

HOUSES OF THE OIREACHTAS

Volume 2

No. 43
Morning
No. 44
Afternoon

AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

Déardaoin, 9 Iúil 2015

Thursday, 9 July 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.

Nexus Phase

Special Adviser - Ms Cathy Herbert

Chairman: I now propose that we go into public session. Is that agreed? As we have a quorum, the Committee of Inquiry into the Banking Crisis is now in public session and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off.

Session 1 is a public hearing with Ms Cathy Herbert, former special adviser to Minister Brian Lenihan. In commencing this morning's proceedings, I would like to welcome everyone to the public hearings of the Joint Committee of Inquiry into the Banking Crisis. At our first session this morning we will hear from Ms Cathy Herbert, former special adviser to Minister Brian Lenihan. Cathy Herbert was first appointed as special adviser to the late Brian Lenihan in January 2006 when he became Minister for children, and she continued as his adviser throughout his ministerial career. She has previously worked as a special adviser to the former Minister, Dr. James McDaid. Before that Ms Herbert worked as a journalist with RTE. Ms Herbert, you're very welcome before the committee this morning.

Ms Cathy Herbert: Thank you.

Chairman: Before hearing from 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 of 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. Therefore, the utmost caution should be taken not to prejudice those proceedings. 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. Members of the public and journalists are reminded that these are documents and that they are confidential and 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 and core documents. These are before the committee, will be relied upon in questioning and form part of the evidence of the inquiry. So with that said, if I can now ask the clerk to administer the oath to Ms Herbert please.

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

Ms Cathy Herbert, former Special Adviser to Minister for Finance.

Chairman: Once again, Ms Herbert, welcome before the committee this morning. And if I

can invite you to make your opening remarks to the committee please.

Ms Cathy Herbert: Thank you, Mr. Chairman, and good morning to the members of the committee. I'm happy to be here with you this morning to assist you in whatever way I can in your important endeavour. You have my written statement, which I'm happy to take as read, but before moving on to questions I'd like to make a brief few points about the nature of my work for the late Brian Lenihan. As you said, Chairman, I was special adviser throughout his time in the Department of Finance. Committee members may know that the legal definition of the role of special adviser is quite broad, and that the Minister to whom the adviser is accountable essentially writes his or her job spec. In my case, my main duty was to advise Brian Lenihan on the communication of Government actions and decisions taken during the crisis, most of which were complex and difficult. Throughout the crisis he was acutely conscious of the need to explain to the citizens the reasons for Government actions and the outcomes they were designed to achieve. His specific objective was to tell the public what went wrong, what the Government was going to do about it and what the outcome of their actions would be. To achieve that objective, I worked closely with officials in the Department of Finance, drafting and providing speeches, providing briefing for Oireachtas debates, drafting articles for print media and advising on media strategy.

The particular job assigned to me by the then Minister was to work with officials and political colleagues in other Departments on the Government's response to the fiscal crisis. Between mid-2008 and April 2011, Brian Lenihan introduced six separate sets of budget correction and in his constant battle to stabilise the public finances. The banking crisis was a separate theatre of battle and initially I had no involvement at all in this area of the Minister's work. Because of its highly confidential nature, particularly in the months before the guarantee, discussion relating to the banks was necessarily held tightly by a very small group of officials. I had no role in any banking policy formulation during that period and I have no recollection of receiving any direct information about the banking matters.

After the guarantee, my involvement in the banking side revolved around the communication of the actions and decisions that the Government had to take to rescue the banks. I contributed to the drafting of speeches and I worked closely with colleagues in the press office preparing for media interviews and responding to the very significant number of media queries relating to the financial crisis in Ireland. The Minister didn't ask me to play any role in the formulation of banking policy or to attend any banking meetings about decisions relating to the banks. He did ask me, along with his press officer, to go to Government Buildings on the night of the guarantee so that we would be fully briefed for what media announcements might arise from the discussions that were taking place that night. I played no part in those discussions and spent the night with other colleagues from the Taoiseach's office in adjoining offices.

Mr. Chairman, in my written statement I have drawn on all the knowledge and information I have been able to assemble, much of it acquired after the events which the committee has asked me to address. Seven years on from the onset of the crisis, I can't now definitively distinguish between my real-time knowledge of events and what I subsequently learned about them and I'd ask the committee to bear the possible distorting impact of this in mind when assessing the information contained in that submission. I'm happy to take your questions.

Chairman: Thank you very much for your opening remarks, Ms Herbert, and if I can invite our first member this morning to ask questions, Deputy Kieran O'Donnell.

Deputy Kieran O'Donnell: Thank you, Chairman. Welcome, Ms Herbert. Mr. Cardiff,

who was before us recently, in his statement said, and this is core documents, Chairman, from page 50 to 51 of Kevin Cardiff's speech. And he said "At all costs, the terrible demonstration effect of allowing queues of depositors to develop outside branches - a very public 'run' on the banks - was to be avoided." Did the late Minister Brian Lenihan or any officials or political advisers ever discuss this prospect with you?

Ms Cathy Herbert: No. I do recall that the Minister was particularly exercised about some media discussions on the Joe Duffy show and particularly, I think, about a report that was being that was being put on the ... done for the news by, I think, George Lee at that time.

Deputy Kieran O'Donnell: When was that, Ms Herbert, roughly?

Ms Cathy Herbert: Some time in September 2008. I can't remember exactly the date. And he was worried about it and I was in my office working on something and he came in and asked me what, you know, he should do. He had got the phone number of the director general, Cathal Goan, at the time and I suggested that he should also ring Ed Mulhall whom I knew. I had worked in RTE, I knew him and I knew him to be somebody that you could trust.

Deputy Kieran O'Donnell: He was the CEO of ... he was the DG of RTE at the time, was he?

Ms Cathy Herbert: Well, no, he was the head of news I think.

Deputy Kieran O'Donnell: The head of news, okay.

Ms Cathy Herbert: And I knew he was somebody who could be trusted and that the Minister could ring him and explain his position, that he would be a reasonable person and he did that. So I was aware from that about the concern about this possibility but really my focus was on a budget which was coming up. As you know the budget in that year had been brought forward to 14 October so that was where I was focused. But on that occasion I suggested that he ring Ed Mulhall.

Deputy Kieran O'Donnell: And then, coming up after the guarantee, did Minister Lenihan discuss with you or were you aware subsequent to the decision of the guarantee, who was ... who supported the decision? Had the Minister, Brian Lenihan, been overruled by the Taoiseach, Brian Cowen? What were the respective positions of the then Secretary General of the Department of Finance, Mr. Doyle, and Mr. Cardiff who was head of banking at the time within the Department? And did the banks themselves bring a document, a guarantee document, in on the night of the guarantee to the Taoiseach's Department for those meetings?

Ms Cathy Herbert: As I said I was asked, after a long meeting of pre-budget ... a long day of pre-budget meetings, to go to Government Buildings on that night by the Minister and-----

Deputy Kieran O'Donnell: What was generally, I suppose, what was generally the atmosphere like, Ms Herbert, when you arrived? What was generally, what was the mood of the night?

Ms Cathy Herbert: Well it was busy. I mean I was aware that they ... I was actually in an office adjoining the private office to the Taoiseach's private office with colleagues who were coming and going, mostly from Government Buildings. I was aware that there were other people, other you know ... the various advisers, various people from the NTMA, the Central Bank, the regulator's office were in various parts of the building and I was also aware that the senior

people from the banks, the two main banks, were in the building. I mean, from my point of view I was ... I didn't know, I had no background and I hadn't been involved in the discussions but I was picking up what was happening - that there had been a difficult day and that there were discussions taking place. Now as regard to who said what and who ... what position anybody had, I didn't talk to Brian Lenihan until that night ... later that night as he was leaving and he-----

Deputy Kieran O'Donnell: And that was roughly when about?

Ms Cathy Herbert: I think it was about 2.30 a.m. - 3 a.m., I'm not exactly sure.

Deputy Kieran O'Donnell: Yes, but it was a.m.?

Ms Cathy Herbert: Yes, it was a.m. yes and that was the first time I saw him since the deliberations began. And I can't exactly remember the words but I do remember that he was concerned about the decision that had been taken. He was-----

Deputy Kieran O'Donnell: What was his general, I suppose, demeanour? What was his general-----

Ms Cathy Herbert: He was worried, he was concerned. He was worried about ... that the guarantee mightn't stick, worried that it wouldn't be enough to ... that this shot wouldn't be enough to rescue ... and worried about his ... what was facing him next morning in terms of talking to key people ... ECOFIN people and his international colleagues.

Deputy Kieran O'Donnell: How did you manage, sorry finish out.

Ms Cathy Herbert: And he was ... but ... he was also conscious of the moment of the decision that had been taken, the importance of the decision. He was conscious of the liabilities that were being taken on and-----

Deputy Kieran O'Donnell: Did the issue of the nationalisation of Anglo come up?

Ms Cathy Herbert: He didn't mention that to me and I wasn't ... I hadn't, at that stage, known that this was a possibility. He actually didn't discuss banking matters with me in advance. Occasionally he would throw his eyes to heaven and shake his head and say "The banks." But we didn't discuss in any detail and that was fine. I had a lot of things to be doing in terms of the budget.

Deputy Kieran O'Donnell: He didn't mention the deliberation with the Taoiseach, with Brian Cowen on the night on Anglo?

Ms Cathy Herbert: No, no, I mean I was talking ... I was talking ... I was generally saying that that was what happened in advance of the night of the guarantee, we didn't have any ... So I didn't know about Anglo. But I mean, I'm aware of this thing that he was overruled on the night and I'm not clear really. I gather that was from the evidence of the Governor of the Central Bank and I'm not clear really whether that-----

Deputy Kieran O'Donnell: And Mr. Cardiff.

Ms Cathy Herbert: Yes and Mr. ... but he didn't say he was overruled. I'm not clear-----

Deputy Kieran O'Donnell: Well, yes he said there was discussions-----

Chairman: Can you let the witness give us her interpretation of it rather than your own

projections, Deputy? Ms Herbert.

Deputy Kieran O'Donnell: My apologies.

Ms Cathy Herbert: So I think there's no doubt that there was a ... that Brian Lenihan had argued strongly in favour of nationalisation that night. That's not in dispute. But this idea that he was overruled ... I'm not sure, I'm not clear whether that was the Governor's own language or whether he was quoting the Minister. It doesn't sound right to me, that he would say he was overruled because he had ... he knew how Government decisions were made. I mean, the business of government is that you ... people get together ... I know there wasn't formally a Government meeting that night but the discussions that would have taken place between himself and the Taoiseach were, in their nature, a Government decision. And he ... they would discuss matters and they would come to a position. And Brian Lenihan would have known that once that decision was made, whatever your ... you argue the toss, you make your case and whatever happens, once the decision's made, your job is to go out and defend that decision and execute that decision, and that's what he did. And, you know, there is no other way that Government can work, that is collective Cabinet responsibility.

So I wouldn't ... it sounds strange to me that he would have said he was overruled. I think I heard the evidence given by Dermot ... the chairman of ... Dermot Gleeson, and it sounds like something he would have said; the other didn't. Maybe the Governor, in fairness, wasn't saying he was overruled, that might have been his language. But I don't think that that's how he would-----

Deputy Kieran O'Donnell: And on the night, around the communications with, we'll say, ECOFIN partners and the ECB and that, what was decided on the strategy to communicate to them about this pending announcement?

