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AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

Dé Céadaoin, 27 Bealtaine 2015

Wednesday, 27 May 2015

The Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Pearse Doherty,	Senator Sean D. Barrett,
Deputy Joe Higgins,	Senator Michael D'Arcy,
Deputy Michael McGrath,	Senator Marc MacSharry,
Deputy Eoghan Murphy,	Senator Susan O'Keeffe.
Deputy Kieran O'Donnell,	
Deputy John Paul Phelan,	

DEPUTY CIARÁN LYNCH IN THE CHAIR.

Chairman: Okay, and do you have anything further to add?

Mr. Tony Grimes: No, Chairman, thank you.

Chairman: I'm going to bring matters to a conclusion so and in doing so, I would like to thank Mr. Grimes for his participation here today and for his positive engagement with the inquiry. The witness is now excused and I'm proposing to suspend the meeting until 2.30 p.m., when we will hear from the further witnesses from Central Bank of Ireland. And as we now are in private session, I can just excuse the witness and accommodate Senator MacSharry's request.

The joint committee went into private session at 1.08 p.m. Sitting suspended at 1.21 p.m. and resumed in public session at 2.43 p.m.

Central Bank-Financial Regulator - Ms Mary Burke

Chairman: I now call the committee back into public session. Is that agreed? Agreed. We now commence with session 2 of today's public hearings with Ms Mary Burke, Central Bank of Ireland IFSRA. The Committee of Inquiry into the Banking Crisis is now resuming in public session. Can I remind members and those in the public Gallery to ensure that their mobile devices are switched off? Today we continue our hearings with the Central Bank of Ireland and the Financial Regulator. At our first session this afternoon we will hear from Ms Mary Burke, a senior official at the Central Bank IFSRA. Later this afternoon we will hear from another Central Bank IFSRA witness, Mr. Con Horan.

Mary Burke joined the Central Bank of Ireland in 1984 and has worked in financial services regulation and supervision since 1998 across various industry sectors. In May 2006, she was appointed to the position of head of banking supervision at the Financial Regulator. She is currently head of prudential policy at the Central Bank, a position she has held since 2010. Ms Burke, you're very welcome and I would also like to acknowledge that you are accompanied today by your legal representative, Mr. Niall Michelle.

Before I hear from you this afternoon and the witness, I wish to advise the witness that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect to their evidence to this committee. If you are directed by the Chairman to cease giving evidence in relation to a particular matter and you continue to do so, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given. I would remind members and those present that there are currently criminal proceedings ongoing and further criminal proceedings are scheduled during the lifetime of the inquiry which overlap with the subject matter of the inquiry and, therefore, the utmost caution should be taken not to prejudice those proceedings.

In addition, there are particular obligations of professional secrecy on officers of the Central Bank in respect of confidential information they have come across in the course of their duties. This stems from European and Irish law, including section 33AK of the Central Bank Act 1942. The banking inquiry also has obligations of professional secrecy in terms of some of the information which has been provided to it by the Central Bank. These obligations have been taken into account by the committee and will affect the questions asked and the answers which can lawfully be given in today's proceedings. In particular, it will mean that some information can be dealt with in a summary or aggregate basis only such that individual institutions will not

be identified.

Members of the public are reminded that photography is prohibited in the committee room. To assist the smooth running of the inquiry, we will display certain documents on the screens here in the committee room. For those sitting in the Gallery, these documents will be displayed on the screens to your left and right and members of the public and journalists are reminded that these documents are confidential and they should not publish any of the documents so displayed.

The witness has been directed to attend this meeting of the Joint Committee of Inquiry into the Banking Crisis. You have been furnished with booklets of core documents. These are before the committee, will be relied upon in questioning and form part of the evidence of the inquiry.

So, if I can now ask the clerk to administer the affirmation to you.

The following witness was sworn in by the Clerk to the Committee:

Ms Mary Burke, Head of Prudential Policy, Central Bank.

Chairman: So once again ... thank you very much, Ms Burke, for being before the committee this afternoon and can I invite you to make your opening comments, please?

Ms Mary Burke: Thank you, Chairman. And good afternoon to members of the joint committee. I have, as requested, submitted a written statement to the inquiry under two broad categories of themes on which I have been directed to give evidence: regulatory, supervisory and Government; and banking.

For the purposes of this statement and in the interest of time, therefore, I propose to focus on particular aspects of my commentary on the regulatory and supervisory themes. It may also assist the committee if I clarify again that my personal knowledge of, and involvement with, those themes dates from my appointment to the head of banking supervision department in May 2006. It may further save time if I reiterate that while I may take issue with some of the fine detail of the respective Honohan and Nyberg reports, I accept generally the thrust of the findings contained in them. As with the commentary I have already provided to the inquiry in writing, the commentary I will now give is necessarily generalised, given the constraints already mentioned by you, Chairman, and, in particular, the strict non-disclosure requirements to which I am subject by virtue of section 33AK of the Central Bank Acts.

My opening commentary briefly centres on five issues which are as follows: IFSRA's regulatory approach and philosophy; the regulatory and supervisory toolkit; effectiveness of regulation and supervision; any relationship between macroeconomic policy and prudential policy; and prudential policy itself.

In terms of regulatory approach and philosophy, the regulatory regime implemented by IFSRA was positioned as principles-based. The approach to regulation appeared to me to be broadly similar to that previously applied by the Central Bank and did not represent a significant shift in prudential regulation or supervision. From my perspective, the focus on defining it as principles-based seemed driven by a desire to brand the organisation and its strategy rather than any fundamental change in approach *per se*, beyond the changes associated with consumer protection. As articulated at the time, principles-based regulation placed an emphasis on seeking to require regulated entities themselves to abide by good governance and on the responsi-

bilities of the boards in management of such institutions to have, and maintain in place, appropriate governance as well as controls and risk management measures in order to appropriately manage their institutions.

However, principles-based regulation was not without rules. The cornerstones of banking regulation in May 2006, the point at which I was transferred to BSD, were the capital adequacy directive, the Central Bank Acts and the building societies Acts. A key document supporting the regulatory regime was the licensing and supervision standards. However, it should be noted that these standards were non-statutory and not enforceable as such. EU legislative initiatives also changed the regulatory landscape. The capital requirements directive became fully effective in on 1 January 2008. This was a complex framework which, amongst other things, facilitated the use of banks' internal models for the calculation of regulatory capital and mandated supervisory co-operation through colleges of supervisors, particularly in the context of capital decisions for EU banks and banking groups. Since the emergence of the crisis in 2007, and given the scale of changes to the regulatory framework at international, EU and domestic level, it is only reasonable to accept, albeit with the benefit of hindsight, that the pre-existing regulatory regime, both domestically and internationally, was not fully appropriate in terms of the areas covered, the detail prescribed and the regulatory tools available. However, in my view, revision of the regulatory framework in and of itself is not, and would not, have been a panacea. In fact, given the nature of the issues we now know to have arisen in Irish banks, I would suggest that the regulatory powers available to IFSRA and the bank before it, were broadly sufficient, aside from those with respect to crisis management and resolution.

In my view, the issues were the strategic approach, and the willingness or otherwise, as well as the logistical wherewithal, or lack thereof, to use those powers to prescribe detailed rules or to challenge and intervene in a manner which would impact banks' business models. The strategy was, I believe, influenced by external factors, including international approaches to regulation and supervision, Government policy and its better regulation agenda, the promotion of Ireland as a financial services centre, industry influence and costs. The effectiveness of the regulatory regime is directly linked to the culture of the supervisory authority and the resources allocated to supervision. Unlike the regulatory framework, which is set out in legislation and published requirements, these are tangible aspects which are not necessarily visible and can be lost in statistics and in the prose of formal strategy documents and annual reports.

However, importantly in my view, a more onerous or prescriptive regulatory framework would, in and of itself, not necessarily have delivered a significantly different outcome if, as was the case, the supervisory resources, both in terms of staff numbers and specialist expertise, were not in place to monitor, challenge and enforce where compliance was not delivered. If there are insufficient people to do the work, the work simply cannot be done. In that regard, in 2006, BSD had an approved staff complement of only 53.5, with actual numbers averaging around 50, to supervise approximately 80 banks, 50 Irish-licensed and 30 EU branches. The level of resources, and the available specialist expertise, was not such as to be capable of delivering intrusive supervision, even in a business-as-usual mode of operation. Added to that, during my tenure in BSD, a business-as-usual scenario never in fact applied. Initially, there was the additional burden of implementing the CRD, and from August 2007, the crisis mounted with ever-increasing issues and problems heaped upon an already under-resourced and over-stretched department.

While an additional complement of three staff was agreed in 2007, my request for additional staff in May 2008, in the face of the financial crisis and the demands being placed upon the

department, was effectively refused. A subsequent oral request that staff who had previously worked in BSD be re-assigned to the department was also rejected. It is difficult to convey the sheer scale of pressures management and staff in BSD were working under, particularly from autumn 2007 onwards. It was not a question of somehow multi-tasking: it was a question of dealing with an unrelenting onslaught of demands, with staff working unreasonably and unsustainably long days, and ultimately weeks, with no let-up. Resource constraints were such that IFSRA was unable, although required by the CRD, to conclude on ICAAP assessments for banks by the end of 2007. Throughout 2008, staff were, on an almost daily basis, being assigned additional responsibilities. Every new issue or new request was a priority on top of existing priorities, and issues with one institution were dealt with at the expense of issues with others. It was only immediately following the introduction of the Government guarantee that an increase of 20 in staff complement was agreed, and a separate department dealing with the Government-guaranteed banks was established. Over the following years, BSD was restructured on a number of occasions, with overall staff numbers for banking supervision increasing to approximately 140 approved in 2010. From 2010 onwards, supervision was also supported by the newly-established policy enforcement directorates.

In terms of the use of powers, even where regulations were sanctionable under the administrative sanctions process, in the period 2003 to the end of 2008, no prudential enforcement cases were pursued against credit institutions. I consider there were a number of factors in this: strategically, the authorities saw the sanctioning process as being primarily a tool in consumer protection; there were concerns regarding market reaction as the crisis mounted; and BSD did not have the resources to mount and pursue such cases. It was only as the resources issue started to be addressed, from 2009 onwards, that prudential enforcement cases became more routine.

In assessing the effectiveness of the supervisory regime, it is also important to understand the culture of the organisation and the different levels of industry engagement. IFSRA's relationship with banks appeared to me to operate at two levels: at a frontline level with BSD and at a senior executive level. Senior banking executives had direct contact with senior executives in IFSRA, often without the knowledge of, not to say engagement with, supervisory staff. Staff were regularly requested by senior IFSRA executives to review decisions or issues based on these discussions, or were told by contacts in banks that the issues had been or would be discussed with our senior executives. To me, at its most benign, this indicated a disconnect between BSD and senior IFSRA executives. I believe it also signalled a manifest lack of support for staff, undermining them in their dealings with banks.

In terms of any linkage between macro-economic and prudential policy, when working in BSD, I saw no evidence of a strong link in that regard. Given the demands placed on resources, as a result of the implementation of CRD, at some time prior to my arrival in BSD, a decision was taken that the department would cease to be actively involved in work relating to the financial stability review. However, this would have been in the knowledge that the relevant economic department within the Bank had access to data regarding individual banks. The financial stability committee was a formal structure for co-operation between IFSRA and the bank on financial stability-related issues. However, the main focus of meetings tended to be on drafting of economic articles and publications.

In terms of prudential policy, IFSRA took a number of policy measures aimed at strengthening the regulatory framework, including the introduction of liquidity requirements. In implementing options and discretions, under the CRD, it took a conservative approach to the exercise of discretions in relation to property-related lending. The proposals on all options and

discretions were subject to a public consultation in October 2006. In addition, the Governor of the Central Bank confirmed that the proposals represented the best that could be achieved in the circumstances. While these interventions can now be seen to have been insufficient, it is worth noting that IFSRA was the only public authority which took measures to try and cool the property-related lending.

Further detail on these and other lines of inquiry is provided in my written statement. In addition, I have not dealt with the specifics of the regulatory framework and supervisory arrangements as I am aware the Central Bank has provided significant detail on these to the inquiry. Again, thank you for the opportunity to make this opening statement. I hope it is useful in providing additional background and context on the wider issues under consideration by the inquiry.

Chairman: Thank you very much, Ms Burke, for your opening statement, and if I can now ask Senator O’Keeffe to lead off the questions this afternoon. Senator, you have 15 minutes.

Senator Susan O’Keeffe: Thank you, Chair. Ms Burke, at what point did you begin to be concerned about the liquidity of the Irish banking system?

Ms Mary Burke: From late 2007, I think. We had introduced new liquidity requirements which took effect on 1 July, the first reporting date for that would have been at the end of September, it was quarterly reporting as we originally implemented it, but the concern was such regarding market reaction of circumstances of the time that from, I think it was 14 September, we required them to report to us weekly. So there were concerns at that point that we needed to be aware of what was happening in terms of bank liquidity, but there was no immediate urgent concern, it was just an escalation of monitoring.

Senator Susan O’Keeffe: And so, as things escalated, do you recall a point at which it became more urgent than it had been previously?

Ms Mary Burke: I would say, from April 2008 we started to feel it was more urgent ... probably sooner than that, but certainly I remember personally feeling it at that time, I probably did feel it earlier, but at an emotional level, I felt it at that time.

