

# HOUSES OF THE OIREACHTAS

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## AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

### JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

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*Déardaoin, 16 Iúil 2015*

*Thursday, 16 July 2015*

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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.

co-operation and assisting in making that actually happen. So with that said, the witness is now excused, and I propose that we return at 12.45 p.m. Is that agreed?

**Mr. Paul Gallagher:** Thank you, Chairman, and thank you members of the committee. I wish you well. Thank you.

*Sitting suspended at 12.28 p.m. and resumed at 1 p.m.*

### **Arthur Cox - Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague**

**Chairman:** We now will return into public session, if that's agreed, and we ... with our next hearing with Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague of Arthur Cox law firm, legal advisers to the Department of Finance. The Committee of Inquiry into the Banking Crisis now resuming in public session, and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off.

At this session we will focus again on the legal advice given to the Government during the crisis period. I would like to welcome two witnesses from Arthur Cox limited firm, Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague. Pádraig Ó Ríordáin is ... was managing partner of Arthur Cox from 2003 to 2011. He led the Arthur Cox team which advised the Irish Government on the Irish banking crisis. Eugene McCague is a partner with Arthur Cox since 1988, he served as managing partner from 1999 to 2003, and served as chairman of the board of Arthur Cox from 2006 to 2013. The witnesses' appearance here today has been facilitated by a decision of the Government to waive legal privilege in respect of their oral evidence to this inquiry, having regard to the exceptional circumstances of the financial crisis and the important mandate of this committee to inquire into the financial crisis. The waiver is limited to advices relating to the bank guarantee provided to the Government during September and October '08. In addition, the waiver does not extend to discussion of legal advice that could prejudice any litigation pending or anticipated regarding matters the committee may seek to inquire into.

Before hearing from the witnesses, I wish to advise the witnesses 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. And 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 and members of the public and journalists are reminded that these documents are confidential and they should not publish any of the documents so displayed.

The witnesses have been directed to attend this meeting of the Joint Committee of Inquiry into the Banking Crisis. You have been furnished with booklets of core documents. These are before the committee, will be relied upon in questioning, and form part of the evidence of the inquiry. If I can now ask the clerk to administer the oath to both Mr. McCague and Mr. Ó

Ríordáin.

*The following witnesses were sworn in by the Clerk to the Committee:*

Mr. Pádraig Ó Ríordáin, former Managing Partner, Arthur Cox.

Mr. Eugene McCague, former Chairman of the Board, Arthur Cox.

**Chairman:** Once again, welcome Mr. Ó Ríordáin and Mr. McCague to the committee this afternoon, and, in whatever sequence you wish, I'd like you ... to invite you to make your opening remarks, please.

**Mr. Pádraig Ó Ríordáin:** Thank you, Mr. Chairman, and, I'm pleased to be here with my colleague, Mr. McCague, to assist the committee in its work today. I would like to start by giving an overview of Arthur Cox's role in addressing the issues which arose in the banking sector.

Arthur Cox was engaged by the Department of Finance on the morning of Wednesday, 24 September 2008, to advise in respect of the emerging banking crisis. Prior to that I had no involvement in the banking crisis and was not aware of its depth. I understand that the Department contacted me as it was familiar with my role ... with my work, through my role as chairman of the financial legislation advisory forum, which I had undertaken at the Department's request on a *pro bono* basis from 2007. I led the Arthur Cox team throughout this period. Arthur Cox was engaged to act as external corporate legal adviser to the Department and its agencies. In executing our role we worked closely with the Department, the NTMA, the Office of the Attorney General, as well as other Department advisers, including Merrill Lynch, PwC, and later, Rothschild.

Over the seven years since the onset of the crisis, Arthur Cox's role has included advising on and helping manage legal risks relating to the State following the guarantee, assisting the Department of Finance and its agencies to map out the legal landscape applicable to the banking sector, undertaking legal due diligence exercises in respect of a number of the banks which the State was supporting, identifying legal obstacles and risks, as well as potential solutions to them in policy under development by the Department, contributing to the design of legislation being prepared by the Office of the Attorney General, helping execute policy decisions by legally implementing banking sector transactions and undertaking the High Court applications required to effect Government policy, working with the Department to satisfy the requirements of external agencies such as EC Directorate General for Competition, and finally, defending the State in litigation taken against it arising out of the execution of its policy. The legal work required to perform this role was uniquely complex and extensive, with each legal action or solution integrally connected with all others over the years of the crisis. In summary, Arthur Cox's job was to help design the legal architecture required to support policy decisions made by Government, and then help provide the legal engineering required to implement those decisions.

At the beginning of the crisis, in 2008, in common with many European countries, the Irish Government had available to it no specifically designed legal infrastructure or powers currently in law to intervene in, or resolve, banks in financial difficulty. Indeed, EU-wide legislation dealing with bank recovery and resolution has only been implemented this year, in 2015. As a consequence, this legal infrastructure had to be built, often under intense time pressure, from the ground up, as the crisis progressed. This was a very extensive and complicated exercise, combining statutory, contractual and judicial avenues with the major milestones being the Credit Institutions (Financial Support) Act 2008, the Anglo Irish Bank Corporation Act 2009,

the National Asset Management Agency Act 2009, the Credit Institutions (Stabilisation) Act 2010 and the Irish Bank Resolution Corporation Act 2013.

