks ago by Mr. Paul Kavanagh; isn't that correct?

A. About Mrs. Ann Lenihan, yes.

Q. Yes.

A. I thought fairly well all along, I thought that Brian had got money, but I had nothing to base it on.

Q. You had nothing to base it on?

A. So

Q. You had nothing to base it on?

A. And it is very difficult to turn around and say that somebody like the late Brian Lenihan who can't turn up here tomorrow and say "Question, I got €40? Yes, I got 50,000".

Q. That's why we have to be extremely careful don't we, Ms. Foy, about a dead man, he can't turn up here?

A. That's exactly my point.

Q. And let's be very careful, you never gave him any money and you don't remember drawing any money in his favour; isn't that correct?

A. I still have a feeling that Brian got money.

Q. Now, Ms. Foy, let's be very careful, we are dealing with a dead man here?

A. I know, I know.

Q. Before this particular supplemental statement was furnished to the Tribunal on which your evidence is based today, did you ever inform anyone about Mr. Brian Lenihan, you believed - sorry, you feel, I use the term you feel, you are not saying he did, you feel he got money?

A. Um hum, I don't believe I did.

Q. No?

A. I certainly didn't say it to you or any of your team.

Q. No, no you didn't, in fairness. And in fact it is only since your conversation with Mr. Paul Kavanagh - I am just fixing it in terms of time - that you have said this; isn't that correct?

A. Yes.

Q. Isn't that correct? Isn't that so?

A. Yes.

Q. Yes. So, can we take it that it is your evidence that it was Mr. Paul Kavanagh who informed you that Mrs. Lenihan got money?

A. Yes.

Q. Mr. Paul Kavanagh, did he or did he not inform you that Mr. Brian Lenihan had got money?

A. No, I said, I told him I - it was my

Q. Feeling?

A. I asked him.

Q. You asked him - sorry?

A. Did he know.

Q. You asked him did he know if Brian Lenihan got money?

A. Yes.

Q. To which he replied?

A. His answer was "I can't be certain but I could well believe it".

Q. So that is as far as it goes about Mr. Lenihan so; is that

correct? You see we have a duty to be very exact and very careful about this.

Now, I think you were asked by the Tribunal "Whether your client had any role in the reception or transmission to the VHI of a Mayo Clinic invoice for \$81,602.74, and the onwards transmission of payment made by the VHI in discharge of that invoice". And your response is that you had no contact at all with the VHI in relation to the late Mr. Lenihan?

A. I never had any contact with them.

Q. Did you even know about their involvement at the time?

A. I did - I think at the initial meeting here with the Tribunal about 14 months ago, that I said I thought the VHI had contributed in or around 10,000.

Q. In or around 10,000?

A. Yes.

Q. Where did that figure come from?

A. It was a figure I had heard.

Q. In the office?

A. In the office, around, I don't know. But that was the figure that I

Q. You had in your mind?

A. But, which has proved to be grossly wrong.

Q. Grossly wrong. Now that's perhaps unimportant. You weren't involved, you didn't know?

A. No, no.

Q. You didn't see the invoice?

A. No.

Q. You didn't make the payment, the VHI made the payment directly, so you had no involvement at all?

A. No.

Q. But you think you heard the figure of €10,000; is that correct? Well, from whom could you possibly have heard the figure, just think about it now?

A. I honestly don't know.

Q. You honestly don't know?

A. I really don't. I said that at the time.

Q. Was it at work you heard the figure?

A. It was.

MR. COUGHLAN: Now, I am going to move on to another portion at this stage, Sir, which may take some time and it might be appropriate

CHAIRMAN: If that's the case, Mr. Coughlan, and it seemed there was only 10 or 15 minutes left in it, in case of Ms. Foy I would sit on, but it does seem there are a number of issues to be addressed, and Mr. Nesbitt may have some matters to raise at the end, and it seems to me preferable that we needn't seek to sit unduly late to conclude Ms. Foy's evidence.

MR. NESBITT: I understand there is one further statement to come in that she may be asked questions about. If that may be available?

CHAIRMAN: There may be that further facilitation, that we may be able to finalise your client's involvement on that occasion. Of course, Mr. Nesbitt, I take it as read that you are not of course under any constraints that might arise if this was a court action as regards access to your client over the weekend.

In those circumstances we will take up matters again at 10:30am on Tuesday morning. Thank you very much.

THE HEARING THEN ADJOURNED TO TUESDAY, THE 19TH OCTOBER, 1999, AT 10:30 AM.