Senator Susan O’Keeffe: And then, if you like, we saw it all, if you like, unravel, unfold, right all the way through until September, in terms of banking and the banking system in the country. Is that a long time or a short time, that many months? Because it’s very hard, I think, for members of the public, when we talk about millions and billions and loans, to know ... you know, if I have a crisis in my own bank, I know in an afternoon, I need some more money to pay my bills, but it seems, people might construe that as a long period of time. But perhaps it’s not, perhaps it’s short.

Ms Mary Burke: Yes, I appreciate, I suppose, it does seem, as you say, if you compare it to your own personal finances, but obviously, that isn’t what we were dealing with. In terms of my feeling, it was more urgent. I mean, we had had Northern Rock, we’d had Sachsen and we’d had Bear Stearns ... so, we were monitoring it, marketing conditions were certainly more erratic, might be a good phrase. I wasn’t at that stage conscious or thinking, you know, we were going to run out of liquidity, but the possibility for ... more so for an individual bank, I think, than ... I certainly never saw the system seizing up at that point.

Senator Susan O’Keeffe: Is it the case that when banks are illiquid or there’s a problem with liquidity that there is always a risk to solvency, or is that ... is that a fair or an unfair state-

ment?

Ms Mary Burke: I wouldn't say there's necessarily always a risk. I think it depends on the circumstances that would give rise to the liquidity. It is possible that those circumstances might be something relatively short-lived or something unexpected happens. The very fact that central banks around the globe provide a facility for emergency liquidity certainly implies that there is an expectation that it might happen and not that it was something that would ... obviously a central bank can't give emergency liquidity if the bank is insolvent, so the two are not necessarily one following from the other.

Senator Susan O'Keefe: In that period of time that we ... that you've outlined, sort of maybe April, May, June, do you recall whether then at that point the issue of solvency and liquidity were being talked about at the same time, being talked about together, or was the focus entirely and solely on liquidity?

Ms Mary Burke: I don't recall that at that time we were talking about solvency. I certainly don't recall that I was talking about solvency or that people in banking supervision were talking about solvency. We were very much focused on liquidity. The weekly reporting had come in, as I said, late in the previous year. We were moving to ... we had started with daily calls with banks, we were now at intra ... you know, intra-day calls, talking through the position with their treasury teams. So our focus was very much on liquidity. Now, there was also some work being done in inspecting banks and looking at property-related lending, but ... and there were contingency plans being developed, given Northern Rock had collapsed. But I can't say that I was particularly engaged on that. Now, I will say, in terms of the meetings and the planning that was going on at the time, it was particularly chaotic and, from where I sat, it felt chaotic in terms of the amount of work we were trying to do. I was conscious that there were meetings on the seventh floor. Sorry for my use of the vernacular, that's our executive floor. I tended to be ... occasionally I get parachuted into a meeting because they need a second person there. You wouldn't be seeing that issue through. So, the extent to which I can create a sort of a narrative as to what was happening is influenced by the fact that I was sort of parachuted in and out of meetings. But at BSD level I was not particularly focused on solvency at that point.

Chairman: That's the banking supervision department.

Ms Mary Burke: Sorry, I beg your pardon.

Senator Susan O'Keefe: Yes, it's okay.

Chairman: Yes, that's okay.

Ms Mary Burke: I'm afraid it's so built in it just keeps coming out, its the banking supervision department.

Chairman: That's all right, no, no, you're fine.

Senator Susan O'Keefe: We'll help you. So in 2006, when you became head of that department, the banking supervision department, was there enough evidence about ... at that point building up of the shortcomings in lending and other controls with banks that you could see systemic risks were building up, or not?

Ms Mary Burke: I can't say that when I came in at that point I saw systemic risks building up. I ... when I came into BSD we were very focused ... I mean, obviously you have to do a sort

of getting to know what the remit of what job you've been handed is. But we were very focused on trying to bring in the capital requirements directive. So we were quite forward looking, I suppose. I did not set about, at that point, to start revising all the current procedures, I was more in terms of developing procedures for the regime that was coming. But, no, I can't say that I say systemic risks building up at that time, nor can I say that anybody else that I was dealing with in the bank, either reporting to me or that I was reporting to, was indicating concerns about systemic risks.

Senator Susan O'Keefe: You say in your statement, written and verbal, that you were ... that there was a shortage of people ... actually, of resources for ... in your department to supervise and you talk about the expertise ... available specialist expertise is on page 5 of the written statement. There was not enough ... "available specialist expertise was not such as to be capable of delivering intrusive supervision". What do you mean by that term "intrusive supervision"?

Ms Mary Burke: What I mean is the sort of supervision that I suppose we have now, the sort of supervision that comes with the SSM. It means people who are experts in lending, in treasury, in risk management being able to sit across the table from the banks and deal with them on their own level, on their terms, on the issues. We simply didn't have that sort of support system in place. Most, I think, regulatory authorities probably would have. I think the FSA at the time had a specialist support team, and we do have that sort of a team now. It's the sort of ... as banking ... it's an extremely complicated industry. It's not something that you can have a general knowledge of all of these things. You can have that knowledge but I don't think you can expect a supervisor with that level of general knowledge to argue the issue with the director of lending of an institution and tell him why you believe his policies and his decisions were the right ones or the wrong ones.

Senator Susan O'Keefe: Okay. And so you say that that has changed now but you did ask in 2008 for some additional resources. You didn't get them. Is that ... that's correct?

Ms Mary Burke: That's correct.

Senator Susan O'Keefe: You didn't get the extra people that you asked for. Do you know at what level in the bank that was refused? Was it at ... right ... up next ... or did it go all the way up to the board or the Governor or do you know?

Ms Mary Burke: Well, I'll give you a flavour of the system-----

Senator Susan O'Keefe: Yes.

Ms Mary Burke: -----and perhaps that will help. The manpower planning in the Central Bank was such that some time around the first quarter you got an e-mail saying, you know, "Please fill up these various templates, setting out the staff you need and why". You would have had to submit that to the next level. You would have had to get the approval of your director and your director would have to endorse it. In this particular occasion, in fairness, my director did endorse that decision. That request, however, was made in the face of being told, while we were being asked to complete the forms, that there would be no increase in staff that year. Nonetheless, it didn't preclude the possibility, of course, that the staff could be reassigned. I certainly didn't believe that I could go through that year without asking for additional staff. I should say that in May '08 you would have been projecting staff for the next year because that's how early the budget process started. I did self-centre ... or self-censor, I beg your pardon, somewhat in what I asked for because, having worked in the organisation as long as I did, I knew the reaction

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to looking for large numbers. We were also in the throes of a review by Mazars and I felt very confident they would flag we were under-resourced. We'd also had Northern Rock and the FSA had produced a report, the name escapes me, but The Collapse of the Rock, or something to that effect, where they indicated that they had three staff supervising Northern Rock, supported by, as I said earlier, a specialist team, and they considered that inadequate for the supervision of a bank that required close and continuous scrutiny. So those were the sort of details I put into my supporting memo.

Senator Susan O'Keeffe: But you don't know at what level ultimately it was turned down, do you?

Ms Mary Burke: I don't know at which level-----

Senator Susan O'Keeffe: But it was turned down.

Ms Mary Burke: -----I know, as I say, my director supported the request the staff.

Senator Susan O'Keeffe: Okay. Do you recall a document that was delivered by the banking supervision department called the "Outlook for Liquidity - Irish Domestic Institutions" on 10 September 2008? So this would have been right up in the crisis time?

Ms Mary Burke: I recall the document. I don't think it was in the list of documents I was provided with-----

Senator Susan O'Keeffe: No, it wasn't.

Ms Mary Burke: -----but I have some recollection of the document.

Senator Susan O'Keeffe: You've some, yes. Really rather than ask you the detail because you don't have it ... but, broadly speaking, do you recall how serious at that point, if you now ... you've come through from 2007 to April 2008, this is now mid-September 2008 ... how serious were things now for the banks that you examined in this document? And what ... I mean, we have some of it, some of it's been redacted.

Ms Mary Burke: They were very serious at that point.

Senator Susan O'Keeffe: And what does that mean then when you guys say "very serious"? Is that a big red flag or ten red flags or how would you-----

Ms Mary Burke: I'm not sure how many red flags makes it too many red flags, but certainly for two banks in particular we felt ... or two institutions rather, it was very serious, I think. Less so for the others. I'm not conscious that we did see obviously that if you have contagion in one it could spread. As I say, I haven't read that document, Deputy, in quite a number of years, so that's more my instinctive reaction.

Senator Susan O'Keeffe: But you do recall that there were two and that it was very serious and that you would have been saying to anyone who asked ... when they asked about it-----

Ms Mary Burke: Yes, I mean, at that point we had a regular committee or an internal committee chaired by the ... one of the deputy directors ... the deputy director general, actually, I think, there was only one, where we met with our people from the financial markets department on a regular basis, weekly at least, reviewing the liquidity. We would have been at that stage, I think, probably ringing each bank and talking to them a number of times during the course of

the day as to what sort of access they had in the market, etc., and conscious that all banks ... we were trying to ensure they maximised their collateral for ECB purposes as well. So, it was very intensive monitoring of liquidity.

Senator Susan O’Keeffe: Can I-----

Ms Mary Burke: It was being escalated to the most senior levels within the bank and the regulator.

Senator Susan O’Keeffe: And at point in terms of the ECB borrowing, would you have been recommending or did this fall into your bag that banks would be reducing their dependence on ECB, or do you remember?

Ms Mary Burke: Well, certainly you would never have been encouraging a bank to be dependent on the ECB. What you would have been recognising, however, was that they needed to have, to the maximum extent possible, access to the ECB if they needed it. So you would have been encouraging banks to make sure that they had eligible collateral for Central Bank purposes, but I don’t think any regulator would be saying if you have an alternative, you know, access to liquidity that you should be going to a central bank ... that wouldn’t have been ... but at that point, we would have been looking for liquidity for banks wherever they could get it, to be quite honest.

Senator Susan O’Keeffe: Wherever you could find it. So, so you wouldn’t be ... how ... you wouldn’t be comfortable if a number of your banks were all knocking on the ECB door. You wouldn’t be thinking that was a good thing.

Ms Mary Burke: In the normal course of events, you would not be thinking it was a good thing. I can’t say I think that September 2008 was necessarily normal.

Senator Susan O’Keeffe: Okay. On page 47 of Vol. 2 of Mary Burke’s own documents, this is the letter that was written to you by the head of ... by the Bank of Ireland Group, and this is in relation to them being in breach of their limits, and they’re replying to you, as your letter notes:

...Bank of Ireland exceeds the 200% limit in Real Estate, Renting and Business category. Bank of Ireland remains comfortable with the exposure in this category because of the diversification of the loan book, in terms of both lending type and geographical spread-----

Chairman: You need to be general on that there, Senator.

Senator Susan O’Keeffe: I’m sorry. And then at the end they ask for, to be allowed to, that those limits should be reconsidered. So, I’m just wondering what would ... what was the view then of that kind of letter? And there were others, I know, but what was the dialogue going on here at that time between your department and the banks-----

Ms Mary Burke: Okay, well I-----

Senator Susan O’Keeffe: -----and their breaches?

Ms Mary Burke: That letter was a reply to a letter that I sent out, I think, as part of positioning a general review of policy on sectoral concentration and I will have to take this back a slight step. I’m sorry if that sounds cumbersome.

Senator Susan O’Keeffe: It’s all right.

Ms Mary Burke: When I came to banking supervision, we did ... we had licensing and supervision standards and requirements. They were described as a guide. I knew they were unenforceable under the administrative sanctions procedure. When I came to the department, in terms of the banks this committee is looking at, any of them that breached those limits were already in breach of the limits at that point. In the case of one institution, it had exceeded the limits for almost a decade. In inquiring into the history to those limits, I understood that they had been, in effect, disapplied, in the sense of the particular sectors that the Central Bank had set out. If you look back ... I mean I obviously can’t give you all of the details on this but there is a Central Bank board paper from 2003 that acknowledges that in the case of a particular institution, and, more generally, mortgage lending institutions, that the Central Bank had accepted the argument that there was diversification within sectors. That was ... I think that’s an April ‘03 paper, which predates the establishment of the regulator, so it was very much a Central Bank position.

So, as I understood it, the Central Bank and the regulator, subsequently, was accepting the argument that there were ... was diversification within sectors. So if you take property, there’s a difference between, I don’t know, an office block in London and a semi-d in Midleton, to pick somewhere, so, you know, those ... that diversification was there. The sectors themselves were not prescribed in the licensing standards. We didn’t say what we counted as a sector. What was used was ESCB, which ... sorry, European System of Central Banks statistical return, and various categories were the sectors that were used. Interestingly, personal lending, which would have included lending for residential mortgages, so if I bought a house, even to let as opposed to rent, or let as opposed to live in, that lending was excluded; that wasn’t considered in looking at the sectoral limits.

Chairman: Thank you very much.

Senator Susan O’Keeffe: Thank you, Chair.

Chairman: Senator Sean Barrett. Senator, you’ve 15 minutes.

Senator Sean D. Barrett: Thank you, Chairman, and welcome to Ms Burke. The memorandum of understanding between the CB and the FR, was there clarity in that division of labour between the two bodies?

Ms Mary Burke: Again, I haven’t looked at that memorandum in quite some time. From my perspective, I was clear. I know there has been quite an emphasis on perhaps ... it was, it was maybe a cumbersome arrangement. I will accept that, certainly not the most elegant arrangement one could have come up with. It was, however, the arrangement that was put in place. I felt I was clear. I certainly didn’t feel there was any lack of clarity at that point.