The common threads running through all of the work in the design and implementation of the required legal infrastructure were to enable the Government to take the actions it deemed necessary to ensure financial stability, while observing the legal integrity of the banks and their stakeholders, and ensuring the central objective that there be no default by any of the banks in relation to any of their obligations which could impact the guarantee. Any default by the banks, even inadvertent, could have triggered cross-defaults on their financial instruments, leading to a failure of a bank and a call on the guarantee. This risk became most pronounced in the first half of 2011, when the banking sector was substantially reorganised in accordance with the troika programme. Each action taken by the State, therefore, had to be robustly designed to implement policy measures, legally and effectively, while ensuring banker sector ... banking sector stability. This was legally challenging in circumstances in which the State was required to intervene strongly to maintain financial stability, even where that required the alteration of other stakeholders' rights. The legal solutions adopted by the State in response to issues caused by the banking crisis navigated a narrow path demarcated by the Constitution, European law, IFSRA, which was later the Central Bank, and banking regulation generally, ECB requirements, stock exchange rules and the EU Commission's Directorate General for Competition, as well, of course, as the legal rights of depositors, bondholders, shareholders, derivative counterparties, bank boards and employees. These solutions had to legally optimise the position of the State, comply with the requirements of the troika programme from 2011 onwards and take into account the responses of rating agencies and sovereign bond markets. Over the period of our engagement, more than 120 Arthur Cox lawyers in total worked for the Department and its agencies on this crisis, with specialist teams required in corporate, litigation, capital markets, finance, financial regulation and insolvency-restructuring.

The direction I've received from the committee directs me to provide evidence on 13 lines of inquiry relating to themes of crisis management system and policy response and regulatory, supervisory and Government. I look forward to answering your questions on these themes, following Mr. McCague's opening statement. Thank you, Mr. Chairman,

**Chairman:** Thank you very much. Okay, with that said, if I ... Mr. McCague, please.

**Mr. Eugene McCague:** Chairman, members of the joint committee, I have been asked to assist the joint committee in relation to one specific line of inquiry, namely, the appropriateness of the bank guarantee decision. I provide you with a written statement setting out my recollection of relevant events between Wednesday, 24 September 2008, which, as Pádraig said, was the date in which Arthur Cox was appointed to advise the Department of Finance, up to and including the night of the guarantee. I don't propose to go through the statement here. I'm here to answer any questions on the bank guarantee decision you might ... may wish to ask.

**Chairman:** Thank you very much, Mr. McCague. So, with both opening remarks made, I now invite Senator Marc MacSharry to open the questioning today. Senator, you have 25 minutes.

**Senator Marc MacSharry:** Thanks very much, and welcome, gentlemen. Thanks for being here today. Can I ask, first of all, as former chairman, this is Mr. Ó Ríordáin, of the legislative advisory forum, can you comment on the extent to which Irish financial regulation policy was geared towards the development of the IFSC and do you believe this in any way compromised the regulation that would otherwise have been put in place in respect of domestic banks?

**Mr. Pádraig Ó Ríordáin:** Senator, I think the role of the financial legislation advisory forum was very much just to consolidate legislation that was already there, because what had happened in Irish financial legislation is that it had built up over a period of time in a relatively sedimentary way and it was quite difficult to find your way through it, so the purpose of that committee was just to consolidate. We didn't really look at that ... in fact, we didn't have any brief to look at the policy or the direction of any of that; it was actually just nearly an administrative exercise to consolidate what was already there so it would be hard for me to comment on the bigger picture in terms of the overall policy and direction.

**Senator Marc MacSharry:** And in undertaking the consolidation of existing legislation and while policy was not your role in terms of determining it, was it your observation at the time that policy was in any way being put together or geared towards the development of the IFSC and do you believe this may or may not have compromised the regulation that would otherwise have been in place in respect of the banks?

**Mr. Pádraig Ó Ríordáin:** I think probably the best way of answering that is to contrast now versus then, and, undoubtedly, then there was much lighter touch regulation, you know, at a macro level. In terms of the purpose of that, whether that was just directed at IFSC I would say that ... just as an observer. I would say that was an element of the regulatory response at the time but how much it was a core or essential feature of policy as that was communicated to the Central Bank, I don't know, but, certainly, if you look at the contrast between then, which is light touch, and now, which is quite different from that, I think you do see that contrast.

**Senator Marc MacSharry:** Okay, so principles-based versus rules-based as we now see and bearing in mind that you are only there as a consolidator and you are witnessing the policy as determined by others, but were you left with a clear view or not that really the piper was calling a tune to facilitate the IFSC regulation rather than the domestic banks?

**Mr. Pádraig Ó Ríordáin:** No, I have to say I didn't have that particular perception but that could just have been because of the focus of the group but I didn't have that perception.

**Senator Marc MacSharry:** Can I ask Mr. McCague, can you outline who had concerns regarding the solvency position of Anglo and Irish Nationwide Building Society as outlined in your witness statement?

**Mr. Eugene McCague:** Yes, I think ... yes, in my witness statement, I said there had been a number of discussions throughout the night on liquidity and also on solvency of those two institutions and if I could maybe just run you through those briefly. As I think I explained in my written statement, I only arrived to the meeting shortly before the representatives of Bank of Ireland and AIB came into the room. So I suppose the first people I heard expressing their concerns were those representatives, and it was absolutely evident from them, and you've heard this evidence yourselves, that they were extremely concerned about Anglo and the contagion effect of Anglo.

**Senator Marc MacSharry:** Sorry, to interrupt you. They being who just for the record?

**Mr. Eugene McCague:** The representatives of Bank of Ireland and AIB, sorry. Sequentially, they were the first people I heard expressing concerns. They were extremely concerned. They had ... I recall Mr. Gleeson of AIB making the point that if the share price in Anglo the following day when the markets opened fell anything like it had fallen that day, that there was a serious risk that people would take that as a proxy for deposits and that there would be people

queuing outside the Irish banks so they had a very serious concern about that. They wanted the nationalisation of those two institutions. I think they used the phrase, “taken out”, or some such phrase but it was clear that it was nationalisation they were talking about. I don’t recall them actually using the words, “These institutions are insolvent”, but my sense was that that was certainly the view that Mr. Gleeson was putting across in what he had to say and the liquidity issue was speaking for itself. And, indeed, they had their own concerns in relation to their own positions as a result.