Ms Cathy Herbert: Well, the decision was that they would ring them next morning.

Deputy Kieran O'Donnell: Were you involved in that, Cathy?

Ms Cathy Herbert: No, that was his private secretary, Kevin Cardiff and himself. And the Secretary General, David Doyle, I'm sure would have made a list of people that he should ring and he was to go in early that morning at 6 a.m. to make those calls, and then to prepare for a media announcement.

Deputy Kieran O'Donnell: Can I ... I suppose, so like, you've quoted in your speech ... sorry, in your witness statement, that it was the unanimous view ... quote from Brian Lenihan, he gave a presentation, he was before the finance committee, where he said "the unanimous view of the Central Bank and regulator and the advice I received from my officials [conclusions]". Did it come up at all ... the fact that Merrill Lynch and the NTMA and Kevin Cardiff appeared to be supportive of the nationalisation of Anglo? Did that come up in any discussions with Mr. Lenihan and yourself?

Ms Cathy Herbert: Not in advance and actually not afterwards. We didn't go over the entrails of that at all. Events were moving very quickly. There were ... you know, he had to go out and act on the decision that was made and we didn't really have time to have a post-mortem on the decision, if you like.

Deputy Kieran O'Donnell: And then, you make reference in your speech ... in your witness statement, on page 4, as well, "The fact that the assumptions that underpinned the Guar-

antee were proven to be entirely unfounded within a short period of time shows how woefully ill-equipped and ill-prepared the system was to meet the scale of the crisis.” Can you elaborate on that?

Ms Cathy Herbert: Well, I think it’s clear now to us all that the system was very ill-prepared. I mean, there seemed to be a lot of preparatory work ... as Kevin Cardiff has ... if you read his book of evidence, it’s clear that a lot of preparatory work was done. But there wasn’t any contemplation of what would happen if there was a serious property crash. So, if you like, people seemed to be hidebound ... and the people advising the Minister seemed to be hidebound by a certain set of assumptions. And-----

Deputy Kieran O’Donnell: Had he a lot of interaction ... the Minister, the late Brian Lenihan, had he a lot of interaction in the months ... he went in as the Minister for Finance in May 2008, the guarantee would have happened four or five months later. In that period of time, was there much interaction with the Central Bank, the Financial Regulator, the NTMA, various, we’ll say, other agencies, on the banking issues?

Ms Cathy Herbert: Yes, a huge amount of interaction. And frequently they gathered on a Friday evening ... late on a Friday evening, about 7-ish. I would be leaving my office and I would see that they were collected there. That was a regular occurrence and that was before ... obviously, those meetings became more frequent in September. I’m sure there was ... there were meetings, I know, in the Central Bank as well.

Deputy Kieran O’Donnell: Who would have been present at those meetings?

Ms Cathy Herbert: Well, it would have been representatives of the Central Bank, the regulator, the NTMA, Department officials, senior Department officials, the Minister. I don’t know that he attended all of the meetings but he certainly would have been at quite a few of them.

Deputy Kieran O’Donnell: And you follow on then on page 6 and it’s more just to get a flavour, you say, this is in terms of recapitalisation of the banks, you say:

It became evident that Bank of Ireland was our only hope [in terms of being able to, you know, to operate on its own exposure] ... it was a blow to discover AIB was not far behind Anglo.

Ms Cathy Herbert: Yes.

Deputy Kieran O’Donnell: When did the Minister realise ... the late Brian Lenihan realise how bad things were with AIB?

Ms Cathy Herbert: Well, I think that didn’t become clear until after the PwC reports and the various processes and, of course, that was an ongoing thing because it took ... it was extraordinary but the systems in the banks seemed to be terribly inadequate and poor.

Deputy Kieran O’Donnell: Do you feel that the banks had in any way misled him?

Ms Cathy Herbert: I think he might have been suspicious about that at times. I don’t think he knew whether he was being misled or whether it was the ineptitude of the systems - their records that they didn’t seem to know who had ... the extent of their exposure. This issue of cross-collateralisation, which I referred to in my statement. So it was difficult for him to know, I think, at times whether he was being misled or whether it was just ineptitude.

Deputy Kieran O'Donnell: But did-----

Ms Cathy Herbert: Whether the banks were-----

Deputy Kieran O'Donnell: Had he become suspicious of the banks?

Ms Cathy Herbert: Well, I think, yes he had ... he'd found it very difficult. Now when ... obviously when you get to deal with individual members or individual executives in the banks, then you try and come to terms with ... But yes he was suspicious. Yes.

Deputy Kieran O'Donnell: Okay. Can I just go ... move on to the whole issue around the bailout and, obviously, your area of expertise in the media and that? What follow-up with the media took place, we'll say, on foot of Professor Honohan's telephone call, that fateful telephone call to "Morning Ireland" on the morning of 18 November from Frankfurt announcing to the public that he expected negotiations to lead to a very substantial EU-IMF bailout and what advice did you, as his adviser, give to the Minister on how to deal with Governor Honohan's announcement? Were you surprised?

Ms Cathy Herbert: Governor Honohan's announcement? Yes, we were taken by surprise by that announcement and it made for a difficult day. We didn't have to do much follow-up to the media. They were following us up pretty quickly. The phones rang-----

Deputy Kieran O'Donnell: How did you advise the Minister? How did you earn your crust on the day?

Chairman: Let Ms Herbert respond, then we'll bring in another questioner. Okay.

Ms Cathy Herbert: I mean he had to deal with the ... what the Governor said. He had to ... I think, if I remember correctly, I think there was an engagement in ... there would have been Leaders' Questions. He would have an engagement in the Dáil and that and I mean, he simply had to go out and say, "Yes, this is the case and this is what we're doing." I mean, he had actually on the Wednesday morning done an interview when he said ... indicated that discussions were taking place at official level and things, you know, the matter was being explored. But for reasons the Government didn't wish to narrow their options or weaken their hand, they wanted to keep their powder dry for negotiations which they expected to take place. They didn't go out and confirm. I mean, it wasn't a great moment but, you know, he had to deal with what ... he clearly went out and said "Yes, this is the case."

Deputy Kieran O'Donnell: Was he irritated by it?

Ms Cathy Herbert: He was irritated by it. Brian Lenihan was only ever irritated briefly. I mean, not long afterwards he said to me, you know, "The Governor had his own pressures. He's a member of the ECB. He's independent in the exercise of his duty." He had appointed him as Governor and he got over it. Now, I mean, it didn't have a serious impact, I think, on the discussions, you know, the possibility of, for instance, our corporate tax rate becoming an issue. But that was in the days before Governor Honohan made his announcements. That had been an issue and as Kevin Cardiff says in his evidence, it was raised at a very senior level with them.

Deputy Kieran O'Donnell: So at that point, when Professor Honohan had come out on the 18th, were ye already, effectively in substance, in discussions on applying for a bailout with the EU ... in substance-----

Ms Cathy Herbert: Well, this is the point. I mean, what ... as Kevin Cardiff points out in

his evidence, the previous weekend there were discussions going on at official level. I mean, clearly if you say there are discussions going on at official level, then you are in ... if you say that then, you know, the momentum builds up and the Government is about to enter a bailout. So there were reasons not to go public on that. We were operating in a very, very difficult environment because there was briefing in various European capitals, given by unnamed sources from institutions in Europe and it was extraordinarily difficult. I mean, the normal rules of negotiation were set aside and essentially we were being media-manipulated into a position.

Deputy Kieran O'Donnell: Who in your judgment was actually carrying out those briefings?

Ms Cathy Herbert: Well, it seems clear that, well there was unnamed sources in various capitals. I know that Brian Lenihan had a view afterwards that perhaps central bankers in individual member states were active and speaking on our behalf and speaking out of turn. It seemed, actually when ... I mean I know there has been a lot of criticism and rightly so, deservedly so, about how the Government and how we in government handled that announcement. But I have to say there seemed to be a fair amount of panic on the other side as well. Europe seemed to have been, you know, the bank was panicked almost.

Deputy Kieran O'Donnell: The ECB?

Ms Cathy Herbert: The ECB. I mean the increasingly sort of ratchet, the ratcheting up of their communications to the Minister in advance. They seemed to be very panicked about the extent of their exposure and it seemed as if what happened in Seoul of all places spooked them a little bit.

Deputy Kieran O'Donnell: Okay.

Ms Cathy Herbert: And I think that they were, you know, they didn't ... they weren't exactly composed either in the way in which they handled it.

Deputy Kieran O'Donnell: And do you think that in substance, was the Government bounced into a bailout by the ECB and European partners or was it just a matter of timing that Ireland was going into a bailout anyway?

Ms Cathy Herbert: I think a bit of both. I think it was a matter of timing. I think that what Brian Lenihan was trying to do was to design ... I mean when Olli Rehn was over after all just five days previously, they ... there was discussion around, at a meeting in advance of his press conference, around the idea of a precautionary bailout so that he would, you know, that we had our four-year plan, that it was something that would come from Government and that there would be supervision. Now there had been a huge amount of supervision anyhow in ... and interaction with the ECB and the EU on budgetary matters from September and that that would continue and that we would be allowed, with the supervisory ... supervision of the institutions to implement the four-year plan which was going soon to be-----

Deputy Kieran O'Donnell: Can I just go on to an area. When Minister Lenihan ... you had been with Minister Lenihan through all his Ministries and you provide a unique insight. He came in as Minister for Finance on 7 May 2008. He brought in a mini-budget of reform just over two months later on 8 July for €440 million of cuts. Was he surprised with the state of the public finances when he became Minister for Finance and ye entered the steps on Merrion Street?

Ms Cathy Herbert: I think there had been some indication that things, you know ... the figures ... various indicators had been taking a bit of a dip. But he was surprised and he had been told, obviously. He had been briefed about it when he entered the Department and the Taoiseach had ... would have told him and the Minister for ... as Minister for Finance he would have also briefed the Ministers about, you know, what was happening in terms of the economic indicators. But the speed which it gathered pace, I mean, after that mini-budget, it was very clear by the time we came back in September that that wasn't enough. Then therefore, there was the budget was brought forward to October. The Department at that stage were indicating that the ... the returns could be down €5 billion. In fact, it was €8 billion. So it really gathered speed and-----

Deputy Kieran O'Donnell: How did you find your interactions with say, with fellow Ministers, Cabinet Ministers and the general ... his role as Minister for Finance which was ... which became a role of containment and contraction, how did ye find within the Government itself, the buy-in from other Government Departments and Ministers?

Ms Cathy Herbert: It was ... it was difficult obviously. Ministers had to face cuts in their Departments and, I mean, politically it was very difficult. And I think it probably took a while for him to bring that home to Ministers. The speed at which it caught ... it happened was ... caught everybody by surprise. And I think also that during the Celtic tiger era - and a lot of those Ministers would have been Ministers throughout that period ... you know, the Department of Finance crying wolf again was, you know ... might have ... there might have been a fear, "Oh, this is Department of Finance at it again." But he ... so he had to work hard-----

Deputy Kieran O'Donnell: Do you feel it had lost its teeth over the previous number of years?