Senator Sean D. Barrett: Was it more or less the same people who used to do the job in ... before 2003, got a different administrative structure, wasn’t that right, that there was about, I think in Honohan, there was about 30 people did prudence work beforehand on the Central Bank and it went to about 50, as you say? So there were no new people. So it’s kind of strange that, to the outsider, that people who’d been doing the job suddenly saw themselves as different and the ... Did you come across that?

Ms Mary Burke: I can’t say that I felt it was radically different. I mean, come 1 May 2003, if you want to call it D-Day or whatever you want to call, I was in the same office that day as I

was the previous day. I was not conscious of some radical change. I am not in a position to say, because I don't have the details nor do I recall whether there was any increase in staff. The one difference there would have been was, I think, there was more focus on the consumer protection aspect.

Senator Sean D. Barrett: Your 50 that you mentioned in your presentation to us, that's out of a staff of, what, 1,200 or something? Is there anything to assist the committee in why ... what we're investigating seemed to be so small overall in the allocation of staff in the organisation?

Ms Mary Burke: I, well, I don't know, to be quite honest, Deputy. I mean you inherited ... when I went in there I inherited a certain number of staff. When I was asked to transfer to that department, it was described to me as being "in good shape"; I think was the phrase that was used, and we had recruited two senior staff who were experts in CRD and modelling. Unfortunately, we lost both of those staff to the private sector within 12 months, which added to the problem.

Senator Sean D. Barrett: Do you-----

Ms Mary Burke: I don't know why. I can only assume that people felt it was adequate to deal with principles-based regulation, but you would need to ask people who made that decision.

Senator Sean D. Barrett: I'll come to that in a minute, if I may. The European aspects: was it the regulator's job to communicate with Frankfurt and the ECB, or how was that connection made?

Ms Mary Burke: The regulator would not generally have dealt with the ECB, Senator. It was ... that was very much the Central Bank side. I don't know that anything precluded us from having a discussion with them, but, in my time, I don't recall ever having the need to, or being asked to sit on any ECB committee.

Senator Sean D. Barrett: Thank you. Now, Senator O'Keeffe referred to the correspondence you had with the Bank of Ireland. Now, if ... I may refer to other correspondence in the Vol. 2, Mr. Chairman, and there's page 15, that's a communication to the EBS. There's page-----

Chairman: Just in general terms now, Senator.

Senator Sean D. Barrett: Indeed. Thank you. Thank you, Chairman. And there's page 43, AIB. There's the reply from Bank of Ireland on page 47 that Senator O'Keeffe has referred to, and there's a ... there's another one to Bank of Ireland mortgage bank, page 57; and Ulster, page 61; and AIB, page 69. Only one bank seems to have replied to you. I see your letters out, and they're very comprehensive, telling you what you've found that concerns you. Are there letters of reply to all of that correspondence or are our files complete in the volume you have in your hand?

Ms Mary Burke: Okay. Well ... sorry, I did slightly lose track of all the page numbers, but if I start with a number of them.

Senator Sean D. Barrett: Yes.

Ms Mary Burke: The one on page 15, which is from February '06, was-----

Senator Sean D. Barrett: That's right.

NEXUS PHASE

Ms Mary Burke: -----was actually written before my time. I didn't arrive until May '06. That seems to me to be setting out the parameters for a system-wide stress test, which is different from the issues I was raising with the banks if you're looking at page 43-----

Senator Sean D. Barrett: Okay, thank you.

Ms Mary Burke: -----which was the general policy review of how we dealt with sectoral concentration limits, which was the issue that Senator O'Keeffe was referring to earlier. If you want to give me further page numbers, but I think some of the correspondence is ... they're dealing with different issues.

Senator Sean D. Barrett: Yes. There's 57 and 61 and 69 and-----

Ms Mary Burke: 57-----

Senator Sean D. Barrett: -----and there are advices to them and no replies. That was what was interesting. Thank you.

Ms Mary Burke: Okay, I can't speak to the one in February '06 because that was issued by the director general, Liam Barron, and I assume the replies would have been to him. The Central Bank, rather than the regulator was dealing with the system-wide stress test, so I presume there were replies but I just can't speak to them. In terms of the February '07 letter, which was our policy review of sectoral concentration limits, my understanding is there were replies received by us. I think something like nine banks replied. I haven't gone to check whether that was a reply to every single ... from every single bank. When you come to page 57, that is a letter from me, it's a standard letter. It would have issued to all mortgage lending institutions, and yes, I appreciate it refers to stress testing in there but that should not be confused with the system-wide stress test that I referred to earlier that was run by the Central Bank. This was guidance that we had in place where we expected banks to ... it was in the context of the affordability of a mortgage that a customer might take on, so every mortgage should have been stress test and the applicant assessed as to whether or not they could handle a 2% increase in the interest rate. So again, those are three separate issues and in the context of that letter on page 57, I would have expected no more than a reply to say yes, they were aware of it and they would comply.

Senator Sean D. Barrett: Yes, and then the last ... 61 and 69, thank you for those, yes.

Ms Mary Burke: Sixty-one is and, sorry, I'll get to 69, both of those are following up on a themed inspection that was done by the Financial Regulator in December '07 across a number of institutions looking at commercial property lending. So those letters are to individual institutions giving them findings of inspections. Again, it's not a policy ... it's not the wider policy review I spoke of earlier. It's not the system-wide stress test and it's not the individual mortgage stress test.

Chairman: The point, Ms Burke, is that the evidence books are examples and not the full set of letters that would have gone back and forth, I assume, yes?

Ms Mary Burke: Yes, they are, I mean, and in the time available I have not sought to find and track every single reply or otherwise.

Chairman: Senator?

Senator Sean D. Barrett: So, thank you, Chairman and thanks again, Ms Burke. So, the

Bank of Ireland reply that you spoke about with Senator O’Keeffe ... “we felt comfortable” ... I mean, that seems very strange to the outsider, you know, if-----

Chairman: Can we speak in general about institutions?

Senator Sean D. Barrett: Yes. Just to ... I appreciate what Ms Burke was attempting in the letter but, I mean, would I say to a policeman “I feel comfortable driving down the middle of the road. You know, thank you for the advice that I should really be on the left”. I mean, it is normal way to react to a regulator to say “Well, we feel comfortable doing something else”?

Ms Mary Burke: Okay, well, I suppose I’ll deal with that in two aspects.

Senator Sean D. Barrett: Thank you.

Ms Mary Burke: One, this was not the Bank of Ireland’s supervisory team taking up a particular issue and pushing Bank of Ireland on their view of it ... sorry, I beg your pardon, pushing the bank on their view of it. It was positioned as a general policy review, we were trying to do in the context of the requirements that were coming in CRD, which is Basel II. So in that context, perhaps the language they used as to whether they were comfortable or not might not be the language you would use normally but they were trying to explain to us the policy they had to inform our thinking on the policy we would develop. In terms of your analogy of a policeman, I suppose, what I’m saying is this wasn’t the policeman role *per se*.

Senator Sean D. Barrett: Was there a general reluctance to be regulated in the industry?

Ms Mary Burke: There was a general reluctance, in my view, in the industry that we would be prescriptive in terms of rules. They very much liked principles and at a certain point, if you pushed it too far to rules, there was a reluctance, yes.

Senator Sean D. Barrett: And as you say on your statement to us ... sorry, mine hasn’t got page numbers. It’s on page-----

Ms Mary Burke: Mine doesn’t have page numbers either, Deputy.

Senator Sean D. Barrett: It’s on page 3, “it should be noted [the] standards were non-statutory and [therefore] not enforceable”. Was it ever considered that we’d better get around to Leinster House and get some legislation, because if this is not enforceable, well, we couldn’t have predicted what happened in 29 September 2008 but was a more organised system ever considered?

Ms Mary Burke: Okay. I should say when I refer to the standards, I mean those particular ... that particular document called the “Licensing Standards and Requirements” or the other way around, that was not in itself enforceable under our administrative sanctions procedure. It could, with some work and probably some considerable rewriting, have been put in an enforceable position but it wasn’t at that time. It was not imposed as a condition, for example, on banks’ licences nor was it issued under any statutory power. Had IFSRA or the bank before it wanted to put some of those requirements and standards on an enforceable footing, I don’t believe it would have been necessary to come to the Oireachtas to seek a legislative change.

Senator Sean D. Barrett: You say, “I saw no evidence” of a strong link between macroeconomic and prudential policy. Is that still your view, reflecting back on that time?

Ms Mary Burke: Reflecting back on that time, that is still my view, yes.

Senator Sean D. Barrett: And what difference would that have made if we had a better connection?

Ms Mary Burke: I don't know whether it would have made any difference, Deputy. I mean, I can't, sort of, predict a past that didn't happen, if you follow me. However, had there been a closer connection and had the Central Bank, in terms of its financial stability role, been able to foresee the consequences that we've subsequently seen, then I would have thought they would have been in the position to effectively ... I mean, I appreciate the terminology and I think it's 33D, is again not the most elegant. It talks about guidance which the regulator had to follow in terms of policy but my view is that they could have effectively instructed us on policies, had we not seen fit to do so ourselves.

Senator Sean D. Barrett: You've had to, I think, advise banks on loans-to-deposit ratios, sectoral concentration and even keeping better records. Would that be a reflection on some of the work you've done in your communications with banks?

Ms Mary Burke: I'd say that's a reasonable reflection that some of that would have emerged in post-inspection letters and been issued to banks, yes.

Senator Sean D. Barrett: And again, it's strange to the outsider that you as the regulator would have to say, "Look, you'd better keep accounts of the possible repayment capacities of these borrowers", and so on but you actually had to do that on occasions, is that correct? Recommend that they had better records on their lending?

Ms Mary Burke: Yes, certainly I am aware that some post-inspection letters issued with words to that effect or certainly messages to that effect.

Senator Sean D. Barrett: And just before your signature on the last page, you noted that the role of external auditors, saying that "where such deficiencies are not flagged, auditors may be taken as indicating to the board and to [the] management that they have not identified any significant risk exposures, including in relation to property", and you go on to say, I would like a more root and branch approach to auditing. Was that something you'd like to deal with in regard to this committee?

Ms Mary Burke: Sorry, I don't think I said I'd like a more root and branch review. I said that they would not be identified absent a more root and branch review, if you follow me.

Senator Sean D. Barrett: Yes.

Ms Mary Burke: I wasn't espousing that auditors should necessarily do that.

Senator Sean D. Barrett: I'm grateful for your observations. Do you think now that you'd see the role of external auditors ... I think it was mentioned this morning that some-----

Chairman: Time now, Senator.

Senator Sean D. Barrett: -----some auditors had 200 staff and 20 partners in a bank, you had only three, I think, for Bank of Ireland and AIB combined, so would you see a role for external auditors and your office in the future? And thank you, Chairman, that is my last question.

Ms Mary Burke: I do see a role for external auditors and for engagement between the regulator and external auditors but not in fundamentally changing the role of external auditors. The Central Bank ... Act 2013 has given us a more flexible framework for engaging with auditors

regarding what they may uncover during their audit but I think banking regulation has moved on very significantly since the period that I was reviewing in my statement or commenting on in my statement. So, we have a more intrusive regime of supervision. The SSM is a game-changer, frankly, in terms of supervision of systemically important banks within the euro area, so I don't, personally, at this point see a need to change the role of auditors, certainly in the context of supervision if you wish to their role in some other respect, that is-----

Senator Sean D. Barrett: How many staff do you have now?

Ms Mary Burke: I don't deal in ... I'm not directly in banking supervision now. I think their numbers are ... approximately approved numbers are something like 120 in banking supervision but you also have to bear in mind that's overlaid with staff in Frankfurt.

Senator Sean D. Barrett: Thank you very much.

Ms Mary Burke: I stand to be corrected on the numbers ... it's just an estimate.

Chairman: Thank you very much, Senator. If I could deal with a couple of matters before we move on to the next question? Just following the lead's engagement with you, Ms Burke, and maybe if you'd care to comment further on the balance of consumer versus prudential focus and adequate resources during your tenure?

Ms Mary Burke: I can't actually remember the number of resources that were devoted to consumer protection and I have no issue with the consumer directorate ... or consumer protection directorate being adequately resourced. I think all directorates, both prudential and consumer, need to be adequately resourced. There was a particular focus in IFSRA post its establishment on the consumer protection area. I think, even in the documents you've given me, I chose to look back at the agendas of various authority meetings ... and, yes, there probably was a greater focus at that level at that time on consumer protection. But I think it needs to be borne in mind that IFSRA was a new authority, so there was a lot of agenda items to do with establishing that authority and budgeting, etc. And, perhaps, not unsurprisingly there was a particular focus on consumer protection at the time. But we do have to remember why IFSRA was set up. I suppose, it was in response to consumer protection issues.

Chairman: And looking back on that period when there was the two separate institutions under the ... following the 2003 Act, would you have a view now on how principles-based regulations actually worked and would you have a comment to make upon them?

Ms Mary Burke: Well, I think ... I mean, history tells its own story. I think we can clearly say that prudential ... that principles-based regulation, certainly as it was implemented here, did not work ... it would be rather foolish to be arguing for anything else at this point.