When they left the room there was then a further discussion among the Government side, if you like, to call it that. What was evident to me was that I was coming at the end of a long meeting, near the end of a long meeting, rather than at the beginning of a meeting, because it was quite clear that the Government representatives had been thrashing this out for a number of hours. I mean, I was told the meeting had been going on for some hours beforehand and, therefore, this was ... the main focus was whether anything new had been learned from Bank of Ireland and AIB and I suppose what those banks had done was reaffirmed a position that was already known that it was a very serious crisis.

And I don’t recall ... so the issue then really became do you nationalise Anglo and Irish Nationwide or don’t you? By the time I was there, that had become the crux of the issue. I don’t recall anyone arguing the case that they were insolvent on the night. I do recall Mr. Cardiff strongly argued the case for nationalisation. I’ve read his statement, which you kindly sent me, and I recall that. I don’t know whether he based that on solvency but there was clearly concerns in relation to it. And I recall that the most significant event of that next session was that the Taoiseach pulled the discussion together and said that he felt a decision needed to be made and he turned to the Governor of the Central Bank, Mr. Hurley. In quite a formal fashion, he said, “Governor, as Taoiseach, I am entitled to rely on you for advice. Is Anglo Irish Bank [I think probably also Nationwide, I remember Anglo] is it a liquidity issue or a solvency issue?” and the Governor was quite unequivocal that it was a liquidity issue. And to some extent from that point on, the direction which the rest of the evening took, which I’m sure we will get to in due course, took its shape. So I don’t remember anyone making an assertion that either of the banks were insolvent but, certainly, the nationalisation of the argument was implying that to me.

**Senator Marc MacSharry:** Very good. Again yourself, if it’s okay, what was the practice of the Department of Finance during September 2008, and subsequently, regarding the seeking of legal advice? Did they seek legal opinion on all policy options being considered or on a specific policy option selected by them?

**Mr. Eugene McCague:** Sorry, I could deal with that for September and if you need, I’m sure Pádraig could deal with it for subsequently. In relation to September, I suppose the policy issues that were being considered were the ones that Merrill Lynch had laid out and they’re in the document you sent. And of those, we were asked to look at two of them. We were looking clearly at the option of the legislation for the nationalisation of Anglo and Irish Nationwide. That was what my main, if not sole, focus over those days was, so we were certainly asked what were the legal issues in relation to that one. And the other one was a lending scheme, an emergency liquidity scheme, a collateralised lending scheme. It was called a secured lending scheme, I think, in the Merrill Lynch paper. There were colleagues in Arthur Cox were asked to look at that and what were the legal issues on drafting on that.

In relation to the other issues on the Merrill Lynch paper, if I recall correctly, there was a good bank-bad bank option. We were never asked to look at that but I think the Merrill Lynch paper itself specifies that that was a second-stage solution, if you like. And liquidation, we

were certainly never asked to look at because it was a second-stage one. So that leaves the one, the option that was, ultimately, followed, which was the guarantee of the six institutions. We weren't asked to give any advice on that prior to the decision being taken on the 30th. I know Pádraig and some of his colleagues did some work in relation to legislation after it. We weren't asked for advice on that. I should say that the Bill which we were drafting in relation to nationalisation did have a section in it which was giving the Minister very wide powers ... a wide power to give financial support to a credit institution and financial support included the word "guarantee" but that section would not have been adequate to deal with the type of blanket guarantee that was introduced on 30 September. I just mention that because I think I saw when I was reading that either Mr. Beausang or Mr. Cardiff or one of those gentlemen had mentioned that there was a section in the legislation. And there was, but it was dealing with just a broad power for the Minister to give financial support to institutions; it wasn't in relation to the guarantee. So the short answer to that is we were asked to give advice on nationalisation and on a CLS scheme and we were not asked to give advice on any of the others.

**Senator Marc MacSharry:** Very good. To your knowledge ... well you said it wasn't and you were not asked to consider it, so I will rephrase it: Would it have been legally possible to let Anglo and INBS fail and create a State bank by nationalising the other four?

**Mr. Eugene McCague:** I'm sure it would have been legally possible. I mean, the issue with nationalising institutions which are solvent ... I mean, it happens in countries like Venezuela and various other places but if you are in a constitutional democracy with a written constitution and with property rights and by nationalising, you're taking people's property rights away, you would face extraordinarily significant legal challenges but, in legal principle, you could introduce legislation to nationalise banks.

**Senator Marc MacSharry:** So on the night, it was the view of the Governor that everybody was solvent, but yet you were being asked to look at nationalisation legislation, which you're saying of solvent banks really that's a matter for Venezuela and other countries.

**Mr. Eugene McCague:** Well, that's just an opinion. I mean-----

**Senator Marc MacSharry:** Okay, yes.

**Mr. Eugene McCague:** -----the State could ... yes, I mean the legislation that we were looking at was legislation which had been in ... around since about May or June. I think you probably know that. It was based on the Northern Rock legislation, we were working on it over those days. It was always said to us, from the first day we arrived, that this was contingency planning. We were never given a date or we were never said, "This must be done." It was contingency planning but that was what we were working on. I don't think the legislation, of itself, to take your point, Senator, would have required a declaration that the bank was insolvent. I'm merely making the point of the practical challenges of nationalising a solvent institution.

**Senator Marc MacSharry:** Again, just a slight add-on to that one, for whichever of you feel is most appropriate to answer. So, on the 24th, when you came in, it was about contingency planning. I know we spoke briefly there about the night of the guarantee. But did you have any sense when you were engaged on the 24th that, "Look, things are in a very, very grave situation and we expect to need to do something within a week, two weeks, a month, a year"?