Ms Cathy Herbert: I think that inevitably, at a time when things are going well, a Department of Finance probably does lose its teeth and influence. And the centre of activity, if you like, a lot of it took place in Government Buildings. Social partnership was a key part of it and the Department was a bit sidelined. But clearly when the crisis happened and when it really hit, that was front and centre of our minds. They were back in the driving seat. But it probably took time for him to bring home to his Government colleagues exactly how bad the situation was.

Deputy Kieran O'Donnell: And how did he find the quality ... well, what's the word, the expertise within his own Department when he joined it in terms of dealing with what had been happening over the last year in terms of ... the last year or two in terms of the banking crisis, and generally what ... how did he find the level of advice within the Department? He appears to have been ... had a propensity to ring people for advice and you make reference to that. Generally, how did he find the Department?

Ms Cathy Herbert: Well, I think that the findings of the Wright report about the lack of expertise in some specific areas, and the generalist nature, I think he ... that was something we found when we went into the Department of Finance. Nonetheless, when ... you know, once the crisis happened, the handling of the crisis was very good. He had to knuckle down very quickly and the Department had to get used to this new Minister. And I think the level ... the advice that ... you know, there was lots of ... there was for ... the NTMA was advising ... there was excellent advice. I mean, he was taking advice, obviously, from the Financial Regulator and the Central Bank which proved not to be very good advice. I think they all had to learn that, you know, that there were lacunae in the advice that was given. He did seek advice outside. He ... I know that Governor ... the then ... Professor Honohan - Patrick Honohan - was in on a number of oc-

casions in those months leading up to the guarantee. There were a number of ... Phillip Lane, Alan Ahearne, whom he later appointed as his adviser - who was a significant contrarian at that time - he was in on a number of occasions.

Chairman: Final question, Deputy.

Deputy Kieran O'Donnell: And I notice that David McWilliams was in on that ... was ... would have been another one he would have conferred with. And just, I suppose-----

Ms Cathy Herbert: I think actually he probably visited McWilliams's house. I'm not sure that he did come in.

Deputy Kieran O'Donnell: Yes, and did ... did he ... when he wrote his book subsequently, how did the Minister Lenihan react to making public ... David McWilliams making public his deliberations with the Minister?

Ms Cathy Herbert: I think he was not surprised. He was ... he took fun in saying it was inaccurate in certain respects, sort of like the timing and whether or not he'd chewed garlic there, or something like that, I can remember those details-----

Chairman: This was definitely covered that morning, so I'm going to move on really on that point.

Deputy Kieran O'Donnell: No, it was actually, just one tiny ... just finally-----

Chairman: Okay, take the question, yes, forget about the garlic.

Deputy Kieran O'Donnell: -----and I know it's probably a very hard question but, with the benefit ... in your deliberations with Minister Lenihan, was there any area that he would have liked to have done differently during his period of time as Minister for Finance, or there were areas that he-----

Chairman: You're running out of time now so I need to push it.

Deputy Kieran O'Donnell: Yes.

Ms Cathy Herbert: Well, I think he ... he felt that he took the decisions he did in the best interests of the entire country. He was a great man for believing in the common good. He obviously deeply regretted the hardship that those decisions caused. There was specifically ... he regretted some of the decisions on ... on VAT, for instance, he felt that that was a retrograde step and it hit people, poor people, and people on lower incomes. But, in general, I think that he felt he did what ... the best thing he could for the country and I ... you know, on the guarantee, for instance, afterwards very close to the end of his life he said it was on ... I had a conversation with him where he said, on balance, it was probably the best decision that they could have made at that time.

Chairman: Thank you. I just want to deal with just one other further line of evidence on that and coming back to the night of the guarantee and given your own presence at that meeting, if you could provide us any information as to whether the banks brought a document with a draft wording for a bank guarantee that night, and if they did, which bankers were it? And could you be able to describe the type of guarantee that they may have brought with them?

Ms Cathy Herbert: Well, all I know about that, Chairman, is really what Kevin Cardiff had

to say. I wasn't aware of any document being brought by them, by ... that night. I wasn't aware that night. I do know that my contemporary knowledge that night was that I wasn't aware. But I did become, I mean, it became something that I heard from various actors later, that they had come in with a guarantee. And Brian Lenihan, in that ... in his ... when he appeared before this committee, in 2009, the finance committee, as it then was, he did say that the two banks wanted a guarantee.

Chairman: But a document being brought to the meeting - you have no visual evidence of that or recollection of that, or such?

Ms Cathy Herbert: No, no, I don't have any ... anything that I can add to what Kevin Cardiff had to say.

Chairman: Thank you very much. Senator Sean Barrett.

Senator Sean D. Barrett: Thank you and welcome, Ms Herbert. You say on page 4 of your document - and it echoes some of the discussion you had with Deputy O'Donnell just now - where you talk, in the fourth paragraph of your statement, about your relationship with the departmental officials, "From the knowledge I subsequently acquired it is clear that many of these advisers were hampered in their analysis of the crisis by their unswerving belief that our banks were fundamentally sound, and their failure to consider the possibility that their might be a crash rather than a soft landing in the Irish property market." As the old examiner question used to be, discuss and expand on that.

Ms Cathy Herbert: Well, simply to say that I didn't know that, I mean, I had ... I knew, obviously, this soft landing idea, that there wasn't going to be a crash and, that it was ... that had ... that was ... that had become a cliché of the time. But I didn't realise the extent to which that had taken root and that it was an obstacle to ... it clearly was an obstacle to the advice that the officials gave, with simple reason that they hadn't allowed themselves to think beyond that it seemed to me.

Senator Sean D. Barrett: And the banks being fundamentally sound, you know, was there any consciousness that you came across that, you know, extending credit by 25% a year ends in some kind of well a crash rather than a soft landing, I suppose?

Ms Cathy Herbert: No and, I mean, from what we now know, of course, it seems extraordinary that that should be the case. But it was ... and I suppose the soundness of the banks was completely dependent on the property prices and ... because so much of their exposure was to property, although we didn't know the entire extent of the exposure at that stage.

Senator Sean D. Barrett: Can you recall ... Mr. Cardiff, in his evidence, referred to 17 September, an update provided to Minister Lenihan ... to the Minister for Finance, noted that the Irish Stock Exchange had lost almost half its value since the early part of 2007, and that the main Irish banks had lost more than 70% of their value since their peak, and AIB and Anglo lost 15% and 20%, respectively, in just two days? Did you have to prepare a media strategy to deal with that? And did the Minister relate to you, in such a-----

Ms Cathy Herbert: No, I actually saw that document because it was circulated to me, and that was my first, if you like, serious sounding warning about what the people in the Department were thinking. But I mean the ... actually the media strategy was not to say anything that would undermine the banks and that was very important. That would shake confidence. So I mean I suppose, subsequently the ... arose out of that was the deposit guarantee, the change in

the amount to be guaranteed by the deposit guarantee. So that initiative arose out of that. So the media strategy was actually not to say anything that would frighten the horses about the banks.

Senator Sean D. Barrett: Yes, I think the deposit guarantee was on the 20th, wasn't it, just a few days later? In the light of what we now have ... constructive ambiguity - does that make it impossible to have a media strategy?

Ms Cathy Herbert: Yes I think it is very difficult, if you can't talk about a problem. I remember actually the morning of ... the decision to increase the amount to be guaranteed and the deposit guarantee was taken on a Saturday morning and, obviously, ... sorry, the decision arose at a meeting the night before and, obviously, it was one of those meetings that all the various advisers had in the Department with the Minister on the Friday night because he rang me on that Friday night and he said, "There's to be an announcement tomorrow about the deposit guarantee. There's a press release to go out. Could you come in and make sure that the press release is okay?" I went in. I had no hand really in the press release because it was quite a technical matter and it was Kevin Cardiff who was involved in it but the Minister gave some interviews afterwards in Government Buildings and I remember I thought he handled it as well as he could. And I remember turning to Kevin Cardiff and saying, "Was that okay?" And he was very, very tense and said, "Any discussion about the banks at this stage in public is really problematic and difficult." So I began to appreciate and understand the stress that they were operating under. I mean, the discussions about the banks, as I said, in advance of the guarantee was very small, held very tightly among a very small group of officials - it had to be. And it really was, I suppose post the guarantee, that people began to talk about it and that, in a way, made it easier, I suppose, for options to be explored. There was exploration of options but when others were talking about it then and when it was out in the open, you know, I think it widened the range of advice.

Senator Sean D. Barrett: Was it a stronger policy other than hands-off, sort of, parts of those discussions? Either you're afraid of markets and say, "Don't frighten the horses", or we say, "These are our rules on loans-to-deposits and loans-to-value these are rules of sectoral concentration. We're putting them there and whether the market likes them or not, tough luck." Were we afraid of markets more or less in that period?

Ms Cathy Herbert: Yes, I think so. I think the market was very much the ... I think so, I think we were very much in control. We were so dependent, I presume, on wholesale ... We were depending on the markets; the banks were hugely dependent on the markets.

Senator Sean D. Barrett: Thank you. Now in your witness statement, you say that it was also made clear by the ECB that Ireland and any other eurozone country with banking difficulties should do whatever was required to save their own banks. When did you become aware of that and did you follow up with the Department of Foreign Affairs to advance our position or, I suppose, try to "re-Europeanise" the banking crisis rather than that "You're on your own" message?

Ms Cathy Herbert: Well, I think the "You're on your own" message came clearly from the very top of the ECB. I certainly though I wasn't aware of it before the bank guarantee, I certainly heard from Brian Lenihan afterwards and others that Mr. Trichet had been in contact to say, "You know, whatever you do, you must save your banks, stand by your banks." And I think I wouldn't have known the detail but it was made clear that you should do that by yourselves, that there wasn't going to be any pan-European approach taken to this and that was the experience in other countries at the time.

Senator Sean D. Barrett: You state that on page 11, “By and large, we were left to fend for ourselves by the EU.” But on page 10, you say, “As an effective lender of last resort, the ECB played a key and very powerful role in our banking crisis.”

Ms Cathy Herbert: I think that was subsequently and I mean, after the deposit guarantee ... sorry after the bailout, I remember having a discussion with Brian Lenihan where I was talking about the role of the ECB and he was very quick to say, you know, where would our banks have been without the ECB? They had a huge level of exposure to Ireland and they lent to Ireland at a very crucial time. And that’s true but I think his difficulty was that they didn’t want to tell the markets they were lending to Ireland. And that was the problem, that they ... they did so, but it was almost like the love that dare not speak its name. They were ... they did support our banks but they didn’t want to let anybody know about it and they weren’t happy about the extent of their exposure.

Senator Sean D. Barrett: Well, that brings up the prospect that that ELA funding was, if you like, the gateway drug to irresponsible banking; that this money was there and they used it to a degree that annoyed Mr. Trichet, who then bounced us into the guarantee.

Ms Cathy Herbert: How do you mean “the gateway drug” to, to-----

Senator Sean D. Barrett: That banks had this source of finance which wasn’t very well publicised and became addicted to it, rather than reforming banks.

Ms Cathy Herbert: Well ... but I think that that became an issue simply when the markets ... when the markets closed to Irish banks. I mean, clearly then there was huge dependence on ELA but I don’t think that was the case before. I don’t know enough about it to say that that was the case before but I think it was when ... when the banks could no longer get money on the wholesale money markets that they had to rely on ELA. But, I mean, the idea that it was a gateway drug, I mean, it was essential. We couldn’t possibly have taken on ... financed the banks by ourselves, the State.