Chairman: Okay. And who in the IFRSA would have been the sort of ... engagement point with the banks on that regulation? What side of the IFRSA would have been the most engaging side on principles-based regulation? Who would have been monitoring that and who would have been having the discussions as to the interpretation of these principles?

Ms Mary Burke: I'm not really sure that anybody would have been having discussions with the financial services industry on the ... sort of ... that strategic level. Each department dealt with the particular industry sectors and they supervised within the framework they were given. To the extent that there was a pressure, if that's what you are looking at, to have principles-based regulation, I think that probably came from industry. You have the Clearing House

Group, the Government's better regulation agenda ... the industry panel was another part of the architecture of the IFSRA regime. And all of those would have pushed for principles-based regulation. But, in fairness, it was also an international theme of, you know, lesser regulation, for the want of a better term.

Chairman: On your opening statement in page 7, and I had to number mine as well just so we are on the same ... it is ... it is in the very last paragraph ... sorry, in the very last couple of sentences there in the last ... in the first paragraph. But just before I get into that, could you maybe explain, Ms Burke, that you ... this paragraph is talking about you looking for additional resources, additional staff and so forth. If the additional ... request for ... staff had been provided, what would they have been doing and what may have been done differently?

Ms Mary Burke: I looked at that point for what I would have describe as a *de minimus* number. I was clear in my communication that I didn't believe it was the right number but I knew I had to get over various hurdles, including the process, the fact that Mazars were in reviewing, etc. So six was by no means the sort of numbers that would have made any ... I don't believe it would have made any fundamental difference to the outcome. What I had hoped to do was to establish dedicated two-person teams for each of the main banks. Now, given what we now know, that would still have been inadequate. And, as I say, I wasn't saying it was adequate. I ... at that point, I don't think it would have made any fundamental difference. My vision was that people would not be distracted from one bank to ... issues with another bank. But it still wouldn't have given us the resources to do intrusive supervision. And, I suppose, to the extent that I can take any comfort from things, I think Governor Honohan said in his own report that even if you had a brilliant idea at the end of '06, it was probably too late. I don't think my request for six staff was a brilliant idea but even, I think, if we had put in an army at that point, an awful lot of the damage was already done.

Chairman: And it just brings me to a final question now before I move onto the other questioners. At the very end of that paragraph, this is the response that you give to your request:

To me, at its most benign, this indicated a disconnect between the [banking supervisory ... supervision division ... or department] and senior IFSRA executives which, in practice, banks used to their advantage. I believe that [this is signalled or this] ... also signalled a manifest lack of support for staff, undermining them in their dealings with bank ...".

Could you talk to us some more about how maybe this gave the banks ... banks an advantage and also how you see that this may have been undermining them in their dealing with the banks?

Ms Mary Burke: I think if you are the ... leading a team dealing with a bank, you should be the main point of contact with that bank. I don't have an issue with the fact that institutions might choose to escalate something. And if they choose to do so, I think the executive in the regulatory authority should engage with the supervisory staff and they should be part of informing that discussion. Personally, I believe they probably should be at the meetings or certainly some of them should be at the meetings. And that's very much the framework we have now. We have more directors, in fairness, so the responsibility at the executive level is more widely spread. And for want of a better term they are very much "embedded" in the supervisory regime. And that's my view as to how it should work. In terms of undermining staff - and I have had personal experience of this - if you are talking to a bank and they say to you, "Oh well, we discussed that issue on the seventh floor", you're immediately wrong footed. You're in a position where, one, you don't know whether they did discuss it, you don't know what they

discussed, you don't know what the outcome is. And you're already very much already seen, from the bank's perspective, as somebody who's not in the loop.

Chairman: And does that imply-----

Ms Mary Burke: And that, I think, undermines staff.

Chairman: And does that imply a disconnect in the structure that there was a two-tier structure ... or that there was a disconnect-----

Ms Mary Burke: I don't think it was a ... a problem with the structure, I think it was simply a problem with the culture.

Chairman: Okay.

Ms Mary Burke: I don't think the structure was the issue, it was simply how people operated.

Chairman: Okay, thank you very much. Senator D'Arcy. Senator, you have six minutes.

Senator Michael D'Arcy: Thank you, Chairman. Ms Burke, you're very welcome. Thank you for coming. One of the objectives of the Financial Regulator was the promotion of the financial services industry in Ireland. Did the objective get in the way of correct prudential supervision?

Ms Mary Burke: I think, technically, our view on this is it probably wasn't an objective, *per se*, in law. I think that probably applied to the Central Bank but we obviously had to be conscious of any Central Bank objectives in the manner in which we went about our work. Yes, I think it did. I think it put a huge emphasis ... or a disproportionate emphasis is probably a better way of putting it ... on competitiveness ... on the level playing field. We had the added complications in two respects ... one, we had an International Financial Services Centre, where we were trying to attract in industry. We very much wanted to keep them on the same regulatory regime. There was one regime for banking in Ireland. We also had the difficulty that, under the European provisions regarding freedom of services, certain institutions operated here on a branch basis. And, therefore, in terms of prudential regulation, they were supervised by a different regulator. They were supervised by us for conduct of business but not for prudential. So, if we imposed particular rules or regulations on Irish licensed banks that weren't imposed on the passport ... the branches, then the issue of level playing field and competitiveness immediately raised its head. But it was a ... from looking back at documents - and I have had the dubious pleasure of doing so for coming in here in terms of my research - the term "competitiveness" and "level playing field" comes up repeatedly. It comes up in IFSRA's own strategy statements, it comes up in industry panel, it comes up in ... even the Minister, when he announced the consolidation ... proposals to consolidate financial services legislation - I think that was in '06 sometime - even that press release talks about how it is important to do so for competitiveness and recognising the ... we have such a large international banking presence here. So it was a repeated theme.

Senator Michael D'Arcy: And was the single regime a mistake?

Ms Mary Burke: You mean the single regime for-----

Senator Michael D'Arcy: For both-----

Ms Mary Burke: -----regulating banks?

Senator Michael D’Arcy: -----international and ... for both, yes.

Ms Mary Burke: I don’t know that it was a mistake. I certainly ... we still have one regime. I think we were probably unduly influenced by the fact that the single regime was ... we were focusing too much on what it might mean for the International Financial Services Centre. I’m not sure there would’ve been any dire consequences in the international sector had we been ... taken a different approach. But I mean, again, I can’t predict the past in that sense.

Senator Michael D’Arcy: Can I ask you, Ms Burke, your ... your view in relation to guidance? You quoted the section 33 from the Central Bank in relation to guidance between the Central Bank and their role in financial stability.

Ms Mary Burke: Yes.

Senator Michael D’Arcy: And it’s something that I am trying to get a handle on. Can I ask your view in relation to guidance, what guidance means? We’ve had former Governor Hurley in here previously and we had Mr. Grimes in this morning. Could you give the committee what your knowledge of guidance means, of guidance from the Central Bank board to IFSRA-----

Chairman: To Ms Burke now Senator to make time.

Ms Mary Burke: My interpretation of that particular provision which is 33D, again, I mean it is an oddly phrased piece of legislation I have to admit but when something refers to guidelines, as to policies and principles that the authority is required to implement, I’d place the emphasis on the “required to implement”, and my interpretation of that is, that in the context of financial stability, the Central Bank could effectively have required us to implement certain policies. I appreciate there are other interpretations of that, and different people have different opinions, but to the extent that there is a need to reconcile those different opinions I will have to leave that to the committee.

Senator Michael D’Arcy: Did you hear former Governor Hurley’s view that this piece of legislation was theoretical?

Ms Mary Burke: I heard quotes to that effect, I didn’t have the opportunity to listen to all of the Governor’s, or former Governor’s testimony.

Chairman: Governor Hurley was referencing the correspondence that came from Professor Honohan which had earlier said that it was theoretical, or it could have been interpreted as theoretical. Okay. Ms Burke.

Ms Mary Burke: Sorry, have I answered the question, I’m not sure?

Senator Michael D’Arcy: I am not sure if you had. You heard the quotation about ... from Governor, former Governor Hurley?

Ms Mary Burke: I heard words to that effect, I may not have heard it.

Senator Michael D’Arcy: Do you have an opinion upon his view that it was theoretical?

Ms Mary Burke: I would look at it as ... in terms of what is written in the legislation. I’m not concerning myself with why it was put there or whether people ... what people thought they meant when they wrote it. I can only tell you what my view and opinion is on that piece, and

it says what it says.

Senator Michael D’Arcy: Thank you.

Chairman: Thank you very much, Senator. Deputy Doherty ten minutes - or six minutes.

Deputy Pearse Doherty: A Chathaoirligh ... fáilte. Can I ask you first of all who was responsible for creating and updating the stress tests scenarios and why weren’t they effective in predicting the banks’ failures?

Ms Mary Burke: Looking at the correspondence that you have provided me with, in 2004 the stress test seems to have been run out of banking supervision, because I can see a letter that was issued. As I say I didn’t go there until May ‘06. By then it was a Central Bank responsibility to run the stress tests and my recollection of the presentation of the financial stability committee at the time was, it was described as an innovation in terms of ‘06, was that the responsibility had moved to the CBFSAI.

Deputy Pearse Doherty: So you would have had no role in relation to the stress tests during your period as head of-----?

Ms Mary Burke: Well I ... whether I would have had, had I been the deputy or have been the head when the stress tests were being done and formulated - I don’t know. I certainly didn’t at that point, it was all of those stresses and scenarios were developed before I got there and in ‘06 I think they were done in consultation with the IMF but I’m open to correction on that.

Deputy Pearse Doherty: Okay, but no consultation with your own division?

Ms Mary Burke: I wasn’t in that division at that point.

Deputy Pearse Doherty: No, in ‘06 sorry.

Ms Mary Burke: In ‘06 I still wasn’t in the division at that point, I only went in in May ‘06 and I think those stress tests were done earlier in that year, certainly in terms of setting out the parameters and the scenarios. I think the correspondence, if I had to find it, issued in February and I think there’s replies in April.

Deputy Pearse Doherty: Okay, okay. Can I ask you in relation to the inspection of commercial property lending exposures in December 2007 on the financial institutions? Can I ask you did this cover all of the financial institutions that were eventually guaranteed by the Irish State and what was the purpose of these inspections?

Ms Mary Burke: I can’t answer your first question Deputy - I don’t know whether it covered all of them, it certainly covered some of them. I don’t actually have the list to hand of the particular institutions. And the purpose of it was to look across the system to some degree, so it would have covered, it certainly I think it covered the key ones in terms of their management and controls around commercial property lending.

Deputy Pearse Doherty: And what was the general findings in relation to the inspections?

Ms Mary Burke: I think there was a common finding across the industry - if I could find the letter - but certainly I know the net worth statements, we felt, were not reliable and not consistently sought across the system and there was one other key finding. If someone could direct me to the particular-----

Deputy Pearse Doherty: It's there on pages I think 62 on.

Ms Mary Burke: And am I in Volume-----

Deputy Pearse Doherty: Vol. 2.

Ms Mary Burke: Vol. 2 ... Yes sorry, that particular one also dealt with the perfection of security and the extent to which property developers could withstand a downturn.

Deputy Pearse Doherty: And can I ask you, Ms Burke, what did you do when you figured out that this is what was going on within the financial institutions, that there were issues, as you say, about property developers being able to withstand a downturn, exposures, no net-worth statements. What did you do, as head of banking supervision?

Ms Mary Burke: We issued post-inspection letters to all of those institutions flagging them and flagging the issues both - there would have been individual issues within the institutions as well as the general broad themes across the institutions. It was also escalated both through the executive and to the authority and my recollection is the CEO report to the authority in early '08 flagged that there were issues across the system and one of the issues in particular that I recall was the issue of net worth statements and the extent to which they were validated by third parties. So it was escalated internally and the standard procedure for issuing letters to banks was followed.

Deputy Pearse Doherty: But beyond writing to the banks and saying this ... these are the areas that we're concerned about, was there any other action taken?

Ms Mary Burke: No there was not any other action taken. I mean if the action you're considering is something like an administrative sanction procedure, for example, in terms of inadequate internal controls, I've already said in my statement that we didn't have the resources to do that. The approach to administrative sanctions had been established in, I think it was probably '05, following the Act that was brought in. Each department went through the rules requirements, whatever ... that were sanctionable, and identified the priority they attached to them. I did it for the department I was in at the time, you graded them either one to five or A to D, something like that. In fairness, in banking supervision, that assessment was done. What was interesting was that even in '05 the opening paragraph of that policy noted that BSD was not in a position to have the resources to pursue an ASP case. That was the case in '05 Deputy, it was even more the case in '08.

Deputy Pearse Doherty: Okay. I want to go to, again Vol. 2 of the documents and it's page 86 and it's actually from ... it's from the "Misjudging Risk: Causes of the Systemic Banking Crises in Ireland", and then paragraph 4.3.5. It says however, it talks about:

In the same vein, inspection reports on Anglo during the Period (both in 2004 and 2007) correctly identified a number of more important problems in the bank at the time. However, there is no indication that these internal reports led to either a reconsideration of supervisory practices or serious consideration of regulatory action. Had the FR [Financial Regulator] rigorously enforced its recommendation to improve structures and processes, it is possible that Anglo would have grown its property lending in a more prudent manner.

And it goes on to say that that could also have had an impact on other banks' lending. Do you subscribe to this view that because the Financial Regulator, and the division which you were head of, did not follow up on these issues, that Anglo was allowed to - and I'm paraphras-

ing here in my view, I'm asking you for a view on this - that Anglo was allowed to continue to grow in a more imprudent manner?