**Mr. Eugene McCague:** Well, I'll take that first.

**Mr. Pádraig Ó Ríordáin:** Sure.

**Mr. Eugene McCague:** I mean, yes, we had a sense it was in a grave situation but we certainly had no sense of the timeline and we certainly didn't have a sense coming in on Wednesday that the big decision would be made in less than a week. But yes, we had a sense that this was, I think, a matter of weeks and that it was something that ... it was a very grave situation.

**Senator Marc MacSharry:** Okay. Do you want-----

**Mr. Pádraig Ó Ríordáin:** I would echo that entirely, Senator. I think that, on the morning, certainly, when we came in, we were asked to come in that morning at relatively short notice and we were briefed at the same time as Merrill Lynch was briefed. And I have to say that I ... the briefing was quite shocking in relation to the position particularly of Anglo and INBS. And therefore the potential knock-on impacts on the rest of the system, you know, were clear, but particularly on Anglo and INBS. But at that stage again, as Eugene said, the timing as to how that would play out all depended on things like liquidity flows and all of that. And obviously the Central Bank would have had all of the information in respect of that and that was being monitored on a daily basis. So it was very hard, when you saw the initial briefing, to predict exactly where this would go.

**Senator Marc MacSharry:** For yourself this time, what was your understanding of the communications between the Governor of the Central Bank and ECB officials in the period to the night of the guarantee with regard to the deteriorating liquidity crisis?

**Mr. Pádraig Ó Ríordáin:** Senator, we didn't have any visibility of that. So we were advising the Department of Finance and that would have been happening at a very different level and perhaps at a policy level as well. So I wouldn't have had any visibility of that.

**Senator Marc MacSharry:** So to the extent that you can comment, you were unaware of any communications with the European authorities? Is that fair or-----

**Mr. Pádraig Ó Ríordáin:** I think that I would have had a sort of broad understanding of the fact that those communications were happening but, as to the detail of them, I wouldn't have had any knowledge.

**Senator Marc MacSharry:** And yourself again, if it's appropriate, on the night of 29 September, did the banks bring a written version of a draft guarantee to the meeting? And, if so, do you have a copy of that draft and, if so, can you provide it to the inquiry?

**Mr. Pádraig Ó Ríordáin:** I'm unaware of any draft from the banks and I don't have a copy.

**Senator Marc MacSharry:** Okay. Just another series of questions and just I want to be cautious here, so if you feel that I'm straying into a territory that you're uncomfortable, or the Chair, I'm prepared to be corrected. For the period 2008, is it in order for you to tell the inquiry how many banks you acted for?

**Mr. Pádraig Ó Ríordáin:** You mean as a firm that we acted for?

**Senator Marc MacSharry:** Yes.

**Mr. Pádraig Ó Ríordáin:** Sure. We acted for one other bank in relation to these issues, which was Bank of Ireland, and we started acting for Bank of Ireland in relation to these issues late in October of 2008.

**Senator Marc MacSharry:** But in a general, commercial sense, are you-----

**Mr. Pádraig Ó Ríordáin:** In a general, commercial sense, probably more. So, in other words, in terms of normal, sort of, loan advice and those types of things-----

**Senator Marc MacSharry:** I understand.

**Mr. Pádraig Ó Ríordáin:** -----probably more. I don't have the numbers, Senator.

**Senator Marc MacSharry:** But apart from, say, purchases of buildings and property and conveyancing and that kind of stuff, I mean, in terms of what a layman like me might describe as high-level legal advice-----

**Mr. Pádraig Ó Ríordáin:** Yes.

**Senator Marc MacSharry:** -----were you acting for many banks, or how many, in 2008?

**Mr. Pádraig Ó Ríordáin:** Before the ... before September or-----

**Senator Marc MacSharry:** Well, assuming that-----

**Mr. Pádraig Ó Ríordáin:** Okay.

**Senator Marc MacSharry:** -----you weren't disengaged in the month of September, or hired in the month of September?

**Mr. Pádraig Ó Ríordáin:** Sure. The banks, Senator, that we would have traditionally done most of that level were ... so let's call it board-level work, would have been Bank of Ireland. From time to time, we would have done some work for EBS as well, I think, at the same type of level. But I'm not that conscious that we had done that much in 2008. So I think Bank of Ireland really would have been the bank.

**Senator Marc MacSharry:** Very good. How do legal firms, and indeed Arthur Cox, reconcile any potential for conflict of acting for the banks and, say, in the context of what we're talking about here, then also advising the Government on guarantee and other related issues?

**Mr. Pádraig Ó Ríordáin:** Well, the very first thing that we do is to see whether we're advising on the same issue, because if it's not on the same issue, then the issue doesn't arise so much. And then the priority always, obviously, is to inform both clients. So, what you would do in those circumstances, you'd go to both clients - so in this case the Government, or the Department of Finance at least, and the Bank of Ireland - and explain to each of them what you're doing, how you're acting in relation to that and what the client actually wants of you. And then if both clients, in those circumstances, agree that actually each of them is happy with that arrangement and the arrangements that are put in place to, you know, separate teams completely and preserve confidentiality and all those types of things, it's the client's decision then, or the client's choice, to go ahead on that basis. I think, in the type of crisis that we had, Senator, every firm would have acted ... would have been acting for other banks, it's just the nature of it. Because it would have been very difficult to provide the type of legal advice and expertise that the Department required if you'd never acted for any banks. So the inevitability would have been that any law firm would have been in a similar position. Therefore the key is, well, how do you handle that conflict and the very first thing in relation to handling a conflict is, obviously, informing fully your clients and making sure that they're aware and letting them choose.