Senator Sean D. Barrett: Your statement on page 7, you say that Anglo, “There was no question of allowing a bank with a deposit base of €11.6bn from its Irish clients alone, to close its doors.” Wasn’t the counter-argument that Anglo had only a couple of hundred customers and, in fact, it was all in property and a lot of the property wasn’t even in the country. So that, you know, was there a case for either nationalisation or just letting it go?

Ms Cathy Herbert: Well, I don’t ... I don’t think anybody has suggested that ... well, some people have suggested, obviously, that you could have let Anglo go but I think nobody advising the Government at the time, and I think Governor Honohan, in his report, didn’t contemplate the idea of letting Anglo go. I don’t think we could have done that. And the fact that it was exposed to property to such an extent and that there were ... the number of borrowers was small, that their client base was small, that it was the size of the exposure that was the issue. We couldn’t have taken on that, the State.

Senator Sean D. Barrett: The ... the communications, Mr. Cardiff referred to those as well, if I could bring you back to that, the comment on the decision to enter the bailout discussions in November 2010, “the communication at Ministerial level over the weekend had not been clear enough to prevent them walking into trouble”. How did you try to have the harmonised message across the Government on the bailout negotiations?

Ms Cathy Herbert: Well I ... I actually ... I didn’t brief the Ministers. I think that it might

have been actually the Minister and the Taoiseach, or maybe the Government press secretary, who briefed the Ministers at the time. Clearly what we were saying was that the Government wasn't in bailout negotiations. Now, there were discussions going on at official level. It's obvious that the message that the Ministers should have been given, we should have been nuanced to recognise that, but I think the anxiety not to confirm - because once you confirm, then your options for negotiation are greatly narrowed - blunted that. It meant that the subtleties weren't gone into and that that was ... if you like, the message was just too blunt and it should have been more nuanced, clearly.

Senator Sean D. Barrett: Is that inherent in an incorporeal Cabinet meeting, that the normal Cabinet discussions and your Minister discussing with other Ministers and hearing their views, is replaced by a phone call?

Ms Cathy Herbert: Is it ... is it inherent?

Senator Sean D. Barrett: Is it inherent that you're going to have communications difficulties if we don't have full Cabinet meetings?

Ms Cathy Herbert: I think so, and I think that, for that reason, that the incorporeal meetings aren't ... are rarely used but the Minister would have spoken to both those Ministers and the Government press secretary. But, you know, maybe ... perhaps the anxiety to keep our negotiating position ... you know, to keep our powder dry, overruled the subtleties that should have been given in the message that we were exploring, but it was very, very difficult. If you ... if you say that explorations are taking ... or discussions are taking on it ... taking place at official level, particularly with the level of briefing that was taking place on that Saturday, you know, you're railroaded very quickly into a situation of finding it difficult to say ... to hold your position that discussions ... that the Government hadn't entered negotiations, which was true, the Government hadn't entered negotiations, hadn't yet made that decision.

Senator Sean D. Barrett: Yes.

Ms Cathy Herbert: It was going a particular direction but they hadn't formally made that decision and that was very important for the outcome of those negotiations.

Senator Sean D. Barrett: Was this the only occasion, in your time, that those incorporeal Cabinet meetings were held or were there other examples?

Ms Cathy Herbert: Well, there was one on the night of the guarantee.

Senator Sean D. Barrett: Yes.

Ms Cathy Herbert: Generally, I'm open to correction here, but generally an incorporeal meeting takes place to ... when there has been some discussion beforehand, when people - you know, Ministers - may have some background, when there is an urgency about the decision. It's not ideal, obviously, but it sometimes, you know ... and that night, there ... you know, we had to have the message out before the markets opened the next morning. So, there were pressures and sometimes that happens but it's used, as far as I know, very sparingly.

Senator Sean D. Barrett: The absence of documentation at crucial stages, that must have been a nightmare for somebody in communications, in the Department and after crucial meetings. Have you any light to shed on that?

Ms Cathy Herbert: Well, I think that, on the night of the guarantee, there was ... a press

release was put together, so that was the briefing and briefing was being prepared next morning ... that night, officials were preparing briefing for next morning, so there was material there. I mean, the meetings leading up to it, there ... you know, there seems to have been a dearth of material. I think Kevin Cardiff has some notes but there wasn't ... there didn't seem to be ... and the meeting, the Government meeting that night, there's clearly very little, but out of that, there was a consideration for what would be said in the media and a press release was put together-----

Senator Sean D. Barrett: I think-----

Ms Cathy Herbert: -----by Kevin Cardiff.

Senator Sean D. Barrett: Yes.

I know it was at a very late stage, at four months, I think, before the guarantee that Mr. Lenihan and you moved into that Department but, going from Mr. Cowen's evidence yesterday, he's impressed at this stage by the way countries like Canada regulate banks and didn't have the dreadful situation we had. Was there ... and it was a short period as well, but other witnesses have ... you know, have wondered how did an extremely conservative banking system go so broke, as happened to the Irish one. Was that discussed at all, in your presence? What had happened to Irish banking to be so solvent, so conservative and then so bankrupt?

Ms Cathy Herbert: Well, I think Brian Lenihan wondered about that right until the end, you know, how ... I mean, he always ... his ... whenever Anglo was mentioned, he said it should never have been allowed to grow to that extent. The exposure to property, I remember him saying the problem was that, in Ireland, there weren't many foreign ... as you have now, there weren't many property people from abroad buying our property, we were all buying our property ourselves. And, you know, that was, you know, I think it was a feature of the credit bubble, of the economic boom that was there, yes. And it was the consequences of it and it was greatly ... something that weighed heavily on him, how did it happen and to make sure that it wouldn't happen again.

Senator Sean D. Barrett: The role of auditors in failing to see so much of what was going on in Irish banking, was that a concern of the Minister?

Ms Cathy Herbert: Yes. I mean, all of the things that led up to the ... to the crisis, all of the ... the analysis subsequently of all of the factors that caused the crisis were of great concern for him and he set about ensuring that or bringing in ... reforming the structures to ensure that that wouldn't happen again. I mean, reform of the regulation was something that was taken on pretty much immediately and throughout his period right up until the end. One of the emergency pieces of legislation I think that was brought in was the credit institutions stability Bill, I think, or ... anyhow, that was to allow for the restructuring of the banking system.

Senator Sean D. Barrett: The communications with the Minister from the Financial Regulator, how did they take place?

Ms Cathy Herbert: Directly.

Senator Sean D. Barrett: Yes.

Ms Cathy Herbert: Through the chairman of the regulator and the chief executive, but they would have been directly ... the chairman, I think, was the man who the Minister dealt with.

Senator Sean D. Barrett: Presumably at the crisis stage they were pretty frequent?

Ms Cathy Herbert: Yes, absolutely. I mean, certainly ... I mean, certainly weekly initially and then I presume daily. I mean I ... as I wasn't involved but there were intensive meetings with the regulator, the CBI, the NTMA and Department officials obviously involved.

Senator Sean D. Barrett: And the contacts between the banks, AIB and Bank of Ireland, with the Minister, were they just in the immediate run up to the night of the guarantee or had they been on an ongoing basis?

Ms Cathy Herbert: Well, I think it was normal practice that the chairman of the bank would meet the ... of banks, would meet the Minister and chief executive would meet officials. So there were contacts of that level. I'm not so sure, certainly afterwards, there was a lot of meetings. I'm sure you would have met the chairmen of the banks, I actually don't know that. But certainly after ... in after the guarantee obviously the State was much more involved in the entire banking system and there were regular meetings.

Senator Sean D. Barrett: Thank you very much. Thank you, Chairman.

Chairman: Thank you very much. Can I just deal with one matter that Senator Barrett was discussing with you, Ms Herbert, and that goes back to the situation in regard to ... in your own statement, you say, "It had also been made clear by the ECB that Ireland, and any other Eurozone country with banking difficulties, should do whatever was required to save their own banks." I just want to chase one line, actually, on that. What was actually ... you're not a finance expert and your role before this committee, even though you can offer opinions as to what maybe the Minister Lenihan was thinking at the time, your expertise would be the area of communications. Maybe if you could discuss what was the communication strategy that was to be developed by the Minister and the Department to counter what was maybe coming out of other quarters in the guarantee period?

Ms Cathy Herbert: In the guarantee period-----

Chairman: Yes.

Ms Cathy Herbert: -----or the bailout period?

Chairman: I'll come to the bailout period in a moment-----

Ms Cathy Herbert: Yes.

Chairman: -----and the guarantee period first.

Ms Cathy Herbert: Well I ... because the discussions on banking were held very tight and because there was no public discussion, really, on banking and I wasn't involved in it, there wasn't, as far as I'm aware, communication strategy. Now there were ... I correct myself, there were options being prepared, for instance, the nationalisation, possible nationalisation of an institution. And certainly there was, as I understand it, this is something I subsequently discovered, there was a communication strategy for, you know, for the possible nationalisation of an institution. A communications strategy for customers, how you would communicate with customers, how you ... and announce it to the media. So that was ... on the guarantee, I like ... I don't think that was considered until ... I mean it was considered, but it was ... as a real option that might happen was later on.

Chairman: But there seems to be a very high-frequency signal coming from Europe that no bank would fail.

Ms Cathy Herbert: Absolutely, and that-----

Chairman: Okay.

Ms Cathy Herbert: -----was ... sorry, on that specific issue, that was absolutely the case and I think that that was governing a lot of the decisions that were being taken-----

Chairman: So, you know, so did you or to your knowledge, were you a part of a strategy to agree a communications line with the Department of Foreign Affairs to try and secure understanding from other European capitals on that position? And also, then, to put a position in place to communicate how the guarantee was going to be operated? We have reports that people like Gordon Brown, Christine Lagarde, the following day were quite excited, I suppose would be a term, to describe their response to it. And was there also a strategy in regard to how the Minister would actually go out and present it?

Ms Cathy Herbert: Well I think the Minister communicated directly with those people on that morning and he was on-----

Chairman: On the decision, yes.

Ms Cathy Herbert: After the decision, so he communicated directly with them and that was the idea. I mean the ... to develop a communications strategy for, you know ... I mean, the decision that was taken on that night was taken in very stressed circumstances. It was in emergency circumstances and therefore the communication of that decision directly from the Minister to people like Christine Lagarde, Gordon ... Alistair Darling in his case, that was done directly by him. The Taoiseach spoke to Gordon Brown, I think.

Chairman: And with our European partners, was there any engagement between the Department of Finance and the Department of Foreign Affairs to agree a joint strategy?

Ms Cathy Herbert: I think that the ... certainly, at official level like, Kevin Cardiff would have been speaking to his counterparts in Europe in various treasuries about that ... about the decision that was taken, he would have briefed those people. So the briefing of officials-----

Chairman: I'm not talking about briefing, I'm talking about a communication strategy.

Ms Cathy Herbert: No, there wasn't any communication strategy. The communication strategy was that the Minister and officials would speak directly to their counterparts, to tell them what the decision was. It was very direct.

Chairman: Okay, thank you. Deputy Michael McGrath.