Chairman: The question was made. Ms Burke.

Ms Mary Burke: I can't speak for 2004, that was before my time. In terms of the 2007 inspection, yes issues were identified. I have already explained why we didn't take administrative sanctions procedures. I can't tell you whether, you know, that would have resulted in the outcome. It is clearly the view of, and I presume this is Mr. Nyberg's report, that it is a possible outcome. I'll accept it as a possible outcome. There are other possible outcomes. I mean if things had been different, Deputy, things would have been different but I can't tell you precisely in terms of a systemic failure, which particular levers, if we pulled them differently or did things differently, would have resulted in a fundamentally different outcome.

Chairman: Thank you very much. Just as a supervisor, Ms Burke, do you have any view on the quality of the Central Bank's stress tests, as to their quality?

Ms Mary Burke: At the time, the discussion of the financial stability report, and it was in very much my early days in banking supervision, and you will appreciate there is a learning curve, given what happened-----

Chairman: I'm on a big one myself.

Ms Mary Burke: Well, I'll tell you, given the financial crisis that hit in '07 it was a fairly steep learning curve for me as well. My recollection of the discussion is that it did note that there was areas for improvement. I think the IMF commented that there had been some improvement but there were more areas for improvement, and there were certainly caveats to the extent that we should acknowledge the limitations of the stress test. I think the regime for stress testing has moved on in leaps and bounds, if you look at, you know, the PCAR and the PLAR that were done subsequently, and the more recent SSM as a quality review, they were very different animals in terms of stress tests.

Chairman: And having completed a very, very steep learning curve, do you now have a view on the quality of those stress tests?

Ms Mary Burke: At the time, in '06?

Chairman: Well ... even on reflection now ... how would you view them?

Ms Mary Burke: On reflection, I don't think they were severe enough and ... but, in fairness, people, I don't think at that time, foresaw a complete closure of the inter-bank markets and the consequences that followed on from Lehman's.

Chairman: Okay. Thank you very much. Deputy Eoghan Murphy.

Deputy Eoghan Murphy: Thank you, Chairman, and thank you, Ms Burke. You're very welcome. You were head of banking supervision from 2006 to 2008 ... May 2006. So, did that come with supervisory powers of the banks?

Ms Mary Burke: Well, it came with the powers that we had imposed on the banks, if you follow me. It came with the power to supervise the banks in line with the approach and the strategy the Central Bank had taken ... or, sorry, the regulator had taken, I beg your pardon.

Deputy Eoghan Murphy: Okay. In evidence ...in evidence from Mr. Hurley he said that the Central Bank was divested of supervisory powers over financial institutions after the 2003 Act. So, would you agree with that statement?

Ms Mary Burke: The supervisory powers, the direct micro-prudential supervisory powers were a matter for IFSRA, which was, as far as I'm concerned, a constituent part of the wider CBFSAI.

Deputy Eoghan Murphy: Okay, but as head of banking supervision, did you have supervisory powers of the banks?

Ms Mary Burke: Yes, I had the powers that the authority gave me, not all of the powers that were necessary delegated to my level, if you follow me, but I had powers.

Deputy Eoghan Murphy: So after the 2003 Act, the Central Bank still had supervisory powers over the financial institutions?

Ms Mary Burke: No, the ... the supervisory powers were with the authority, the IFSRA, but it was a constituent part of a wider organisation.

Deputy Eoghan Murphy: Okay, but ... just trying to clarify-----

Ms Mary Burke: I'm ... I'm obviously losing the plot here slightly.

Deputy Eoghan Murphy: With ... with banking supervision, and you were involved with stress tests. I know you weren't, but the role was. You had the power to set the parameters for stress tests with the banks, to get them to conduct a stress test and to set the scenarios by which they'd do that.

Ms Mary Burke: Okay, I ... I can't speak for how the scenarios were developed in 2006 because it was before my time. The overall responsibility for running the stress test had moved from banking supervision, which seemed to be taking the lead - again, I can only deduce this from the documentation provided to me - in '04; the correspondence was issuing from banking supervision. By the time we got to '06, that responsibility was with the Central Bank. The extent to which they engaged with the then management in banking supervision as to the scenarios and the stresses, I can't speak to. I am, however, aware that the IMF also had input, but I can't speak to you as to how much input BSD had.

Deputy Eoghan Murphy: And then, as head of banking supervision, were you involved in the domestic standing group at all?

Ms Mary Burke: I wasn't. I was asked to attend one meeting at some point because ... I think it's my reference earlier to being parachuted into meetings. I think they wanted two people from the regulator there for that meeting and there was nobody else in the building, or, I was the next most senior person might be a better way of putting it. There were clearly people in the building. And I was asked to attend.

Deputy Eoghan Murphy: And did you take part in the crisis simulation exercise in late 2007, which dealt with the collapse of a bank?

Ms Mary Burke: I didn't in any meaningful sense. There was various functions assigned to people. My recollection is that I was asked to be responsible for the co-ordination of gathering any information requests that may emanate from the authority. So, there were people in various

rooms. The Department of Finance was in one room, the boardroom was used by the authority and senior executives from the regulator. I wasn't in there as part of that discussion so I don't know the cut and thrust of the debate. I was in, for the want of a better word, an ante-room dealing with any requests that may emanate from them for information.

Deputy Eoghan Murphy: Okay. Were you involved in preparing or reviewing the scoping paper that was prepared by the Department of Finance in late 2007 that dealt with possible nationalisation, liquidation, or guaranteeing of a bank?

Ms Mary Burke: Not in any meaningful way that I can recall. Now, there were-----

Chairman: Two minutes.

Deputy Eoghan Murphy: Thank you.

Ms Mary Burke: Pardon?

Deputy Eoghan Murphy: It's just he's said me two minutes.

Ms Mary Burke: Okay. That's fine by me, Deputy. Not in any meaningful way. I have said earlier that there were so many meetings at that time and you were parachuted in and out of meetings. I cannot say to you that I wasn't at some meeting where something was discussed but I certainly wasn't a hands-on in developing it.

Deputy Eoghan Murphy: Okay, and then, were you consulted on Mr. Hurley's approach to the banks in March 2008, where he asked the banks to continue lending to each other?

Ms Mary Burke: No ... no.

Deputy Eoghan Murphy: You weren't, okay. I'm just curious, as head of banking supervision, that you weren't involved in the domestic standing group as an active member, or regular member. You weren't in the room for the crisis simulation exercise, you didn't have a direct role in the scoping paper prepare, looking at the nationalisation or liquidisation ... or liquidation, excuse me, or guaranteeing of a banks, and you weren't aware that the Governor was approaching the banks directly to ask them to lend to each other. Can I ask why that is?

Ms Mary Burke: I'm not sure I can tell you why that is, Deputy. You would need to ask some of the people that didn't approach me on various things. In fairness to people at that time, it was very fast moving. There was a lot of issues being dealt with my impression was, strategically, at the level of the seventh floor. The more issues came, the more BSD became operational, and much less strategic. We were literally fire-fighting and there were constant demands for information, be it why we didn't regulate conduits, to what the liquidity position on a particular bank was, etc., and I think, given the resource constraints within the wider organisation, the seventh floor and our executives became far more involved in those sort of strategic discussions where, in a more calm, business as usual mode, perhaps you might have expected the head of banking supervision to be involved. I can only tell you my evidence is I was not involved.

Deputy Eoghan Murphy: And can I just clarify how many positions were above you, between yourself and, say, Mr. Grimes, the deputy governor?

Ms Mary Burke: Well, I wasn't on a direct reporting line to Mr. Grimes. Above me there was the prudential director, there was the CEO, and they reported directly into the authority. Mr. Grimes was on the other pillar, for the want of a better word.

Deputy Eoghan Murphy: Okay, thank you.

Ms Mary Burke: Thank you.

Chairman: Thank you very much, Deputy. Deputy Joe Higgins.

Deputy Joe Higgins: Ms Burke, who was on the seventh floor?

Ms Mary Burke: The seventh floor, I'm not sure I can remember all the names, we've had various-----

Deputy Joe Higgins: No, I know, but the level of responsibility.

Ms Mary Burke: The level of responsibility ... it was directors, the term "director" was on the regulator side, on the Central Bank side, they were deputy director or assistant director generals.

Deputy Joe Higgins: So the very senior people in both the regulator and the Central Bank were on the seventh floor?

Ms Mary Burke: Yes, they shared the executive floor.

Deputy Joe Higgins: The ... the top brass, one might say, perhaps.

Ms Mary Burke: Yes.

Deputy Joe Higgins: Yes. Ms Burke, what impact, in your opinion, did the size of the supervisory teams in ... on the banks have on the supervision of some of the key prudential issues, especially issues of liquidity and capital considerations?

Ms Mary Burke: I think the size of the teams meant we were spread extremely thin. I don't believe we could have delivered ... we didn't deliver intrusive supervision. If you are a team of three people and you have two of the major banks in the country and you are trying to supervise them through the worst financial crisis since nineteen twenty whatever, there was only so much those people could do, and it was not intrusive supervision, and, in fairness to those people in BSD, I think I should say that they went above and beyond in terms of the effort they put in.

Deputy Joe Higgins: But with ... for example, you say in your evidence, three people looking after Bank of Ireland and Anglo combined, and another three looking after Allied Irish Banks and IL&P combined.

Ms Mary Burke: Correct.

Deputy Joe Higgins: You ... you say that it was impossible for them to really track the serious issues that was going on in the banks.

Ms Mary Burke: It ... we could identify issues and, certainly, I think we could identify, and we did identify, serious issues. I mean, the reports ... the one that was quoted to me earlier on Mr. Nyberg, that was quoted by Deputy Doherty, notes that we did identify issues. I think we did identify issues and they did identify issues. They didn't necessarily see the consequences because, as I said earlier, people did not see the seizure of the ... the markets. But our ability to follow through, our ability to challenge, our ability to then enforce ... and there's not much point in threat making ... making a threat of following through if you know you can't ultimately do that. That was not there.

Deputy Joe Higgins: Yes. Did you hear the auditors' evidence to this inquiry?

Ms Mary Burke: No, I didn't hear that, no.

Deputy Joe Higgins: Would you be shocked, or not, to hear that in the audit of one of those institutions - AIB - the auditor had up to 200 staff necessary, they felt, to do the audit?

Ms Mary Burke: Very little shocks me at this point, Deputy. I would not be surprised to know that a professional services firm had up to 200 staff to do an audit.

Deputy Joe Higgins: Would that cast into a very cold light the paucity of resources that the regulator had previously?

Ms Mary Burke: Absolutely. I am crystal clear here. We did not have the resources that were needed to supervise these banks. You won't get any dispute from me on that one.

Deputy Joe Higgins: Okay. Can I go very quickly to your written statement, page 3, and this relates to the International Financial Services Centre and I quote, which you did already, some of it:

Other factors which I consider influenced the approach to regulation and supervision were [the Financial Regulator's] mandate to promote the financial services industry and the existence of the International Financial Services Centre ... The desire to portray Ireland as business friendly led, I believe, to a reluctance to introduce prescriptive rules and a particular focus on keeping costs down [and then continue a little while on] ... In addition, the strategic decision that there should not be two different regulatory regimes - one for domestic firms and another for those in the IFSC - meant that a different approach was not taken to the domestic financial services sector. This decision was driven by a concern that the IFSC might otherwise be categorised as an off-shore centre with associated negative connotations.

Could I ask you, Ms. Burke, would it be fair or unfair to interpret that statement as meaning something like this, that in order that the IFSC was not seen as an offshore island-type financial centre with a more lax regime than normal domestic banking and an unsavoury reputation, perhaps, that regulatory standards for the domestic banking sector as a whole were significantly lowered to avoid making what was happening in the IFSC look bad?

Chairman: Just ask a question.

Deputy Joe Higgins: I did.

Chairman: Yes, I know. I'm just restating.

Ms Mary Burke: I thought very carefully, Deputy, about the words I used in my statement and, I suppose, I would say I would use the words I used in my statement. You may choose to use different terminology and that's a matter for yourself.

Deputy Joe Higgins: No, I ... putting a ... I was posing just a theoretical question to you in the event was ... well ... did this play into the fact that *The New York Times* in 2005 could refer to Ireland and its financial system as the wild west of European finance?

Ms Mary Burke: I don't know whether it played into it, Deputy, and I wouldn't necessarily use your language. It's more eloquent and colourful, perhaps, than mine but, perhaps, being from the Central Bank I tend to play it more low key. Yes, the wild west reference did ... was

something people had in mind. It certainly was something people felt defensive about. I don't know that the standards were lowered for domestic banks by virtue of the IFSC but there was very much a view that we needed to have one regime and sell the regulatory regime in the context of the promotion of industry as being a one regime for supervising banks.

Chairman: Last question, Deputy Higgins, quickly.

Deputy Joe Higgins: Yes. Okay, let me sum up so, Chairman. In page 7 of Ms Burke's written statement again - and the Chairman alluded to this - and you are speaking about the relationship between what I would call perhaps rank and file members ... workers in the IFSRA and more senior executives. Could I put it to you, Ms Burke, that what you portray there to an ordinary person might seem as an extraordinarily dysfunctional relationship ... that it would seem that hard work by rank and file - or whatever you would refer to - I've no doubt hard-working members of the regulator were undermined by a cosy relationship between regulators at the top and the banks? And, just the last thing, you say at its most benign this indicated a disconnect between the banking supervision department ... or division and the senior regulator executives. If that was benign, what would a malign explanation be do you think?