**Senator Marc MacSharry:** And just for the people that would be listening in and for the benefit of the committee, if you are acting for Bank A and you're acting for the Government on

the guarantee, who may or may not be a beneficiary of this guarantee, you could advise both parties that, “Look, this is what’s going on; are both sets of people happy?” And are you saying that it is the practice then that, if both parties are happy, everybody proceeds? Is that-----

**Mr. Pádraig Ó Ríordáin:** Well, Senator, I should clarify one thing, that we gave absolutely no advice to Bank of Ireland in relation to the guarantee or anything like that prior to the guarantee being given.

**Senator Marc MacSharry:** Okay.

**Mr. Pádraig Ó Ríordáin:** So we weren’t engaged in anything like that. And, as I said, actually I was quite unaware and, as a firm, we were quite unaware of the depth of, you know, the problems at the time in September. So just to be very clear on that. The only time that we started acting for Bank of Ireland was later in October 2008 and that was having consulted both the Department and Bank of Ireland in relation to that and getting their-----

**Senator Marc MacSharry:** So, at the time there was none?

**Mr. Pádraig Ó Ríordáin:** At the time, there was none, no.

**Senator Marc MacSharry:** Okay, that’s grand. How would, again, a legal firm - or Arthur Cox in this instance - manage a conflict of interest in circumstances where ... no, that’s actually not relevant, so I’ll move on. How much of your income as a firm was derived from the banking sector?

**Mr. Pádraig Ó Ríordáin:** I ... we don’t publish our figures, Senator, and I actually don’t even have that number. I don’t know.

**Senator Marc MacSharry:** Okay. As a percentage-----

**Mr. Pádraig Ó Ríordáin:** Well, as a sector-----

**Senator Marc MacSharry:** -----as opposed to the amount, I mean?

**Mr. Pádraig Ó Ríordáin:** I don’t even have the percentage. But as a sector, undoubtedly the financial sector as a whole would be a significant part of our practice. But I really don’t know what percentage that would be. And I think in many ways, it was essential for us to have that or else we wouldn’t have had the expertise in terms of advising the Department.

**Senator Marc MacSharry:** Was the firm, Arthur Cox, qualified to advise on the guarantee?

**Mr. Pádraig Ó Ríordáin:** Well, we weren’t asked to advise on the guarantee, just to clarify that. I think that, in general terms, if we had been advised to ... asked to advise on the guarantee, we certainly would have been qualified to act on the legal aspects of the guarantee. And, you know, for example in the implementation of the guarantee afterwards, Senator, which happened in the first three weeks of October, where the statutory instrument that was ... that brought the guarantee into law was created, we were very involved in that. So I think that bears out that, on the legal side, yes. But I think there’s ... and this comes back to a question you asked Eugene earlier as well, I think there’s a very important distinction - certainly in terms of our role - between what the policy is, in terms of what you choose to do in terms of supporting the banking sector, and then the legal implementation of that. And they’re actually two fairly distinct points.

**Senator Marc MacSharry:** I understand. In the issues that you were asked to consider,

and you talked specifically about the nationalisation legislation and then a specialised lending scheme, I think you referred to it as, did Arthur Cox have the necessary expertise to advise on these or did you yourselves interline or source any external other legal firm from other sovereigns, perhaps, who have dealt with that issue before? Or was it-----

**Mr. Pádraig Ó Ríordáin:** I think that we very much had the legal expertise in relation to those and ... so what we were asked to do in respect to them, for example, I'll give you some examples of that week. So on that week we ... we gave some advices in relation to the legislation itself because that was continually in development. We did things like prepare step plans, for example, in relation to what ... how do you practically ... what practical steps do you take if you do nationalise? So what are the things you do on day one? And that's actually quite an extensive list. We also did things like helped, you know, draft the explanatory memorandum. All those types of things and also, as I said, contributed to the Act itself. On the collateralised lending scheme, we certainly had the expertise and, again, we were advising how that could be constructed to provide liquidity to the banks on a general basis.

**Senator Marc MacSharry:** Were ye ever retained to - and again I don't know if this is appropriate, you can tell me if it's not - to advise other sovereigns on nationalisation of banks or similar schemes?

**Mr. Pádraig Ó Ríordáin:** No. Well, we practise only Irish law so it would be unusual if we were to advise another sovereign in relation to that.

**Senator Marc MacSharry:** Okay. Very finally, did you take any contemporaneous notes of the meetings held on the night of the bank guarantee?

**Mr. Pádraig Ó Ríordáin:** Was this, sorry ... I ... just to be clear, I wasn't actually at the-----

**Senator Marc MacSharry:** No, absolutely-----

**Mr. Pádraig Ó Ríordáin:** -----the meeting itself. So I didn't take notes. Eugene?

**Mr. Eugene McCague:** No, I didn't.

**Chairman:** Okay. Thank you very much.

**Senator Marc MacSharry:** That's very good. Thank you, Chairman.

**Chairman:** Deputy John Paul Phelan.

**Deputy John Paul Phelan:** Thank you ... thank you, Chairman. And good afternoon, gentlemen. I've a little less questions now because some of them have been dealt with already.

**Senator Marc MacSharry:** Apologies.

**Deputy John Paul Phelan:** You're all right. Firstly, actually, is it Mr. Ó Ríordáin or O'Riordan?

**Mr. Pádraig Ó Ríordáin:** Ó Ríordáin.

**Deputy John Paul Phelan:** Ó Ríordáin. Because it was written as "O'Riordan" earlier. In relation to the 120 lawyers who you said were working in the firm on the business that you've referenced in your opening statement, how many of them would be ... would've been of a partner level in the firm can you recall?

**Mr. Pádraig Ó Ríordáin:** I don't have those numbers, Deputy. It would have depended a lot, from time to time, on what precisely the work was. There would have been quite a few partners involved but I don't have the numbers to hand. It's important ... that 120 were not always ... were not working at one given time or another. So that was over a period of seven years where we needed specialist teams to do specialist things. So, for example - very clear example - we'd a ... we had a litigation team that had to do some of the High Court applications in relation to direction orders, those types of things, and then we'd have corporate and capital finance teams dealing with, for example, recapitalisations of the banks or the reconstruction of the banks in 2011. So the 120 lawyers is over that period of time in total.