Deputy Michael McGrath: Thank you Chair. Good morning, Ms Herbert. Can I start by asking you about the decision to increase the deposit guarantee from €20,000 to €100,000 on 20 September 2008? Can you outline your knowledge of the events that led to that decision?

Ms Cathy Herbert: The first I heard that that decision was to be taken was when I was phoned late on Friday evening the previous night by Brian Lenihan who asked me would I come in to the Department the next morning, that there would be some media ... he felt he might be doing some interviews and that there was a press release to be got at and would I come in. And I did. The press release was being handled by Kevin Cardiff, he ... it was a short technical press release and then the Minister did some interviews in, as I remember it, in the forecourt of Government Buildings. I discovered afterwards the background to the decision was concern

about Irish Nationwide particularly, the impact and to reassure small depositors or relatively small depositors that their deposits were safe. There was a general statement, I don't have it to hand, but it was to the effect that the Government would stand behind the banks. That was also included in that.

Deputy Michael McGrath: Okay. Deputy O'Donnell asked you about the decision to guarantee the banks. Did Minister Lenihan ever indicate any difference of opinion to you between himself and the Taoiseach as regards the approach with Anglo Irish Bank, that it should be nationalised as opposed to guaranteed?

Ms Cathy Herbert: No, we didn't ... oddly enough he didn't, he didn't indicate to me. I became aware of it afterwards, mainly through other officials who were there, and obviously ... I mean, it's clear now ... but, it didn't emerge to me as a problem and I think that if it had been a problem, if there had been a serious disagreement, in other words, if he felt he had been overruled in ... and if he was ... had a complaint, I would have known. And I didn't ... he would have discussed-----

Deputy Michael McGrath: Okay. The national recovery plan, which was published around the time of the bailout in November 2010, when did the work start on that, Ms Herbert?

Ms Cathy Herbert: September. I think that the idea of it was mid-September, that we would do this and we talked to Europe and we really began in September. It was quite an undertaking, he ... Brian Lenihan ... it was a group of officials who took charge of it and did the work, a group of us, a small enough group of us. And the Minister, you know, oversaw that work regularly in intervals, he was extremely busy obviously on the banking thing but he was very keen that that should be a document that could be read by any citizen and that it would stand up and that people would understand what we had to do.

Deputy Michael McGrath: Okay. You say in your witness statement that "many of [the] advisers were hampered in their analysis of the crisis by their unswerving belief that our banks were fundamentally sound". When it emerged subsequently in 2009, in 2010, when the full scale of the recapitalisation emerged, how ... did the Minister ever express any frustration to you as to the nature of that advice and the difficulty of getting to the bottom of the black hole in the banks?

Ms Cathy Herbert: Well, I think it became clear, once it became clear that the Pricewaterhouse ... the Department, in fairness, began to be sceptical about the advice from the regulator pretty soon after the guarantee, if not a little bit before that actually.

Deputy Michael McGrath: Sceptical?

Ms Cathy Herbert: Sceptical. They ... I mean they were worried about the ... you know, exactly this whole idea that the banks were sound, they were sceptical of that that was the case. Kevin Cardiff says that in his advice ... in his evidence, as well. And they ... that's why they pushed for PwC to be brought in to - and the NTMA were also quite sceptical - to look at the banks. And of course they came back with advice that was ... that they were actually sound and that ... and this was an ongoing difficulty. I mean, the whole recapitalisation and getting to the end of what was happening inside the banks was a running sore throughout the crisis. And it was ... he did express frustration but, I mean ... I think also that the situation was worsening as property prices went down. Obviously the situation in the banks was getting worse but it was quite remarkable that the banks seemed to have such little handle, themselves, on their own

exposures.

Deputy Michael McGrath: And then prior to the guarantee, did the Minister ever consider the need to, you know, carry out a root-and-branch review of the banks from January to September 2008, to actually ask the regulator to go in and do a detailed assessment of the underlying health of the banks? Was that ever discussed or considered?

Ms Cathy Herbert: I don't know because I wasn't involved in those discussions. He came in in May. It may have been something that he was pushing for - I don't know - but very soon after the guarantee decision was taken, we had the ... PwC went into the banks and then the appointment of Jones Lang as well at a later stage to look at what they ... to look again at their analysis. He was, I now know, concerned ... very concerned about Anglo and the growth in it and it was a big bank and that was the one ... that was the institution ... it and Irish Nationwide were the institutions that were most exposed. And I think that that might have been why he ... I think ... my understanding from discussions we had - and I can't remember chapter and verse on it - was that that probably was what was behind his idea of nationalising Anglo. It was to distinguish ... to draw a distinction between this bank and other banks. I think he wanted to, for the reputation of the financial institutions, to say, "Okay, so these banks are bad and this is how we're going to deal with them but these are okay." But of course at that stage he didn't have the benefit of knowing exactly how bad the other banks were, all our banks were.

Deputy Michael McGrath: And did he ever indicate to you then what his plan was in terms of Anglo, if it was nationalised, what to do with it then? Was it to strip it down in some sense and protect the good assets?

Ms Cathy Herbert: I think ... well, I think so, and that ... I'm in danger now of-----

Deputy Michael McGrath: Okay.

Ms Cathy Herbert: -----doing what I said at the end, of overlaying my information that I subsequently acquired-----

Deputy Michael McGrath: Okay.

Ms Cathy Herbert: -----to what I knew at the time.

Deputy Michael McGrath: Okay.

Ms Cathy Herbert: So-----

Deputy Michael McGrath: Your particular role focused on communications. So in terms of the bailout and the lead up to the bailout in November 2010, to what extent was the Minister unhappy with the level of public knowledge which emerged? And obviously when Governor Honohan made the phone call to RTE and the IMF arrived in town on, I think, 18 November, the whole thing blew up. But what was the Minister's view? What ... was he trying to, in a sense, maximise the negotiating position of the Government or why was there an element of not telling the public fully about the preliminary negotiations which were going on?

Ms Cathy Herbert: Well, I think there was a concern to maximise the negotiating position but also, I think, that it happened so quickly ... we'd had that meeting with Olli Rehn on the Monday and by the Sunday ... the Saturday and Sunday, there was this intensive briefing going on. And I think Brian Lenihan knew that maybe we would need ... we would end up at some stage in a bailout. But he was anxious, if he could, and he fought for a long time to do it, to see

if we could get this idea of a precautionary bailout, that we would implement the decisions ourselves under intense supervision. We had our plan almost complete at that stage and that's what he wanted to do. And I don't suppose there's any Minister for Finance that gladly embraces the idea of a bailout, you know, and I think he had fought a hard battle to try and keep the country out of a bailout and then, ultimately, that's what happened. And naturally there was a reluctance on the part of the Government generally, I would imagine.

Deputy Michael McGrath: And was he ... was he particularly uneasy or unhappy then about any element of the bailout package which was subsequently negotiated and agreed?

Ms Cathy Herbert: Well, I think he was unhappy about the interest rate. He was very concerned about the fact that there was no clarity in what was going ... what the proposal was to deal with our banks. He was very concerned about that. He had been listening to the Central ... to the ECB since September talking about urging "greater fiscal appetite", as they called it, and he didn't see the connection between what ... he just didn't see how that was going to end up helping our banks. He realised that the ... you know, here they were saying that they were very unhappy about the extent of ELA, threatening to withdraw ELA and, at the same time, no plan to provide us with a way of dealing with our banks, and it was essential that we had. And "greater fiscal appetite" was not going to do that. He knew that.

Deputy Michael McGrath: And what greater clarity was he looking for in terms of the future of the banks-----

Ms Cathy Herbert: Well, he wanted ... he wanted it to-----

Deputy Michael McGrath: What specifically?

Ms Cathy Herbert: -----be clear. In a way, it was like as if ... Europe, generally, the institutions, you know, that they didn't ... they only fitfully took an interest. And the ECB didn't seem to take an interest. They weren't particularly interested in our banks and our problems and, obviously, the fact that the ELA had to be approved on a fortnightly basis, I think that inevitably meant that, you know, that they were very conscious of it. But they weren't looking at our entire banking problem and taking an interest and helping us how to solve it.

Deputy Michael McGrath: Okay. Finally, Ms Herbert, you mentioned the issue of corporation tax. Can you elaborate on the level at which the corporation tax issue was raised? Was it prior to the bailout negotiations? Was it ECOFIN? And who specifically raised the issue of Ireland's corporation tax and what were they looking for?

Ms Cathy Herbert: Well, it was being raised by individual governments at ECOFIN. I think the French, I think-----

Deputy Michael McGrath: To increase the rate, is it?

Ms Cathy Herbert: Yes, to increase the rate. Absolutely to increase the rate. But more alarmingly was ... and Kevin Cardiff has it in his evidence, that it's fairly senior officials in the ... in ... senior officials in the Commission had made it clear that it was probably unrealistic for us to hope to hold on to this and it was a central part of our Government strategy, of our-----

Deputy Michael McGrath: Was it a red line issue for the Minister?

Ms Cathy Herbert: Yes, absolutely it was. It was. And for the Government.

Deputy Michael McGrath: Okay. Thank you.

Chairman: Okay. Thank you. Can I just remind members there with regard to phone distortion, because we have a tight, kind of, schedule today and questions have been allocated on a rotation of five, other members may not be asking questions in particular sessions, but there's a lot of phone distortion coming in. I'm asking members to turn off their phones. It's not acceptable to have your phone active when another member is actually speaking because it's distorting a communication next to them and it's unfair. It's bad for the broadcasting and we actually have members of the public complaining this morning, actually, about it. So turn off the phones and if I see members with their phones I'll just publicly name them from here on out because it's an ongoing cause of annoyance. So my apologies to Deputy McGrath if there was any distortion in that regard. Deputy Doherty.

Deputy Pearse Doherty: Go raibh maith agat agus fáilte. Can I ask you, first of all, did Minister Lenihan advise you on any telephone conversations he had with Jean-Claude Trichet regarding the burning of bondholders? And, if so, can you outline the nature of the conversations as he advised ... as you were advised of them?

Ms Cathy Herbert: I knew in a general way. Did we have a discussion about it? I just knew from him and officials that there was a ... I think that the details of the communication emerged subsequently. Would I have seen a letter, that letter? I think I probably would have seen that letter that he sent.

Deputy Pearse Doherty: Yes, outside the letters ... the phone calls ... there's been a lot of stuff written about Minister Lenihan and phone calls that he received and a lot of speculation. As his special adviser, are you knowledgeable from Brian Lenihan himself of any phone call that he received from Jean-Claude Trichet?

Ms Cathy Herbert: Yes, he told me subsequently. Was I with him when those calls were made? I don't think so. I can't be sure that I mightn't have been with him.

Deputy Pearse Doherty: Yes. I'm not interested whether you were with him or not. So Minister Lenihan said he received a phone call from Jean-Claude Trichet. At what time? In relation to burning the bondholders, now, we're talking about, so not-----

Ms Cathy Herbert: I can't tell you exactly the time, Deputy. I mean, I would have known subsequently that, you know, that he was ... he was not in ... I think it was over a weekend actually, was it? I don't exactly know the time. It was ... this is ... you're talking about in November after the bailout.

Deputy Pearse Doherty: Well, I'm asking did Minister Lenihan advise you that he had received a phone call from Jean-Claude Trichet, where the subject of burning bondholders was part of the discussion?