Ms Mary Burke: I again will stick to the terminology I have used. I have not talked of a cosy relationship ... it's your phrase that it was dysfunctional. I would say it was frustrating for people at an operational level to feel they had to not only argue the issues with the banks they supervised but also have to argue ... some of them, not all of them ... it wasn't every decision we ever made just to be clear on that ... but if you're already arguing with the banks, to have to argue with the people that you feel should be on your side was frustrating. I think people felt undermined by the fact that you would see the CEO of a bank in at reception. It was a bank you supervised and you would come to me and say "Do you know why they're in?" and I would go "No, I have no idea." I think that did undermine people. Whether ... I don't ... it wasn't ... it didn't feel ... and perhaps you just become used to the system you're trying to work within. It didn't feel, you know, hugely dysfunctioning ... dysfunctional, I beg your pardon, it felt frustrating. I'm not suggesting there was anything inappropriate in the relationship. I've already explained that I don't have an issue with senior executives escalating matters internally within the bank or within the regulator, but I do feel that the people at the front line dealing with it should have been involved in any subsequent discussions with those senior executives.

Deputy Joe Higgins: Could things have been-----

Chairman: Sorry, Deputy, I'm going to have to move on.

Deputy Joe Higgins: Could I listen to-----

Chairman: Deputy, Deputy, Deputy, please.

Ms Mary Burke: Other than saying my same comment earlier, Deputy, you know, if things had been different, things would have been different. I can't tell you what the different outcome might have been.

Chairman: I just want to move to the discussion with you, Ms Burke, just going to one level here before bring in Senator MacSharry. There's the Financial Services Centre, there's the Central Bank, there's the auditors, there's the regulators, the boards and all the rest of it. But, as a supervisor, you would have ... you would be gathering an intelligence and an awareness and a cognisance of things from a broad observation. Now, one observation ... or things that could have been observed during the time was loan-to-value ratios were tightening, we saw income

ratios and borrowers increasing, going from two or three times' an income up to seven or eight times and beyond that, we saw schedule extensions from 20 years out to 35 and 40 years on mortgages and we saw 100% mortgage products and all the rest of it coming on the line. Did that in any way find its way into the thinking of your role and travel up the line in terms of that we need to do something about this?

Ms Mary Burke: We were aware of a lot of those issues and there were discussions on them in various places. I mean, some of the things like the 100% mortgages actually would probably also have been discussed with ... the consumer context. So there were general discussions around those issues. In terms of banking supervision, other than doing the various inspections that we did, etc., I'm not conscious that we were ... and we were very busy, as I said earlier, dealing with operational issues - much less so strategic as time went on - and that really was probably from the end of '07 onwards. So they would have been considered, and probably discussed also at the financial stability committee, but I don't recall that any definitive particular courses of action were agreed as a result.

Chairman: Okay. Senator MacSharry.

Senator Marc MacSharry: Thanks very much, and thanks, Ms Burke, for being here. Can I ask ... you were talking about staff and requests were declined. Who declined your requests for staff?

Ms Mary Burke: I'm ... sorry, I'm conscious that I'm trying to keep things as general as possible. I don't have an issue naming people-----

Senator Marc MacSharry: Great.

Ms Mary Burke: -----if the committee believes that's appropriate.

Chairman: No. If you could give us the-----

Ms Mary Burke: Well, let's put it this way, I can deal with it as generally as possible.

Senator Marc MacSharry: Okay.

Ms Mary Burke: In looking for staff, things were escalated up the line.

Senator Marc MacSharry: Okay. Were they on the seventh floor?

Ms Mary Burke: Well, we've already discussed with your colleague as to what "up the line" meant in my context and how many people were above me, so I will need you to deduce from that ... yes, they were on the seventh floor.

Senator Marc MacSharry: As opposed to the Department of Finance, say, or-----

Ms Mary Burke: Oh, sorry, yes. No, I certainly ... it was internal. It was the seventh floor.

Senator Marc MacSharry: It was internal. Okay, that's fine. In the period - and I know some of it predates yourself - records of the Financial Regulator indicate that no enforcement action was taken on any institution for regulatory breaches from 2003 to 2008. I know you only came along post-2006. Why was that?

Ms Mary Burke: Well, I can only speak in the context of prudential regulation. I can't actually recall what might have been done in terms of sanctions for consumer issues so you'll

have to excuse me on that.

Senator Marc MacSharry: No, no. No, sorry, I mean that very specifically to do with prudential regulation. I'm not that interested in the consumer side just for now.

Ms Mary Burke: From my perspective, it was ... at an operational level, it was a resources issue. We didn't then, I beg your pardon, have a separate enforcement directorate as we have now. We actually have a directorate with two enforcement departments who in fairness carry ... do Trojan work and carry the lion's share of responsibility in terms of taking a sanction and pushing it through. Sanctions ... you know, the initiation and the pursuit and the successful conclusion of sanctions, which is a very time-consuming process, was left with the supervision departments. It wasn't peculiar to banking supervision. It was the same if you had investment firms, or funds, or whatever, insurance, it was the same and we didn't have, in either of the two departments I was in, the resources to divert people that ... from doing the day job of supervision to, say, take time out, which would have been a number of people, for weeks on end, to pursue a sanctions case and, as I said to Deputy Doherty earlier, in as early as '05, the banking supervision department - that was before my time - in its policy had indicated it did not have the resources to pursue a sanctions case.

Senator Marc MacSharry: On prudential regulation specifically, was it the practice, therefore, or not, that, due to lack of resources, no action was taken?

Ms Mary Burke: Well, that is what happened. Whether ... if one ... that is the reality. I didn't have the resources, therefore, I did not propose to take sanctions that I knew I didn't have the resources to do.

Senator Marc MacSharry: Okay. And again not specifically to you, because obviously this was the case before your time as well, was it a policy choice, "I'm not going to go down the sanctions route on prudential regulation but I am going to go down the sanctions route on the consumer side"?

Ms Mary Burke: At a more strategic level, at the level of the authority, I don't know it was ever made that absolutely definitive that sanctions were only for consumer policy and they were not for prudential, but certainly if you look at minutes of certain authority meetings, you will see - and it may even have made its way into strategy documents, I can't recall - that there was a view that they were primarily consumer and that they would only be for the most egregious issues on prudential.

Senator Marc MacSharry: Okay.

Ms Mary Burke: They hadn't in course ... in terms of that policy considered whether we could do it on the ground and they emphasised the importance of the ongoing relationship in prudential supervision in resolving issues.

Senator Marc MacSharry: So that was kind of seventh floor department again, was it, in terms of-----

Ms Mary Burke: Well, no, the authority would also have been the board of the regulator-----

Senator Marc MacSharry: Okay.

Ms Mary Burke: -----and the ... most of the executives-----

Senator Marc MacSharry: But the board-----

Ms Mary Burke: -----were on the board.

Senator Marc MacSharry: -----and the senior executives.

Ms Mary Burke: Yes.

Senator Marc MacSharry: Kind of ... just this was the situation. It was kind of decided, "Look, we're going to focus more on the consumer side than the prudential regulation side".

Ms Mary Burke: Well, I wasn't party to ... I didn't sit in at those meetings. I can only tell you what I've seen in minutes and strategy documents.

Senator Marc MacSharry: But the outcome of those meetings, as you understood it, was to pursue that line, was it, or not?

Ms Mary Burke: Yes, that was the outcome.

Senator Marc MacSharry: Okay.

Ms Mary Burke: It didn't absolutely preclude it for prudential.

Senator Marc MacSharry: So, in essence, was principle regulation, when it came to prudential regulation, like having a football match and FIFA but no referees?

Ms Mary Burke: I probably wouldn't use the FIFA reference today, Deputy.

Senator Marc MacSharry: Oh, okay.

Ms Mary Burke: I'd perhaps prefer the garda reference earlier.

Senator Marc MacSharry: Maybe the FAI. The FAI then.

Ms Mary Burke: I think if I was mixing metaphors, perhaps it would be like having the FIFA without the guards that the Deputy referred to earlier.

Senator Marc MacSharry: Okay.

Ms Mary Burke: It was ... it was very much in the moral suasion space. There was theoretically, to use a term that was applied earlier, the possibility of administrative sanctions, but I don't believe that the industry saw that as a credible threat.

Senator Marc MacSharry: Can I ask-----

Chairman: Final question, Senator.

Senator Marc MacSharry: Yes. Any chance of some of Deputy Higgins' time there?

Chairman: If you're pursuing ... if you're pursuing a good line, we'll give you a bit of it.

Senator Marc MacSharry: The ... you mentioned in your statement, and I'll paraphrase somewhat but you can correct me if I'm wrong, that at times you would be dealing with an issue with a bank and, similar to the issue that was mentioned to Deputy Higgins there, that it was maybe somewhat passed off and, "Look, I'll be talking to so-and-so", perhaps on the seventh floor, or higher, your superior, I think you mentioned in your statement about that?

Ms Mary Burke: Yes. I wouldn't say it was passed off. The examples that I can think of in that context were when banks were frustrated with either the depth or the number of inquiries we were making on an issue, particularly if it was a complex or innovative proposal-----

Senator Marc MacSharry: Yes.

Ms Mary Burke: -----and things weren't moving quite fast enough for them, I certainly am aware of a number of occasions where staff said to me, you know, "Joe Bloggs in bank X says they'll raise that on the seventh floor." Now, I wouldn't say they ... we weren't passing it off. It was more being suggested by the bank, let's call it, as an incentive for us to, you know, speed up our process-----

Senator Marc MacSharry: Okay. Without ... and this is the very ... this is the very last thing-----

Chairman: Yes, go on.

Senator Marc MacSharry: Without naming names, or banks, or institutions, was there ever an instance that you would consider serious, that you were dealing with a bank on, that their retort was, "Leave it to me. I'm dealing with so-and-so"?

Ms Mary Burke: No. In fairness to both the regulator ... or the executives in IFSRA and the bank, it wasn't ... it wasn't that tone necessarily, you know. They would engage with us on issues but where, as I say, it wasn't moving fast enough, or they began to be concerned about the outcome, or in a number of occasions where they didn't like the decision, they would escalate it. It was not necessarily their first port of call. They would go through the process of engaging with us and it was not every decision that was ever made, but I have a number of examples in my head which I found particularly frustrating and annoying and I know people in BSD did as well.

Senator Marc MacSharry: Okay.

Ms Mary Burke: So, it was that kind ... and, as I said earlier, I'm not suggesting any impropriety. They simply felt they were escalating it and moving things along.

Senator Marc MacSharry: Okay, thanks.

Chairman: Deputy O'Donnell.

Deputy Kieran O'Donnell: Thank you, Chairman, and I welcome Ms Burke. Can I just go to ... it's ... I don't know what page. It's the second-last page of your statement where you speak about ... that "Senior banking executives [and I'm assuming seventh floor executives] had regular direct contact with senior executives of IFSRA, often without the knowledge of, not to say engagement with, supervisory staff." Now, you took it upon yourself, in October 2006, to ask that the support staff would advise us of the agendas, of whether briefings were required and whether the supervision staff were to be present. "In practice", you said, "this resulted in marginal if any difference, particularly as the crisis escalated" and then you spoke about, saying that:

Staff were regularly requested by senior IFSRA executives to review decisions/issues based on their discussions, or told by contacts in banks that issues had been, or would be, discussed with [other] senior executives. To me, at its most benign, this indicated a disconnect between [the supervision staff] and the senior [seventh floor] IFSRA executives which,

in practice, banks used to their advantage. I believe that it also signalled a manifest lack of support for staff, undermining them in their dealings with banks.

Can you expand on that, please, Ms Burke?

Ms Mary Burke: Well, I can ... other than, sort of, the commentary I've already given, where your colleagues explored that, there were regular meetings with certain bank executives and with industry representative bodies. I'm not saying that every one of those meetings resulted in a request for us to change a decision or do anything different.

Deputy Kieran O'Donnell: Were there occasions where it did?

Ms Mary Burke: There were occasions where we were asked to look at a decision again. The number of ones I'm thinking of, we did look at them again, but we maintained our decision. I can think of one where there was an application for a bank authorisation which we were fundamentally opposed to and it felt like a war of attrition to persuade our executives that-----

Deputy Kieran O'Donnell: And was that a new bank, or was that an existing bank?

Ms Mary Burke: No, that was an application for a new bank licence-----

Deputy Kieran O'Donnell: Okay.

Ms Mary Burke: -----not from an existing bank, from a new entity. And those engagements were frustrating. They were also time-consuming. I had no-----

Deputy Kieran O'Donnell: Did you find it impeded and frustrated the supervision division on their day-to-day work?

Ms Mary Burke: I think it took resources that we could ill afford to be arguing things internally when we probably should have had the support of our executives and certainly had less questioning on them. If ... I had no issue if they wanted to be involved in making the assessment and the decision and then, you know, embed themselves in the decision-making process, but if you delegate the decision to somebody and they make it and you have given them the responsibility, I think you support them in that decision.

Deputy Kieran O'Donnell: And do you feel-----

Ms Mary Burke: That doesn't-----

Deputy Kieran O'Donnell: Yes.