**Deputy John Paul Phelan:** Was there any point during the seven-year period where the Department of Finance would have been your biggest client or one of your ... one of your biggest, I should say?

**Mr. Pádraig Ó Ríordáin:** Well, again, we don't give that information usually but, certainly, the ... with the level of complexity and work that was ... that was in the task that we were assigned, it would have been one of our bigger clients.

**Deputy John Paul Phelan:** Okay. I want to reference your opening statement, Mr. Ó Ríordáin. Paragraph 13.1 and quote it directly, where you said in the middle of that paragraph that "we had a limited interaction with the IMF in respect of the legal manner in which senior bondholders could participate in burden sharing." Can you, within the parameters that were operating in here today, outline to the inquiry the nature of that interaction that you had?

**Mr. Pádraig Ó Ríordáin:** I think I can, Deputy, on a factual basis, so I'll avoid giving our advices in relation to the matter. But on ... basically, when the IMF came in at the beginning, they very much were focused on burden-sharing with senior bondholders and I think that they saw that - at least the teams that I interacted with - saw that as being an integral part in the over-all approach in solving the problem. So we did have some meetings with the IMF in relation to that and the ... there was an IMF ... a lawyer that the IMF had used previously in relation to exactly this work called Lee Buchheit, from Cleary Gottlieb, who was brought in and, actually, he gave advice over a day or two, in respect of, you know, how this had been done elsewhere, for example, in Latin America and various other places. So, certainly at that stage, it was quite a focus of the IMF. From my perspective then, that disappeared back into a policy discussion and then it came back from the troika on the basis that there wouldn't be any burden-sharing with the ... with senior bondholders.

**Deputy John Paul Phelan:** Was your interaction lawyer to lawyer then rather than you to somebody or, we'll say, Arthur Cox in general to somebody operating directly on behalf of the IMF?

**Mr. Eugene McCague:** No.

**Mr. Pádraig Ó Ríordáin:** No. Some of the conversations would have been directly with the IMF and others that they ... the IMF representatives would have been in the room when some of these things were discussed. And, for example-----

**Deputy John Paul Phelan:** And they would've been the people who we all know and are familiar with in terms of names who were dealing with the IMF matters here in this-----

**Mr. Pádraig Ó Ríordáin:** I think in general terms, yes. Yes.

**Deputy John Paul Phelan:** Can I turn now, actually, perhaps to Mr. McCague? What was your views - in relation to the night of the guarantee itself - on the responsibility that the State had legally for the banking system or the position of individual banks within that system?

**Mr. Eugene McCague:** Do you mean Deputy, sorry, before the decision was taken or after?

**Deputy John Paul Phelan:** Well, during ... while the decision was being discussed even, I suppose-----

**Mr. Eugene McCague:** Okay-----

**Deputy John Paul Phelan:** -----yes.

**Mr. Eugene McCague:** -----well, before the decision was taken - and let's say the decision had been taken - I suppose, if we're looking at responsibility in the sense of responsibility for liabilities, I mean, clearly there's ... in the broader sense, if you take the Central Bank as a part of the State, there was a responsibility for regulation. But if we're talking really about the liabilities, I suppose, until the decision was taken, the responsibility ... or the potential liability on the State would have arisen potentially in relation to the deposit guarantee scheme, where the increases had gone from €20,000 to €100,000. And so if a bank had defaulted on deposits, to the extent there's intended to be a fund to cover that - I don't know what state the fund was in - but to the extent that that fund wasn't able to meet it, then the State I think would have had to step in. So, until the final decision was taken, that would have been the extent of the State's liability. Once the decision on the guarantee was taken, I think it's, again, fairly straightforward which is that for all of the categories of liabilities which are mentioned in the guarantee in relation to the six institutions and for the two-year period of the guarantee, the State was basically saying that they would pay up to creditors to the extent that an individual bank failed to do so.

**Deputy John Paul Phelan:** Okay. In reference to a comment that you made in answer to Senator MacSharry earlier, you said that you - and I think I'm quoting you correctly - you don't remember anyone making an assertion that on ... banks were insolvent on the night of the guarantee in the meetings that you attended. Was there an extensive discussion around the matter of insolvency or the potential for insolvency or that the illiquidity which everybody has acknowledged existed could ultimately lead to insolvency?

**Mr. Eugene McCague:** There was ... I wouldn't say there was an extensive discussion by the time I had arrived but bear in mind that this was getting quite late now - the banks had come in, they'd gone out and so on. I had the clear sense there had been an extensive discussion and there certainly was, to take your last point, a discussion on the fact that, you know, in some ways, it isn't quite binary liquidity versus solvency. I know people have set up the debate, if you like, as such. And, you know, serious illiquidity will ultimately lead to insolvency. So there was a view that if the liquidity issue wasn't dealt with, then obviously it would lead to insolvency. But I don't recall anyone calling it directly and saying, "I believe this bank is insolvent as of tonight."

**Deputy John Paul Phelan:** Can I ... I just want to rewind, there's one point that I forgot to ask Mr. Ó Ríordáin earlier. In relation to the full extent of the seven years that were ... that you're referencing in your opening statement - and you spoke about the 120 lawyers who were employed over that seven-year period, or were working on these matters within the firm - can you inform the inquiry how you were instructed for each of those engagements? Like was there a tendering process for each of them and which of them there were not ... was there not,

potentially, a tendering process?