Ms Cathy Herbert: He didn't specifically advise me that he had received a phone call but I knew that that was the view of the ECB-----

Deputy Pearse Doherty: Yes.

Ms Cathy Herbert: -----and I knew it from him. I knew from him the view of the ECB on how we would deal with bondholders, senior bondholders.

Deputy Pearse Doherty: Okay. But he's not ... what we're trying to do in this committee

is gather a bit of evidence and we're trying to ... unfortunately, the late Minister isn't with us anymore, so we're trying to find out, did he ... on a first person basis, did he ever say that he had a phone conversation with Jean-Claude Trichet, that the issue of bondholders or burning bondholders was discussed? Not to your knowledge-----

Ms Cathy Herbert: No-----

Deputy Pearse Doherty: -----your evidence.

Ms Cathy Herbert: -----not specifically.

Deputy Pearse Doherty: Okay. Okay. Can I ask you, in relation to ... you mentioned that the Department were sceptical in relation to the information from the regulators and particularly that the banks were sound. Was the Minister himself becoming sceptical of the information that the regulator was providing and did he inform you of such?

Ms Cathy Herbert: Yes. And, again, these are discussions I wouldn't have had with him until after the guarantee. Absolutely, he was ... he was ... clearly he was sceptical and as information ... as we gathered information, very soon after the guarantee was taken, you know, he was sceptical of the extent of the exposures and-----

Deputy Pearse Doherty: And did he ... did he talk to you about the reasons why he argued - we understand, quite strongly - on the night of the guarantee for nationalisation of both Anglo and INBS? Was it because of the scepticism that he had in relation to the fact that those banks were sound?

Ms Cathy Herbert: I think we had ... we'd had discussions later when, you know ... after that decision his job was to come out and execute that decision and defend it - and he did. And, I mean, he did so quite trenchantly in actually the meeting that took place of this committee as it was then formed in 2009. So he ... he defended the Government decision and ... and his energy went into that. He ... he ... I was aware that he wanted to draw a distinction, as I said earlier, between Anglo and the other banks because he was concerned about ... that the reputation, generally, of our financial would be, in so far as possible, protected. But as I said, he didn't realise at that stage the extent of the trouble that was in the other banks.

Deputy Pearse Doherty: And did he explain to you why he wanted a distinction between Anglo and Nationwide from the other banks at that time?

Ms Cathy Herbert: Because they were the two most errant institutions, if I can use that word. I mean, they were the two that were most exposed. It looked as if they had most exposure to property, largest, you know, loans and, you know, the fact it had grown to that level was a source of constant wonderment to him that it was allowed to do that. And he ... his view was Bank of Ireland and AIB would be, you know, sound banks and that we must defend those, and that's what he tried to do.

Deputy Pearse Doherty: Ms Herbert, when was the first time that Minister Lenihan spoke to you about the need for the banks to be recapitalised? Did he suggest that this is an outcome that may arise around the time of the guarantee? Was it afterwards, was it before? Can you, can you give-----

Ms Cathy Herbert: It was afterwards and it was ... obviously it was ... once we went in and looked at the state of the ... of the banks, it was clear that they would have to be recapital-

ised. And there was no option but to recapitalise given that the banks ... obviously there was a possibility of selling ... you know, of the banks selling some of their assets - for instance, AIB and the bank they had in Poland. These were options but it was clear that they weren't going to get enough money on ... privately - from private sources - and, therefore, we would have to recapitalise them, otherwise we wouldn't have had a banking system.

Deputy Pearse Doherty: But even ... even though you've given evidence that Brian Lenihan was sceptical of the information that the regulator were ... was giving him in relation to the soundness of the banks and wanted to distinguish between Anglo ... Anglo Irish Bank and Irish Nationwide, was it Brian Lenihan's view, to your knowledge, on the night of the guarantee, that both those banks were financially sound?

Ms Cathy Herbert: Yes, he did believe that they were. And, in fact, I think the guarantee ... deposit guarantee had worked quite well for INBS and the pressure that it was experiencing abated somewhat and it didn't have liquidity issues quite as badly as the others. But, I mean, of course these were questions I'm sure he asked and he was assured that the banks were sound and that this was a liquidity issue ... that what was ... the pressures now were liquidity pressures that were short term and ... and that's what he believed. That was the advice he was given, that's what he believed.

Deputy Pearse Doherty: But you say he was sceptical of that advice.

Ms Cathy Herbert: He was sceptical that ... he was beginning to be sceptical of that advice of what was happening in Anglo just, you know, coming up to the guarantee. And then that's why they pressurised for PwC to go in and do ... I mean, the difficulty, I suppose, was that all of these advisers were depending on the banks for the information. That was the difficulty.

Deputy Pearse Doherty: Were you aware of any lobbying to Brian Lenihan from outside of the Department or the Central Bank, any suggestions about the need to provide a guarantee from any individual? Did he ever discuss these matters with you?

Ms Cathy Herbert: No. I'm not aware ... I wasn't aware, no.

Deputy Pearse Doherty: Okay. You talk in your statement about the role of advisers in analysing the crisis and you talk about how they were hampered in their analysis of the crisis by "were hampered in their analysis of the crisis by their unswerving belief that our banks were fundamentally sound and their failure to consider the possibility that their (sic) [may] be a crash rather than a soft landing in the Irish property market." Sorry, but your job was to write speeches for the Minister. Did you partake in any of the briefings to understand what was meant by a soft landing as to help to convey this message to the general public?

Ms Cathy Herbert: Did, sorry, just-----

Deputy Pearse Doherty: Were you involved in any briefings so that you would understand what a soft landing meant as you wrote speeches for the Minister to try and persuade the public that that is where we were headed?

Ms Cathy Herbert: I don't think that there were ... the speeches that ... that I was involved in and that the Minister was giving at the time were really to do with our economic position. He was very concerned about the public finance position ... the position of the public finances, the need to, you know, to take steps ... the steps that he had to take he had a budgetary ... there was a budgetary adjustment brought in in July and the work related to that, it was really about

public finances, really ... that was ... my issue. He did ... he did ... he did say himself at a meeting - some conference in Dublin Castle - that, you know, he had had the misfortune to be appointed Minister as ... at the time when the ... so I think he was aware of what was happening in the property market.

Deputy Pearse Doherty: Okay. Did you write the speech for him on the ... when he addressed the Dáil on 18 November, the day Governor Honohan went on RTE?

Ms Cathy Herbert: I would have had a hand in that speech.

Deputy Pearse Doherty: Okay. And Minister Lenihan at the time said, as he was confirming the negotiations were beginning - or the discussions were beginning - with the IMF, he said, “The problems we are facing do not relate to our budgetary position ... It is important to understand that the problems we are addressing are of a structural character in the banking system.”, i.e., the reason we are having these discussions is because of our banks. Is that the view ... was that your view and Brian Lenihan’s view, personally?

Ms Cathy Herbert: Yes, I think so, because we had done an amount of budgetary adjustment. I think it was €14 billion ... €15 billion at that stage. We had been in negotiations with the ... with the ... supervised by, if you like, the Commission and the ECB on what was ... what was to be done in the next budget. It was to be €6 billion. And we had our four-year plan so, you know, we ... we had a handle on what to do about our budgetary position. We ... we had taken action right throughout the crisis.

Deputy Pearse Doherty: That day ... that same day in the Dáil, Brian Lenihan confirmed that he would be heading the negotiations or heading the discussions without actually him being there, it would be officials dealing with it on a technical nature, but he would sign off on them. And we know the discussions and negotiations went on for a number of days. The previous day, Minister Batt O’Keeffe said this was about playing a game of poker. What was the Minister’s view in relation to the type of negotiations that the Government or the officials were entering into with the IMF and the troika? Was it, as Minister Batt O’Keeffe said ... this was like a game of poker or was it very more reserved, more-----

Ms Cathy Herbert: I think that it became clear ... he wouldn’t have used that language - “a game of poker”, that wouldn’t have been his language. They were very serious negotiations. I think that the thing that ... I know that what weighed most heavily on him was what was going to be the proposal for the banks. It became clear pretty quickly that they were happy with our proposals for dealing with the public finances. But what was going to happen the banks ... and that was a game of poker it was, like, it was very difficult. We had had the background of the ECB saying that they were going to stop the ELA, that they were unhappy about the extent of the exposure. But it wasn’t clear what solution that they were going to propose. In the end, of course, they continued with the ELA but, I mean, there was ... the proposals for restructuring, for instance, how quickly that would have to be achieved. That was their first engagement, really, seriously with our banking crisis.

Deputy Pearse Doherty: Ms Herbert, and finally, can I ask you ... and Deputy McGrath talked on this here in relation to the black hole in the banks and the loss of public confidence in relation to the Government announcing announcement after announcement that additional money had to be pumped into the bank, and the loss of international confidence as a result of that. Was it not the troika that insisted that the Government set aside €35 billion to deal with that hole that the Government were unwilling to face up to up until that time? That was the

actual essence of the troika programme, as Brian Lenihan said, that the structural character, the problems we're having is a banking ... is in the banking system, not budgetary.

Ms Cathy Herbert: Well, I think that the ... the difficulty about the, as you said, the continuing hole in the Government ... in the banks was that this was something that got worse, not by virtue that we didn't do the sums right but the situation got worse and the hole got deeper and bigger. And, I mean, the NAMA process obviously was going to crystalise a lot of losses for the banks. And that situation ... so it was ... it was a rolling situation. And then the proposal for ... from the ... in the bailout to, if you like, stuff the banks with money to shore up ... or to bring back market confidence, that was a proposal that was, you know, it was one way of doing it. But the Minister would have liked, as you know, and the Government would have liked to ... some burden sharing at that time that would lessen the amount of money that would have to be put into the banks.

Deputy Pearse Doherty: Can I just ask you finally, you mention that it wasn't because you didn't get the sums right. But Minister ... or Governor Honohan in his own report says that Anglo Irish Bank and Irish Nationwide were heading towards insolvency at the time of the guarantee. The Government's sums were saying that they didn't require any money. How can you say that they ... that you didn't get the sums right?

Ms Cathy Herbert: They required liquidity at the time but they didn't think that they were un ... that they would be unsound. They didn't ... their ... the advice was that they were fundamentally sound, both of those banks. But the position of the other banks, well we only got to know what was happening in the other banks after the guarantee. And when the PwC process began and then it went on. And, I mean, Governor-----

Chairman: Bring it to closure and then I'm going to move on.

Ms Cathy Herbert: I mean, Governor Honohan when he became Governor went in and did an analysis and then very soon that had to be, you know, that was ... it was clear that that would have to ... the money would have to be increased again, that there was ... and that was because of the NAMA process. So it was a rolling ... I mean, as I say, every time there was a solution it was overtaken by another set of problems.

Chairman: Okay. Senator.

Senator Susan O'Keeffe: Thank you, Chair, Ms Herbert in Mr. Cardiff's statement he said that there was ... that you were ... accompanied Minister Lenihan to a meeting in Brussels on 22 September 2010. Do you recall that meeting and, if so, can you tell us what the nature of the discussions were and what demands or what ... what was going on with the European Commission at that point in relation to Ireland?