Ms Mary Burke: Sorry, just, Deputy, that's not to say that every decision we made was right and that it didn't preclude the possibility that somebody had to, you know, gracefully exit us from some decision we'd made, but I personally believe you do that in a manner which does not undermine your staff. The staff that deal with the banks, front and centre, have to be seen to have the support of the organisation that they work for.

Deputy Kieran O'Donnell: And had ... during the crisis, had a situation developed where it was the seventh floor executives and the supervision staff, that it had developed into a them-and-us-type situation?

Ms Mary Burke: No, I don't think it had got to that stage. I think it was very much ... and I've said earlier this wasn't every single decision and I didn't see the organisation as dysfunc-

tional, as Deputy Higgins suggested to me. I found it, in certain aspects, frustrating. I found, however, as the crisis proceeded, there was, certainly within BSD, very much a good team spirit in trying to work together. People were frustrated with the sheer workload they had to do. I don't know that anybody felt, either from the seventh floor, looking down at us, or us looking at the seventh floor, that there was a them and us. Everybody was trying to do the best they could in an extraordinary situation. And I have no doubt that the executives felt, as they were doing what they were doing, that they were trying to do the best they could.

Deputy Kieran O'Donnell: And the qualifications of staff that were working on the banks ... I mean, when you took over, you had three executives looking after one and a half, Bank of Ireland and Anglo. You had three executives looking after AIB, divided one and a half each.

Ms Mary Burke: Yes.

Deputy Kieran O'Donnell: What were the qualifications of these people?

Ms Mary Burke: There would be different qualifications. I can't remember exactly. Accountants, people maybe with an economics degree. Usually the people at the more senior level - it didn't always follow - had the higher qualifications-----

Deputy Kieran O'Donnell: So typically what level they were at? What level-----

Chairman: A question, Deputy.

Deputy Kieran O'Donnell: This is a critical point, Chairman. What level were they at in terms of experience? The question really, I suppose, I'm getting at is ... you were dealing with institutions like large institutions that had enormous internal audit set-ups, enormous regularity set-ups and was it David versus Goliath in terms of the supervision going out to effectively regulate and supervise the banks from your viewpoint?

Ms Mary Burke: Yes, I mean some of the individuals would have had industry experience; some wouldn't. Some would have come up through the ranks. Most of them would have had professional qualifications or third level degrees, etc. I don't doubt the expertise of the individuals. In terms of one of the many ... many analogies that have been put with me today, I am happy to agree with the David and Goliath analogy that you've put. But in terms of just numbers, the sheer ... if you have one and a half people dealing with a bank, David and Goliath might even be optimistic.

Deputy Kieran O'Donnell: Okay, thank you.

Chairman: Thank you, Deputy, and thank you very much, Ms Burke. Deputy Michael McGrath.

Deputy Michael McGrath: Thank you, Chair. You're very welcome, Ms Burke. In his witness statement, John Hurley stated "No request for funding or resources from the Financial Regulator was ever refused." Is that accurate?

Ms Mary Burke: I don't know. I wasn't involved in discussions at the level of the authority and the board on that.

Deputy Michael McGrath: Okay, who did you report to directly, Ms Burke?

Ms Mary Burke: I reported directly to the prudential director.

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Deputy Michael McGrath: And who was that in 2006-07.

Ms Mary Burke: In two thousand and ... it would have been Con Horan

Deputy Michael McGrath: Okay, and he then would have reported to the CEO-----

Ms Mary Burke: Correct.

Deputy Michael McGrath: -----Mr. Neary?

Ms Mary Burke: Yes.

Deputy Michael McGrath: Okay. So if Mr. Hurley's statement is accurate, then your request for additional resources either fell at the hurdle of Mr. Horan or Mr. Neary.

Ms Mary Burke: I have already said that my recollection is that my director supported my request on that occasion.

Deputy Michael McGrath: Okay. So if what you're saying is accurate, and what Mr. Hurley is saying is accurate, then it fell at the hurdle of the CEO, Mr. Patrick Neary.

Ms Mary Burke: I don't know that either. Mr. Neary reported into an authority and I don't know where it went in the mix-----

Chairman: We'll clarify this tomorrow.

Deputy Michael McGrath: Absolutely. He'll have an opportunity to do so. I'm just trying to join the dots, Chairman. You have stated in your evidence and it has been confirmed that there are about 50 people working in the banking supervision areas. How many were employed overall by the regulator, the IFSRA, by the Financial Regulator?

Ms Mary Burke: I'm not sure I can remember, Deputy. Over the years-----

Deputy Michael McGrath: Yes.

Ms Mary Burke: -----I've seen so many different figures. I have a figure of something like 350, is going around in my head-----

Deputy Michael McGrath: Okay, yes.

Ms Mary Burke: -----but I couldn't guarantee that and I would suggest you would have to check-----

Deputy Michael McGrath: Mr. Honohan's report is referring to about 200 in prudential supervision-----

Ms Mary Burke: Yes, and I-----

Deputy Michael McGrath: -----and only 50 in banking.

Ms Mary Burke: -----of course I would think of supervision as being consumer as well. So-----

Deputy Michael McGrath: Yes.

Ms Mary Burke: -----you know, it was certainly of that ilk somewhere between the 250,

350 kind of region-----

Deputy Michael McGrath: So in the region of 50 out of a total of 300 or so?

Ms Mary Burke: Yes, approximately.

Deputy Michael McGrath: Of that order. Okay. Just on the issue of resources, your request in May 2008, was that your first request for additional resources since you became the head of-----

Ms Mary Burke: No-----

Deputy Michael McGrath: -----banking supervision?

Ms Mary Burke: -----I had requested additional resources the previous year. I can't remember how many I requested but I was given three the previous year.

Deputy Michael McGrath: At your request?

Ms Mary Burke: At my request, yes.

Deputy Michael McGrath: And was your request met in full?

Ms Mary Burke: I can't remember the number I originally looked for so I don't ... I can't actually recall, Deputy. But if it wasn't in full, it was substantively met.

Deputy Michael McGrath: Okay, and that was for the calendar year, 2008, and that request would have been put in during-----

Ms Mary Burke: Yes.

Deputy Michael McGrath: -----2007.

Ms Mary Burke: Correct.

Deputy Michael McGrath: And the request which you refer to in May 2008, that was for the calendar year, 2009.

Ms Mary Burke: Correct.

Deputy Michael McGrath: It was an early stage of ... early of-----

Ms Mary Burke: Yes-----

Deputy Michael McGrath: -----early stage of the planning.

Ms Mary Burke: -----the budget had to go to the Minister, my recollection is in October, and so, therefore, the process started quite early in the year.

Deputy Michael McGrath: Okay. Okay. But to your knowledge that was the first request that was refused during your time as head?

Ms Mary Burke: During my time at BSD, certainly the previous one was met, if not in full, partially. I can't remember. And that one was effectively refused. Now I think I said on my statement it was agreed that I'd have had 0.4 of a person allocated to me but that was done ... my recollection, is some sort of accounting for atypical people, you know, people that worked

half days or whatever. So, in substance, it was refused.

Deputy Michael McGrath: Okay-----

Ms Mary Burke: I mean, 0.4 of a person is very difficult to recruit.

Deputy Michael McGrath: Sure. You said a few moments ago that prudential enforcement cases weren't taken or weren't recommended because you simply didn't have the resources to process them and to follow through. Is that accurate?

Ms Mary Burke: Yes.

Deputy Michael McGrath: Isn't that quite an alarming point and quite a striking point? And doesn't it go really to the heart of what your job was that you really weren't in a position to do your job? Even if you felt that a prudential enforcement case should be taken against the bank, you didn't pursue it because of a lack of resources. You simply weren't able to do your job.

Ms Mary Burke: Yes, we were not able to pursue administrative sanctions cases because of a lack of resources. That was not peculiar to me, in fairness. The previous manager had flagged as much when he developed the policy for ASPs for banking supervision.

Deputy Michael McGrath: And who did you make this known to?

Ms Mary Burke: It ... I didn't make it known to anybody, in that the policy for BSD had been developed in '05 by my predecessor and he had clearly stated it, that it was not resourced as a department to take and pursue administrative sanctions procedures. It was well known within my reporting line that we were not resourced to do that.

Deputy Michael McGrath: But did that not basically mean you couldn't do your job in full?

Ms Mary Burke: Given that ... and in talking to Senator MacSharry, we talked about the strategic approach ... given that the strategic approach did not see administrative sanctions as a tool that would be regularly used, I presume people did not necessarily see a terrible inconsistency, but, at the end of the day, Deputy, I was not in a position to take administrative sanctions procedures and that is the heart of the matter.

Deputy Michael McGrath: Okay. In your opening statement, you essentially say that a lack of powers wasn't the key issue. Is that accurate?

Ms Mary Burke: Yes, I don't think it was. Other than for resolution and recovery, where I think, you know, we didn't have a resolution regime-----

Deputy Michael McGrath: Yes.

Ms Mary Burke: -----but I think there were a number of powers available that could have been used to implement various measures.

Deputy Michael McGrath: I think one of the key questions that a lot of people would like answered is: did the Financial Regulator have the power and if it wanted to do so, could it have halted the amount of lending that the banks were engaging in to the property and construction sector?

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Ms Mary Burke: My view is we had a number of powers. We could have set ratios; we could have set requirements regarding the composition of assets and liabilities; we could have imposed conditions on bank licences. I have already spoken about the fact that, obviously, there would have been the level playing field issue with the branches. The extent to which and how you would have gone about doing that I'd have to think imaginatively as to the wording of any particular rule or requirement but I presume ... those are fairly broad powers and it certainly allows for the scope to do something. Whether it would have been able to halt it or not, I can't say.

Deputy Michael McGrath: But it wasn't done.

Ms Mary Burke: No, it wasn't.

Deputy Michael McGrath: Thank you.

Chairman: Thank you very much, Deputy. Is that in essence putting theory into practice what you just said there?

Ms Mary Burke: We had the powers, in my view - now that is very much my personal opinion----

Chairman: Yes, indeed.

Ms Mary Burke: -----and others may disagree - to take various measures and impose various rules but we were applying a principles-based regime and, as such, those rules were not imposed.

Chairman: Thank you. Deputy John Paul Phelan.

Deputy John Paul Phelan: Thank you, Chair. Good afternoon, Ms Burke. I've a couple of brief questions. Firstly, I want to refer to your opening statement and I must confess I don't have the page number but it's a direct quote.

Ms Mary Burke: That's my fault, Deputy. I didn't number the pages.

Chairman: It's actually numbered down in the right hand corner, Deputy, if you look at it.

Deputy John Paul Phelan: I have the quote here. I just want to read it out.

Chairman: Sure.

Deputy John Paul Phelan: You'll be familiar with it. "While work had been initiated in other areas such as directors' compliance statements and a corporate governance code in 2004 and 2005, this did not lead to their imposition on the industry." Why, in your view, were those compliance statements not introduced? And do you have a personal position as to whether they should have been introduced then?

Ms Mary Burke: I wasn't dealing with the compliance statement issued, directly, I have to say. At the time, there was a central unit dealing with it. My recollection is that it was brought in in the IFSRA Act - and I can't remember what the full title is - modelled on proposals from the company law review group. There were less onerous provisions, I think, ultimately imposed in company law. Those provisions in company law allowed it for ... allowed for a sort of a comply and explain mechanism. They had materiality thresholds. It was very much in terms of were the directors satisfied that they had procedures and processes. It was by no means an

absolute statement that you were in compliance with everything-----

Deputy John Paul Phelan: Okay.

Ms Mary Burke: -----everywhere. I am paraphrasing here slightly. My recollection is that the industry had serious issues with the way the compliance statement from the Financial Regulator was structured based on what was in the legislation and not on some theory we had developed ourselves. And my recollection is also that the Department of Finance also had issues with it when it realised the consequences. I think industry, at one point, questioned the constitutionality of what was being proposed and ultimately, I think, it was agreed that the whole issue would be dealt with in the context of the consolidation of legislation project, which was launched by the Department of Finance in '06.

Deputy John Paul Phelan: Do you have a view as to whether ... I'm sorry to be rushing you but my time is nearly up now already.

Ms Mary Burke: Sorry.

Deputy John Paul Phelan: Do you have a view as to whether it should have been introduced as originally proposed?

Ms Mary Burke: I certainly didn't have an issue and my recollection at the time was that our ... it was not us ... for us to decide on the constitutionality or otherwise. Somebody could take it to the courts. However, I don't believe that particular issue was fundamental to whether or not we had the collapse of the banking system.

Deputy John Paul Phelan: To turn to another area, I want to refer to evidence by Mr. Gleeson, the former chairman of AIB. When he came before the inquiry, he said ... it's in relation to sectoral lending limits:

[W]e would have been very well off not to have exceeded that sectoral limit. It's a great shame that we didn't.

Do you have a view, yourself, from the position of the regulator as to regret or otherwise that you didn't pursue those limits beyond some of the letters that had been referred to, I think, by Senator Barrett in his ... his ... his earlier question?

Ms Mary Burke: I ... you inevitably wonder about the ifs, buts and maybes, Deputy, and I have done that on a number of occasions. I regret that I didn't pursue the issue of resources perhaps more strongly. I could have made different decisions on different occasions.

Deputy John Paul Phelan: Specifically on sectoral limits?

Ms Mary Burke: On sectoral, I think they should have been enforced, but by the time I got to banking supervision in '06, I don't believe I could have made a difference in that regard.