**Mr. Pádraig Ó Ríordáin:** Sure, Deputy. There was no tendering process at the very beginning because it clearly was an emergency when this happened. The ... over the period of this time I think we did about 19 different tenders, some ... many of which we won, some of which we lost. That would include, for example, tenders in relation to work for NAMA and those types of things as well. So there was ... there was quite a bit of tendering.

**Deputy John Paul Phelan:** I want to turn to paragraph 5.5, which is quite a long paragraph, if I remember, because its got a number of subsections. If I can find it myself. Yes, subsection (e) of your statement, you say that the legal consequences of a failure of a bank could have included the capacity of the ECB to seize the bank's collateral. Can you, maybe, briefly outline what that would have entailed?

**Mr. Pádraig Ó Ríordáin:** Absolutely. So this is just one of the consequences of a bank becoming insolvent. So what would have happened ... and the ECB would have been in no different position, really, from other types of ... well, actually, sorry, it had priority ... would have been in a similar position to other types of derivative counterparties whereby, in order to get liquidity, what the banks would have done is that they would have repoed some of their assets to the ECB. And what happens in that case is that if there's an insolvency event or a bank becomes illiquid, the ECB or, indeed, other derivative parties, would actually then seize that collateral so that they own it, essentially, as collateral for the lending that they'd given.

**Deputy John Paul Phelan:** So, in theory at least, the ECB could have become a ... almost a direct lender to people who held loans.

**Mr. Pádraig Ó Ríordáin:** Not really, because what would have happened ... no, because all the ECB would have taken at that stage in terms of collateral would have been publicly-traded instruments so as ... rather than packaged loans, for example. And that was one of the issues that the banks faced in relation to liquidity because they couldn't just package loans and give them to the ECB. So that was the position in respect of that.

**Deputy John Paul Phelan:** Have you heard of any examples of where that actually happened? Maybe in other jurisdictions or other examples of that.

**Mr. Pádraig Ó Ríordáin:** Well, I suppose, that actually happened here to a certain extent in relation ... once IBRC was liquidated. The promissory notes, for example, that were held at the Central Bank of Ireland at the time ... the Central Bank would have become the owner of the promissory notes and then they were restructured from there. So that's probably the primary example.

**Deputy John Paul Phelan:** Okay. At paragraph 6.3 of your statement you say "Anglo posed the greatest risk to the guarantee and the stability of the banking sector". Again, can you maybe elaborate on that particular statement?

**Mr. Pádraig Ó Ríordáin:** Certainly, Deputy. I think ... and, again, I'd need to be a little bit circumscribed because I'm conscious that there's litigation ongoing in relation to Anglo. But, essentially, once the State guaranteed each of the banks, then the State was, obviously, vulnerable to any default by any of the banks. And, therefore, when it came to Anglo, once confidence started to erode in relation to, you know, the manner in which Anglo was being run, that obviously had quite an impact in relation to whether the guarantee could be triggered. And, you know, a guarantee could be triggered if there was any default in any of the covenants, for

example, for ... in any of the financial instruments that the bank held. So when you guarantee like that, you ultimately are responsible for the bank and that, therefore, once the confidence in a corporate governance began to really erode in terms of Anglo, then that really was a trigger, I think, for the State to say “This is really is our obligation, our liability, ultimately, in terms of the guarantee and, therefore, we need to take more extensive control than we have taken in relation to the other banks.” And then that’s when you nationalise. So you become the owner. You control the board - at least, you appoint the board. And, therefore, you regularise the governance of it to a much greater extent.

**Deputy John Paul Phelan:** Was it your advice to the Department that Anglo was of such systemic importance that the consequences of its failure would have impacted on the industry in the manner that you’ve outlined?

**Mr. Pádraig Ó Riordáin:** No, Deputy, because it would be beyond my expertise, frankly, to do that. So that judgment would be made by ... from the financial perspective. So that would be Department of Finance, I suppose the Central Bank. My lens in terms of all of this would be much more just the legal perspective.

**Deputy John Paul Phelan:** Okay. In evidence to the inquiry, Professor Honohan, Governor of the Central Bank, spoke about the merger of EBS and AIB and the merger of Anglo and INBS and he said it “seemed a largely pointless cosmetic exercise”. That’s from page 7 of his statement that he gave to the inquiry. He also said that the exercise was “pressed on the Irish authorities by the Troika”. You would have been involved, obviously, at the time in advising the Department. Were you aware of those pressures that Professor Honohan ... external pressures that he alleges to have been coming from outside?

**Mr. Pádraig Ó Riordáin:** Yes, Deputy, and in general terms, yes. So what happened was when the troika came in, the troika required that the banking sector would be reorganised in a sustainable manner. And at that stage, INBS, for example, was still out on its own as an entity and it needed to be resolved. It needed to be put on a footing that actually was sustainable in the longer term. And the decision was made to roll that into Anglo to form IBRC and that combined essentially perhaps the two most troubled banks. So the purpose of that at the time, certainly as I understood it and as, I suppose, we executed it or helped execute it, was that the ... that the idea was to reform the Irish banking sector into the two pillar banks, Bank of Ireland and AIB. And then EBS ... then ILP as a third bank, which actually had a potentially sustainable future. So I have to say that I would see logic in that because clearly something had to be done with INBS and EBS too was a very, very small institution at that stage and clearly also was troubled.

**Deputy John Paul Phelan:** So would I be correct ... I’m not trying to put words in your mouth, but you have a difference of opinion as to what Professor Honohan said? His quote again was that it “seemed a largely pointless [and] cosmetic exercise”.

**Mr. Pádraig Ó Riordáin:** Well, I wouldn’t contradict Professor Honohan for one second because he clearly has a very different lens on this than I would have. So he has a lens of the ... you know, financial stability and finance generally in terms of the country’s economy. My view is just I would say that there’s a logic in saying that if you have a number of banks that seem unsustainable in the longer period of time, you do need to consolidate them or you need to take them off the pitch in some way. This was just the way that it was decided to do that.