Ms Cathy Herbert: Well I recall the meeting because a group of us went over and the people who got into the meeting were Kevin Cardiff and Michael McGrath. So myself, Alan Ahearne and Ann Dolan sat in a corridor in the Berlaymont while the meeting went on. So ... I mean, I became aware afterwards what the meeting was but I didn't sit at the meeting. It was unusual for me to go to Brussels to a meeting. The Minister didn't normally ask me to do so but he did ask me at short notice.

Senator Susan O'Keeffe: And was there any outcome after the meeting?

Ms Cathy Herbert: Well-----

Senator Susan O’Keeffe: I appreciate you weren’t present.

Ms Cathy Herbert: Yes well the outcome was that they ... that was the meeting where ... it was the first of a series of meetings where it was indicated that they wanted to see greater savings, they wanted a budget to be brought ... the amount to be saved in the 2011 budget to be larger. So with the amount kept under ... I think it started at seven and it came down to ... maybe eight actually and it came down to six. So there was ... it was general discussion. And obviously a discussion on ... there was a constant debate over forecasts. The bank ... or, at least, the Commission thought our forecasts were too ... the Department’s forecasts were too benign.

Senator Susan O’Keeffe: And what was Mr. Lenihan’s demeanour after that if, you know, if that was the start of that kind of rankle about figures?

Ms Cathy Herbert: Well his demeanour was how were we ... how were we going to do this? That we would have to ... I mean it was ... his demeanour was, as it always was, let’s get on to see how we’re going to solve this difficulty. What are we now going to do? We had to work with the ECB and the Commission. And from then on we were in very intensive, you know, negotiations with them on budgetary matters and how we might bring them down. How we might bring down the ... that the minds could meet, in other words.

Senator Susan O’Keeffe: Okay. On the night of the guarantee, William Beausang who is obviously an official, told us about how he worked on a draft of a release that related to the guarantee and that he’d had ... his e-mail record showed that there was a draft that was sent to him. Were you involved at all with William in that draft?

Ms Cathy Herbert: No, and my understanding is that that draft came from the Central Bank and they would have their own communications people. And I think it would be part of normal preparations that if the ... it seems to me the Governor of the Central Bank came to that meeting in Government Buildings that night, you know, set on the idea of a guarantee and they obviously equipped him with a statement, a draft statement. In the end I think ... I’m not sure how much of that statement made it into the final statement. I think I heard in previous evidence that it did, substantially, I’m not sure whether that’s the case.

Senator Susan O’Keeffe: But you didn’t have a hand in ... you weren’t sitting at a machine or talking to Mr. Beausang?

Ms Cathy Herbert: No, no I wasn’t.

Senator Susan O’Keeffe: Okay. But it’s your ... but you believe that it was because the Central Bank was already set in its view that it came with that?

Ms Cathy Herbert: Yes and I think that that was part of the preparations that they would have done. I mean, there was also, as I understand it, a document that was given to the PAC. There was a statement prepared for the possible nationalisation of a building society as well. That had been in preparation and I think that that is in the public domain, it had been given to the PAC some time ago. So there would have been ... these would have been normal preparations of draft statements.

Senator Susan O’Keeffe: When you were going over to Government Buildings for that meeting, and I know you weren’t party to them, but were you aware or did Mr. Lenihan make any observation about what he expected the outcome of the meeting might be, you know, we’ll be ... there’ll be a solution or we’ll have nationalised or did he-----

Ms Cathy Herbert: Well, I'm ... I have a vague enough memory of it but my ... I think what happened was that we had had that series of pre-budget meetings in the Department and then he obviously went off and talked to banking officials and was told of this meeting. And I think he went home briefly that night, actually, I think there was a family celebration and he went home very briefly and came back in. So I would have been, I think, probably in Government Buildings before him or shortly after but we didn't go together. But he just said that there ... the banks and there's a meeting tonight and something may come out of it and, you know, would you come over? And I was with the press officer who would have been involved a bit in the preparations that had taken place, those secret preparations that had taken place that I think William Beausang referred to.

Senator Susan O'Keeffe: Were there any observations again around any statement ... you talked about the statement that was made that was delivered the following morning, about whether or not the statement would contain the expression that all banks were solvent? Because this came up in evidence from Mr. Eugene Sheehy from the bank, that ... you know, would it say that or not. Were you part of any of that conversation?

Ms Cathy Herbert: I wasn't part of that conversation but I'm sure that that was a concern because the banks would have been very anxious to make clear that they were solvent because this was a statement, really, the importance of it was for the market as much as anything else.

Senator Susan O'Keeffe: Well in fact Mr. Sheehy said there was clearly a risk in the statement and didn't want that to be said.

Ms Cathy Herbert: Oh, in relation to-----

Senator Susan O'Keeffe: And in fact it wasn't said.

Ms Cathy Herbert: Oh. Yes.

Senator Susan O'Keeffe: In relation to the banks overall that they ... it wouldn't be said that they were all solvent. It didn't say it in the final release.

Ms Cathy Herbert: Oh, right. Okay.

Senator Susan O'Keeffe: When Mr. Lenihan gave an interview in March 2011 he said that when Brian Cowen asked him to be Minister for Finance, "I did not seek the job and I did argue with him at the time but he asked me to do it and you don't refuse a Prime Minister." Do you recall what his, you know, yourself, what was the view, what was your view, did it come as a surprise, was he delighted, was he worried, was he concerned, what happened?

Ms Cathy Herbert: It did come as a surprise, I remember that. He had been ... he was ... so he had just been appointed Minister for Justice which was his first senior appointment and he obviously ... he had an affinity with that whole portfolio, he was a lawyer and he had a lot of things that he wanted to do in that Department. But, you know, you don't refuse a Taoiseach and it ... he knew, I think he knew that the task was going to be daunting. But, I mean, he enjoyed the business of government and he would have done whatever was required of him, absolutely.

Senator Susan O'Keeffe: When he saw the briefing notes, and I assume you would have seen some of the briefing notes that were given to him at the time ... I mean, was it then the ... you know, what was his reaction when he saw the seriousness of the language, the seriousness

of the briefing notes which we've seen? What ... do you recall what he might have said to you or said out loud?

Ms Cathy Herbert: Well, that the situation was serious and that we'd have to take very swift action. I mean at the time I think ... so we were involved in the referendum, the Lisbon referendum, so that had to go through and immediately after that, I mean, I think the day the results were coming in he went over to talk to the Taoiseach to say this can't wait for a budget, we now must address the crisis. I mean, my dealings with him ... on ... at that time were very much on the public finances and he was very concerned and took very swift action, and unfortunately that wasn't enough and that was the nature of the ... I mean, it was a case of constant crises and he knew that was what it was going to be.

Senator Susan O'Keeffe: Kevin Cardiff, when he was here, gave evidence that he, Kevin Cardiff, had met with Tiernan O'Mahony and Sean FitzPatrick, Brian Goggin, Denis Casey, Gillian Bowler and Michael Walsh - not together, separately - in the days before the bank guarantee and I'm wondering whether Mr. Lenihan might have accompanied Mr. Cardiff to any of those meetings?

Ms Cathy Herbert: I don't think so. Certainly at that committee meeting, he's on record as saying that he met Sean FitzPatrick just once before the guarantee, once ever before the guarantee, and that's when Sean FitzPatrick asked to meet him. And he met him with the Secretary General, just briefly.

Senator Susan O'Keeffe: In 2011, when Mr. Lenihan became aware that Mr. Cowen had had the golf outing in July 2008, had he, first of all, had Mr. Lenihan known about the golf outing at the time when it had occurred or did he just find out as other people did in January? And if so do you recall what his response, if any, was?

Ms Cathy Herbert: He didn't know so he was surprised and ... but he listened to what the Taoiseach had to say about it and I presume he took it on, you know, on its ... as he said it, but he didn't know beforehand because I remember him ... he was surprised by it.

Senator Susan O'Keeffe: And was he surprised ... was he more than surprised or was that it, just surprise?

Chairman: Final question now, Senator, okay?

Ms Cathy Herbert: He was surprised.

Senator Susan O'Keeffe: Okay. In an interview that he gave, again, he ... to the *Community Voice* newspaper, when he said he had a good working relationship with Mr. Cowen around the Cabinet table he said:

I felt that when he was elected Taoiseach he would give a stronger lead and express himself in a more forthright way about the problems facing the country. I felt I had to give a lot of that lead and give those forthright expressions myself, along with everything else.

What observation would you make about that? This was something he put on the record.

Ms Cathy Herbert: I think he felt, and I think it was a difficulty that people around the Cabinet table were in a difficult political position because they had been part of decisions that he had to unravel and that he had to ... you know, that certainly caused the crisis. And I think he had, yes ... he felt he had to do a lot of the communications. He was a very good communicator

and a lot of that role fell to him but he did it and he did it well.

Chairman: Final question now, Senator.

Senator Susan O’Keeffe: Forgive me, on page ... it’s your own statement on page ... where is your own statement gone ... you make ... I’m sorry, somebody has-----

Chairman: I would say stop the clock but the clock is stopped.

Senator Susan O’Keeffe: Just ... if you would just give me one second. I’m sorry, do you have it there? It’s on page ... it’s the remark you make about the bailout ... I won’t be able to find it now. Okay, I’m sorry-----

Chairman: I’ll give you a moment there Senator.

Senator Susan O’Keeffe: Sorry, just bear with me one second, “...whether it needed to be a full-scale programme is open to question”. It’s on page 10 of your own statement, forgive me, I’m sorry. Thank you, Chair. So, “whether it needed to be a full-scale programme”, you were talking about the bailout. And you were talking about ... so, and you were making an observation I think, you know, did it need to be a full-scale programme? I just wondered what made you think of that.

Ms Cathy Herbert: Yes, because it wasn’t as if we had been in denial about our budgetary position. We had taken enormous steps from the time that Brian Lenihan came into office and throughout the crisis and we had ready a very coherent four-year plan so it wasn’t ... we had a plan so it could have been, and I think that’s what he very much wanted, that that plan could have been implemented by the Government with the, you know, increased supervisory role of the European institutions.

Senator Susan O’Keeffe: But without a full bailout?

Chairman: We need to move on and ask supplementary.

Ms Cathy Herbert: A precautionary bailout as it was called.

Senator Susan O’Keeffe: As it was called, okay. That didn’t happen.

Chairman: Thank you. I’m going to move to wrapping things up, Ms Herbert. Ms Herbert, are you familiar with the term “spin doctor” and if you are, maybe you could explain how you understand it?

Ms Cathy Herbert: Spin doctor?

Chairman: Yes.

Ms Cathy Herbert: I take it as it is. It’s a common term to use to put to communicate, in the best way possible, whatever message you have to give and to communicate in the best way possible the actions you’ve to take.

Chairman: Okay, the ... we ... in answer to questions by Deputy Doherty there earlier, you were saying that you would have been involved in Ministers’ press releases, Ministers’ statements, addresses to the Dáil. Were you part of that speech by Minister Lenihan that spoke about the “green shoots of recovery”?

Ms Cathy Herbert: Yes.

Chairman: When was that wrote?

Ms Cathy Herbert: Was that a budget speech?

Chairman: Yes. When was it?

Ms Cathy Herbert: There were several budget speeches where he gave-----

Chairman: When he first used it?

Ms Cathy Herbert: I think it might have been 2008, September 2008-----

Chairman: On reflection-----

Ms Cathy Herbert: -----no, it was 2009 maybe.