Deputy John Paul Phelan: I want to put one other brief quote. Mr. McCarthy, the former chief ... or the chief executive of Ulster Bank, in evidence to the inquiry said, "There was a sense that [the sectoral limits were] honoured more in the breach than in the observance." Do you accept that that culture may have existed within the banks at the time as regards the sectoral limits?

Ms Mary Burke: Well, as I say, by the time I came to banking supervision, they were ex-

ceeded in a number of cases. It wasn't peculiar, to be clear, to property-related lending in the domestic institutions. If you were a bank in the IFSC, you would have ... and many of them would have had issues with the financial intermediation sector and it was known that if certain banks, even when you authorised them, they were inevitably going to hit an issue with these sectoral limits. So, you know, they were ... there were issues with them, Deputy, and that's as much as I can say.

Deputy John Paul Phelan: Okay. Can I ... I've a minute left and I've a few questions I want to run through. Do you remember identifying ... following on from Deputy ... or, Senator MacSharry's questions, identifying breaches that occurred, that your unit identified, that weren't pursued owing to lack of resources or owing to this sense that you expressed that, you know, such pursuit wasn't what was sought by the regulator?

Ms Mary Burke: Well, in terms of the sectoral limits specifically, we could not have sanctioned for them, given the manner on which they were-----

Deputy John Paul Phelan: Broader ... outside issues.

Ms Mary Burke: -----based. If I take broader issues, to the extent that we identified weaknesses in internal controls in this, I suspect a case could have been made under the capital requirements directive, that they failed to have internal controls adequate to manage their business. You would've had to make that case and pursue it through an administrative sanctions procedure. But ... it wasn't done but I suspect, theoretically, it could have been done.

Deputy John Paul Phelan: Okay ... yes ... I just wanted also then finally to ask, outside of - and I accept your statements that you sought additional staff yourself ... did you yourself or anybody else that you're aware of on the seventh floor, to use that phrase, seek to have legislative change or regulation ... regulatory change that would allow you to use, in your own words, you know, that ability to follow through ... that it would actually come into play? Was there an attempt by yourself or by others to seek those changes?

Ms Mary Burke: There was ... in my view there was no need for a regulatory change. And, I've said it previously, I think we had an administrative sanctions procedure, we had various rule making powers. The issue was not, to my mind, beyond resolution and recovery regimes. The issue was not the legislation, it was the manner in which supervision was approached.

Deputy John Paul Phelan: Thank you.

Chairman: Thank you very much. I'm now going to move to wrap things up and inviting the two leads in. It will be about three minutes each, with a question and to include a supplementary. I just want to deal with some matters first, Ms Burke, before I do. You seem to be consistent in your answering this afternoon that by 2006, regardless of the number of staff and other resources that might've been available to you ... that it may have been too late at that stage. Could you maybe indicate to us as to when would have been the optimum period to actually have made an intervention and what would have been the interventions that you would have put foremost to your mind at that time?

Ms Mary Burke: I am taking comfort in respect of my reference to '06 from the fact that that was a reference to Governor Honohan's assessment and I think Professor Nyberg probably had ... or Mr. Nyberg had similar themes. I think the time to do something would have been in the early 2000s. You might've been able to do something up to 2005 but even then, I think, it probably would have been late in the day. In terms of ... as a regulatory regime, leav-

ing aside what we might have done, as country, in tax policy or promotion of building ... I think we could've probably imposed more rigorous standards in terms of lending ... but even ... and possibly LTVs, LTIs along the lines we have. The ... we were working within a European framework that set out limits for large exposures, etc., to individuals and we were endeavouring not to be super equivalent to that. I haven't sat down and thought through, Deputy - in terms of my recollections and ifs, buts and maybes on what might have happened over my time there ... I haven't sat down to think through, in detail, what I might have done. I can only deal with the reality of what was there.

Chairman: Thank you. And maybe just a final question on this before I bring in the leads ... maybe if you could offer us your view on the different business models being adopted by the banks in the run-up to the crisis and also the products ... some of the products I mentioned earlier. So, both the business model and the products that were available.

Ms Mary Burke: I'm not sure I can deal with the products, *per se*. I can't say that I focused particularly on the products in terms of prudential regulation. Looking at the business models of the banks, a number of them were particularly aggressive in terms of commercial property lending. In some cases it certainly was outside of their original reason for being, I suppose, I will put it that way. Sorry, I've lost my train of thought, Deputy, can you say the question again?

Chairman: On business models and your view on them ... on the type of models that were being developed and pursued by the banks in the lead-up to the crisis period.

Ms Mary Burke: Yes. I think some of the main retail banks aggressively pursued business looking at what competitors were doing and, by their own admission in terms of evidence here, I think they accepted that some of that lending was not entirely appropriate. I think that some institutions should have stuck to plain, vanilla, residential lending and certainly not dabbled to the extent they did in commercial property. But one bank in particular was seen as a property bank and that authorisation ... when it was authorised, it was recognised that it would have problems with the sectoral limits. The fact that that was also in what other banks saw as a competitive space with them caused problems. I think now we would intervene more assertively in terms of the business models, in terms of whether or not we think they are viable and appropriate, but at the time we didn't do that.

Chairman: Thank you very much. Senator O'Keefe, so, question and supplementary?

Senator Susan O'Keefe: Thanks Chair. The inspection of commercial property lending exposure that we talked about before in Vol. 2, can you just confirm whether the results of that would have been passed upwards? Would the Central Bank have known about that inspection and the level of, you know, would that have been passed through automatically?

Ms Mary Burke: It would have been passed up to some degree. I would have orally briefed on my reporting line. My recollection is it was also mentioned in the CEO report, which was a report the CEO made to the authority. In the context of those reports, the executives on the regulatory side were always given detailed briefings so that they could deal with any issues. My understanding of the procedure for the circulation of documents from authority meetings is, and I think you'd have to refer to the authority members' handbook in that regard, is that all authority papers were circulated to two senior executives in the Central Bank. So, assuming that procedure was followed, they would have had those papers.

Senator Susan O'Keefe: When you talked earlier about the now-famous seventh floor,

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can we just be clear, those meetings that took place between those executives and bank executives, were they minuted and were those minutes passed back to you?

Ms Mary Burke: Not in general. I can't speak to ... I don't know what I don't know, if you follow me, Deputy, so if meetings were happening that I didn't know about, I obviously can't speak to them. On various ... on a few occasions when people would have asked for briefing, they might give us some feedback. I don't believe ... I rarely if ever saw what one would call a minute. You might get feedback, particularly if there was an issue they wanted you to look at again, so you would get a feel for what the discussion was but, and certainly as the crisis moved on, and I know the bank, in terms of the bespoke pieces it prepared for the committee, has done an analysis of all the various meetings. The sheer number of those meetings I certainly wouldn't have been aware of what was discussed at most of them.

Senator Susan O'Keefe: Finally, the report we spoke about earlier, that you completed on 10 September, the outlook for liquidity.

Ms Mary Burke: I didn't personally complete it.

Senator Susan O'Keefe: I'm sorry - your department. That was obviously, roughly two weeks or three weeks before the night of the guarantee. Would your department have had any further involvement as the crisis escalated into that period of time, would you have been asked for any more information, would you have been supplying information to the Central Bank, to the regulator, to the Department of Finance, in that period leading up?

Ms Mary Burke: We were supplying information to all of the above for a long period of time. I couldn't tell you in those particular few weeks what particular pieces of information I was providing-----

Senator Susan O'Keefe: Sure. But you were part of-----

Ms Mary Burke: But there was constant information being provided. In the context of liquidity particularly, there was regular meetings of, I've already mentioned, an internal committee headed up by the Central Bank, where we discussed liquidity on a regular basis.

Senator Susan O'Keefe: Would you have been at those meetings yourself-----

Chairman: Last question now, Senator.

Ms Mary Burke: I was at some of those meetings, yes.

Senator Susan O'Keefe: And so, finally, would you have taken the view that on the night of the guarantee, that the financial institutions were solvent, all of them, or not? Given what you knew.

Ms Mary Burke: Given what I knew, our focus was, at BSD, was particularly on liquidity at that point. I was not involved in any substantive discussions on the guarantee. At that point we were not questioning solvency, and I would say, I suppose, as a regulator you have to work based on the information that you have, regulatory returns, accounts, etc. You can't, based on some sort of feeling, decide that - or, you know, an instinct or whatever - that somebody or some bank may or may not be solvent, that's not how it operates. That being said, I amn't conscious that I had that particular feeling on that evening.

Chairman: Thank you very much. Senator Barrett.

Senator Sean D. Barrett: Thank you, Chairman. Is a regulatory system with no sanctions, is it moral hazard and bound to fail?

Ms Mary Burke: In my view, yes, using your reference earlier of the guards. I think they have to have the power to enforce and be seen, by the market that they supervise, to be in that position.

Senator Sean D. Barrett: Looking ahead ... and, you know, how do we prevent the next crisis, should we aim for a two-tier system, one regulated by you which carries your protections, and the other sort of, free-range, like, we don't reimburse losing lotto tickets or slow greyhounds, or whatever? Would that be a way to proceed, that we have a very tightly regulated sector which protects people's savings, and gambling separated?

Ms Mary Burke: I wouldn't have characterised any of it necessarily as gambling, Deputy. I certainly would not favour that sort of a system. I think we ... because you'd never know the contagion effects by the free range, as you've described them yourself, and where the connections may come with industry. I think that was probably part of the problem with securitisations etc., in the lead-up to the crisis. I do think, however, we do, to some degree, have various levels of oversight now in terms of banks. I wouldn't describe it as two tiers, but you do have the SSM in Frankfurt supervising the systemically important banks in each jurisdiction, and what are called the LSIs ... the less significant banks, actually, sorry, is the terminology, are supervised at a more local level, with oversight by the ECB. And so long as Ireland is within the EU, and more particularly with the euro, that regime will continue to apply.

Senator Sean D. Barrett: Finally, May 2008, when you sought the extra staff, was that a normal shortage of staff or did you have premonitions of doom-----

Ms Mary Burke: No, I-----

Senator Sean D. Barrett: -----a few months afterwards?

Ms Mary Burke: I didn't have premonitions of doom. That would be probably overstating it. I did, however, have the collapse of Sachsen, the collapse of Northern Rock and the financial crisis ringing in my ears, so it was more in an effort to try and deal with the sheer workload that we were being given, rather than any foresight of doom and gloom on my part.

Senator Sean D. Barrett: Thank you, thank you.

Chairman: I just need to establish one question, and this might even prepare us for tomorrow. Was there a boss of bosses on the seventh floor?

Ms Mary Burke: There was a reporting line.

Chairman: Okay. Who was the boss?

Ms Mary Burke: My reporting line was up through the prudential director and to the CEO. The authority had a chairman, and I assume the CEO would report to him. And on the Central Bank side, the Governor would have been the top. At an instinctive level rather than a legal level-----

Chairman: Right?

Ms Mary Burke: -----and I'm not in a position to-----

Chairman: Sure.

Ms Mary Burke: -----start parsing it, I think staff in the Central ... or in Dame Street, let's use that term so as I don't have to start doing sides, would have felt that the Governor was the senior executive in the building. But, that being said, you know, I have come up through a long ... a long time in a central bank where we still call the Governor "Governor", so that would have been my feeling, as opposed to wondering whether or not, in law, he had powers over me, if you follow me.

Chairman: Okay, thank you very much for that. Is there anything else? Sorry?

Deputy Pearse Doherty: Just, sorry, because it may come up later on, just to clarify with the witness here. It was just on the question of stress testing and devising stress tests. I just looked through the core documents. You did have responsibility in relation to domestic mortgages and stress tests, isn't that correct?

Ms Mary Burke: Yes, but that was a different form of stress testing. That was the stress testing ... I can't remember who asked me the question earlier?

Deputy Pearse Doherty: I asked you the question.

Ms Mary Burke: Sorry, I beg your pardon. Yes, there was a guidance we had imposed on mortgage lenders that in the case of individual applications for mortgages they should stress test them for a 2% increase in interest rate and assess whether or not the applicant was in a position to afford that. That was implemented by the prudential department. It is now actually housed on the consumer side, in the context of affordability, and it is built into our consumer protection code.

Chairman: Thank you very much. Is there anything you would like to add before we bring matters to a conclusion, Ms Burke?

Ms Mary Burke: No, I'm fine, thank you, Deputy.

Chairman: Okay. With that said, I'd now like to thank you for your participation with the inquiry today, Ms Burke, and for your engagement with the inquiry, and to now formally excuse you and in doing so, propose that we would break until 5 p.m. Is that agreed? Oh sorry, I need five ... we need a bit of extra time for the switch-over. Okay, what time do you need? 5.15 p.m. Well, I'm saying 5.10 p.m. for 5.15 p.m., okay, is that agreed? Agreed. Okay, thank you.

Sitting suspended at 4.50 p.m. and resumed at 5.23 p.m.

Central Bank-Financial Regulator - Mr. Con Horan

Chairman: Okay, so I now propose that the committee go back into public session; is that agreed? And we'll now deal with session 3 of our hearings today with Mr. Con Honan ... Horan, Central Bank of Ireland IFSRA, and the Committee of Inquiry into the Banking Crisis now resuming in public session and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off? This afternoon, we will continue our hearings with witnesses from the Central Bank of Ireland Financial Regulator. At our next session, we will hear from Mr. Con Horan, the senior official from the Central Bank of Ireland IFSRA.