Chairman: -----on reflection, was that an accurate depiction of what was coming down the line?

Ms Cathy Herbert: I think that for 2009, certainly, and I think that's maybe when so was the 2010 budget. I think for a while in 2009 until the Greece crisis ... the Greek crisis hit, I think that, you know, it looked as if we might be turning a corner, that was another thing he said. I think he believed that you had to give people hope and he was optimistic.

Chairman: Okay.

Ms Cathy Herbert: And I don't know that there ... any of us could have said where was the bottom of this crisis. Did any of us know? Did anybody know?

Chairman: Okay. As I said earlier to you I don't expect you, and I don't think the committee is expecting you, to be an expert on finance but you would have been privy to discussions and you would have formed the presentation of a lot of matters that the Minister would have presented to the public. From your own observations of discussions and your own involvement with the Minister, were you aware of any concerns with regard to the structure or design of the banking guarantee, along with its period of duration, having any Irish ... or bearing on the Irish State entering a bailout two years and two months after the banking guarantee? Was there discussions?

Ms Cathy Herbert: I didn't get that, was I aware-----

Chairman: Were you aware of any discussion or any communications taking place between the Minister and other members of Government or anybody else about concerns with regard how the banking guarantee was actually structured, how it was designed, how about its period of duration - it was set up for two years - and did that ... and it having any bearing on the Irish State entering a bailout programme two years two months later? Was there any discussions simply that the guarantee is probably, or maybe, or might not be bringing us towards a bailout programme?

Ms Cathy Herbert: No, I don't recall any discussions about that. I think that what brought us to the bailout programme was the ongoing, you know, the property bubble and-----

Chairman: Okay. Mr. Cardiff, in his witness statement, commented to this inquiry - I think

he commented on the Jean-Claude Trichet letter of 19 November 2010, to the late Minister for Finance - and in many ways he, Mr. Cardiff ... Mr. Cardiff's commentary, in many ways "the letter was entirely superfluous since it was already clear by the time of the letter that the Government was going to opt into a programme". Is that also your understanding at that time, that the Government was going into a programme?

Ms Cathy Herbert: Yes, at that stage.

Chairman: Okay. So, in terms of being bounced into a programme or being hurried into a programme, in terms of maybe more accurate English instead of spin English, were we bounced into a programme or was it inevitable, and that it maybe hurried it up? Because "bounce" might give the impression that we were in some place completely different and you then end up somewhere else. So were we bounced or did it maybe just hurry us into the bailout programme?

Ms Cathy Herbert: I think it hurried us into the bailout programme. I think that certain institutions had an interest in us being hurried into a bailout programme but there was the possibility that we might have avoided it give ... if market reaction to our budget or to the four-year plan might have resulted in, you know ... it was always to be hoped that it could have helped our situation. If the market were to regain confidence, then there was the possibility that it might have been avoided.

Chairman: In Kevin Cardiff's statement - it's coming up on the screen there - there seems to be a commentary from Olli Rehn is ... It's just come up there now in a moment, from Olli Rehn that maybe a bailout programme could be avoided, and then Mr. Buti is more or less taking a certainty position that a bailout programme is going to happen. I just, it says ... it's half way down the page there - this is the visit of the 27th September that we referred to earlier with yourself and Ms Nolan, Mr. Ahearne, Mr. McGrath and yourself:

Certainly, after spending some time with him alone, Lenihan told me that Commissioner Rehn thought it was still on balance more likely than not that a bailout could be avoided – though it had to be considered a possibility – even, according to Lenihan, suggesting that the Portuguese were a more likely candidate for bail-out at that stage than was Ireland. But Marco Buti, who reported directly to Rehn, told me separately that it was his personal view that a bailout would probably on balance be required. He was not advocating it, at this stage, merely giving an opinion on the likely turn of events.

So, does that concur with your own view that we were heading to a bailout programme-----

Ms Cathy Herbert: Well, I think there was always that danger and he had ... Brian Lenihan said that afterwards, in that interview that he did in the BBC, that there was always a danger but he had fought hard to avoid it, and he thought, he said, that on balance it might have been in the spring, depending on what the reaction was, the spring of the following ... of 2011. The situation was, for instance, in Portugal, they didn't enter a bailout until some time later, but I suppose the thing is, it may have been postponing what was inevitable.

Chairman: Okay. On the issue of a soft landing, did you use that vocabulary in some of the speeches or addresses or press releases?

Ms Cathy Herbert: I never used that language.

Chairman: Okay. Did you ever see a document coming from the Department of Finance that was their document supporting a soft-landing theory?

Ms Cathy Herbert: No, I don't recall it; what I recall was that the advice, the assumptions were ... I mean this was a phrase that might have been coming from the media more than anything else and of course the media had to get it some place.

Chairman: But by ... there was no document provided to you to say, "Ms Herbert, you need to communicate positions that the Department of Finance have, these are evidential-based positions, we have the supporting evidence that says that there is a soft landing outside there, in a communication to it, this would be the reference point that we would give to editors", and so forth?

Ms Cathy Herbert: No.

Chairman: Nothing of that regard. Okay. Finally, Ms Herbert, you refer to Mr. Lenihan's statement that a precautionary bailout involving intensive scrutiny would be his preference, probably giving the Government a greater discretion on fiscal adjustment targets, etc. Did that lighter-touch option feature in any exchanges with the Taoiseach or Ministers that you know of?

Ms Cathy Herbert: I would say that he spoke to the Taoiseach about that, but I don't know for a fact.

Chairman: Okay, thank you. I'm going to move to wrapping-up question and one supplementary question. One supplementary, beginning with Deputy O'Donnell.

Deputy Kieran O'Donnell: Ms Herbert, prior to the guarantee, the late Brian Lenihan and the Department of Finance, was there discussions or concerns around the solvency of the banks?

Ms Cathy Herbert: I wouldn't be in a position to know but I don't think so ... because I wasn't part of those discussions. I don't think so.

Deputy Kieran O'Donnell: And was there ... what was the ... he was sceptical and the Department was sceptical around the advice being provided by the Financial Regulator. What was the basis of that scepticism?

Ms Cathy Herbert: I think they were becoming, to become, as they moved ... I think this was something that developed in September. I think Kevin Cardiff actually refers to it in his evidence as well, they were becoming more doubtful about the nature of the advice. They knew that the advice from the Financial Regulator, the Financial Regulator was relying on the banks for advice, so they began to wonder, and that I think was the impetus for the PwC report.

Chairman: Thank you very much. Senator? A question, a supplementary?

Senator Sean D. Barrett: Thank you. The reform or stricter auditing of banks, was that discussed in your hearing at that time?

Ms Cathy Herbert: That was ... I think there was a realisation, once the guarantee happened and very soon afterwards, when the position of the banks became clear, that that would have to be done, and the Department set about that pretty much immediately. Legislation was drawn up to reform the banks ... the ... to reform the regulatory system, and I can't recall exactly about the role of auditors, what exactly, but certainly, the reform of the regulatory system, to make it more sound, was set about pretty much immediately, it was 2009.

Senator Sean D. Barrett: Thank you very much. Thank you, Chairman.

Chairman: A final question to Ms Herbert, and then I'll invite you to make any closing remarks you want. In regard to the corporation tax issue there, I was going to raise it myself with you anyway, was there really anything new with regard to other European partners' concerns with regard to Ireland's corporation tax? There's plenty of records showing that many governments were ... had their noses out of joint about it. The Commission had a position on it but we know under EU law that the sovereign position on taxation remained and actually remained right through the restructuring programme and all the rest of it. So what was it ... was there anything different with regard to what you were hearing from Europe with regard to the corporation tax as we were going into that period?

Ms Cathy Herbert: Well I think what was new about it was that they were giving us money and they could be in a position to say, "This is our condition." We were in a difficult ... that was precisely the issue, they were saying "Okay, if we're going to bail you out we want make changes on this." I mean Olli Rehn, when he came over on 8 November, he said we needed to look at our taxation.

Chairman: And that was in the context of Ireland needing some structural programme and the discussion of corporation tax was explicitly in that arena, not in the general arena where there has been a lot of commentary from European partners around corporation tax?

Ms Cathy Herbert: No this was ... it was going to be ... it was clear that this was going to be a condition sought by, and Marco Buti, somebody referred to him earlier ... Marco Buti did mention, in Kevin Cardiff's evidence, he had a discussion on that weekend they were over before the bailout actually happened, where he said he did think it was unrealistic that we could hold on to our corporation tax. So there were reasons to be fearful.

Chairman: Sure. And was reducing the minimum wage part of those discussions, to your familiarity?

Ms Cathy Herbert: Pardon?

Chairman: Reducing the minimum wage?

Ms Cathy Herbert: Certainly that was a view that Olli Rehn had. I think that he had a view on the need to reform labour policy.

Chairman: Inclusive of reducing the minimum wage?

Ms Cathy Herbert: Yes, I understand so.

Chairman: Thank you very much. Ms Herbert, is there anything else you'd like to say by conclusion?

Ms Cathy Herbert: Well, I'd just like to say that ... I know that if Brian Lenihan were with us here today, he'd be, I think, one of your biggest fans. He would relish the opportunity to give his account of what happened during his stewardship and his time in the Department of Finance and it's a great pity that he's not here to be able to give you those details, and that you're to be doing with the likes of me.

Chairman: Thank you, Ms Herbert, but I wouldn't be diminishing your own participation here this morning in that regard. With that said, I'd like to thank Ms Herbert for her participation with the inquiry here this morning, to now formally excuse you and to thank you for your engagement with the inquiry this morning also. Thank you.

So I now propose that we suspend until 11.50 a.m., as we'll just need to pull back a bit of time if we need to get through the day. So is that agreed? Agreed.

Sitting suspended at 11.37 a.m. and resumed at 12.07 p.m.

Quinlan Private - Mr. Derek Quinlan

Chairman: And we now commence with our second session of today which is public hearing with Mr. Derek Quinlan, former executive chairman and founder of Quinlan Private. The Committee of Inquiry into the Banking Crisis is now resuming in public session. Can I ask members and those in the public Gallery to ensure that their mobile devices are switched off. At our next session we will hear from Mr. Derek Quinlan, former executive chairman and founder of Quinlan Private. This is the first of several sessions at which the inquiry will focus upon the relationships of the property development companies and their principal financial institutions.

Derek Quinlan founded the business which was to become known as Quinlan Private in May 1989. He has been involved in significant investment and development in the United Kingdom, Ireland and several other European locations over a 25-year period. He acted as both principal and adviser in some of the most significant real estate investments of the last 14 years. Mr. Quinlan retired as chairman and founding partner of Quinlan Private in May 2009. Mr. Quinlan, you're welcome before the committee this afternoon.

Before hearing from 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 of 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. Therefore, the utmost caution should be taken not to prejudice those proceedings.

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. 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 and core documents. These are before the committee, will be relied upon in questioning and form part of the evidence of the inquiry. So with that said, if I can now ask the clerk to administer the oath to Mr. Quinlan please.

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

Mr. Derek Quinlan, former Chief Executive and Founder, Quinlan Private.

Chairman: Thank you. Before we commence there, do you have your phone switched off, Mr. Quinlan, have you?

Mr. Derek Quinlan: Pardon?