**Deputy John Paul Phelan:** Again, just to rewind to maybe one of my earlier points in relation to burden sharing, paragraph 12.3, you refer to ... of your statement, you refer to the

burden-sharing of deposit holders. Again, within the narrow constraints in which we're operating, were you ever asked to provide advices in that particular window, if you like, as to the possibility of burden-sharing with deposit holders?

**Mr. Pádraig Ó Ríordáin:** No, I wasn't.

**Deputy John Paul Phelan:** Okay. All right. Thank you very much.

**Chairman:** Thank you very much. Our next questioner is Senator O'Keeffe. Senator, you've ten minutes.

**Senator Susan O'Keeffe:** Thank you, Chair. What was your ... sorry, gentlemen, thank you. What was your advice to the Department on the actual legal position regarding the deposit guarantee scheme? Now, I appreciate you may not have had, so if ... that's fair enough. That was approved by Government on 20 September, which I appreciate was prior to your coming on-----

**Chairman:** Phone interference there, Senator.

**Senator Susan O'Keeffe:** I'm sorry. But wasn't enacted until ... in legislation until next ... until the following year. So did you have any hand, act or part in that?

**Mr. Pádraig Ó Ríordáin:** No, Senator, we didn't. So that was already a decision that had been taken before we came in.

**Senator Susan O'Keeffe:** Okay. So if we go back then to your appointment, were ... how did it come about that you were appointed on 24 September? Had you been forewarned, maybe earlier on in the month, that such a ... or was it an out-of-the-blue moment? And could you just tell us how that happened?

**Mr. Pádraig Ó Ríordáin:** Well, it was quite out of the blue, Senator. So I got a call that morning, quite early that morning, and I was asked to come down to attend a meeting at the Department of Finance which I did. So, as I said earlier once I got down to the Department of Finance we were then briefed on what the position was generally.

**Senator Susan O'Keeffe:** Right. And was that described to you then as an emergency or a crisis or what were the words that were used to explain how you'd got a call out of the blue?

**Mr. Pádraig Ó Ríordáin:** Well, I'm not sure that that was ... those words were used in the call ... the original call to me, but certainly it was quite evident when we got down and were briefed, that this was very urgent, as a situation, a very dangerous situation.

**Senator Susan O'Keeffe:** And, forgive me, well ... perhaps people don't understand ... maybe watching ... the public at large, but why the State would need to, if you like, employ outside lawyers to work, if you like, effectively with the Attorney General's office in order to produce legislation that, in fact, we're supposed to be able to do ourselves. So why was that that you were brought in at that point?

**Mr. Pádraig Ó Ríordáin:** Well, Senator, it's a very good question. The reason is this. The Department of Finance ... we advise the Department of Finance. So if you take the Attorney General's office which did a really great job in respect of the entirety of the crisis, their job is to provide the legislation on the infrastructure. But in a crisis like this, there's a lot more to be done, essentially. So, for example, in terms of understanding, you know, banks' capital, their

financial instruments, transacting with banks - so a lot of this is contractual as well - there's a lot of other legal work that needs to be done which the Attorney General's office wouldn't generally do.

In terms of our input in terms of the legislation that the Attorney General's office was producing, our job really was to say "Well, how does this work, you know, out in the banking world?" So, in other words, that we would bring the experience of how this would actually legally impact the banks, how ... you know, how the legislation could be drafted in a way that actually effected in practical ways, in the actual banks themselves and the banking sector, what it was that the policy needed to achieve.

There's also a question of resource. I mean, for example, you know creating that step plan in the ... and this was only the first week, but creating that step plan for nationalisation, what do you actually do, you know, when the legislation is brought in? Those types of tasks would not be tasks that the Attorney General's office would, generally speaking, do.

**Senator Susan O'Keeffe:** I think you said that you weren't given a timeline ... you weren't told, I don't think, that "We need this by Friday," or "We need this by Monday." Am I correct? Did I understand that correctly?

**Mr. Pádraig Ó Ríordáin:** Yes, you are, yes.

**Senator Susan O'Keeffe:** However, you have observed that it was clearly a very serious situation, so-----

**Mr. Pádraig Ó Ríordáin:** Yes.

**Senator Susan O'Keeffe:** -----what sort of sense did you have - and your team - about when you were meant to be delivering something, even if there wasn't a specific date given?

**Mr. Pádraig Ó Ríordáin:** No, absolutely. There was absolutely a general urgency that everything needed to get done and the preparation that needed to get done, that it needed to get done as soon as possible so, you know, over those days we all worked as a team, not just our firm but, as a team, worked extremely hard over those days. We didn't know precisely when, you know, the work that we were doing would be needed, but we knew that there was a decent chance it would be needed imminently. And obviously the function of the Department of Finance at the time, who we were advising, was to make sure, I suppose, that they had the options in place in terms of any Government decisions that might be made and we were working to that.

**Senator Susan O'Keeffe:** Just to be completely clear: in the end, if you hadn't come in, if you hadn't been called was there already in existence sufficient legislative capacity for either nationalisation or a guarantee?

**Mr. Pádraig Ó Ríordáin:** Yes, I think there certainly was. So there was ... when we came in there was already a very advanced Bill that had been prepared by the Attorney General's office, which dealt with nationalisation and which also had sections in there enabling the Minister to provide financial assistance to individual banks. So that was all very much in train. So the work that we did, essentially, over those couple of days was just to maybe help, you know, perfect that and give our views in relation to it so the Attorney General's office could take that on board. But that legal infrastructure was already prepared.

**Senator Susan O'Keeffe:** You say, I think perhaps it's Mr. McCague, you say you attended

a meeting on Sunday, 28 September:

in the offices of [the] NTMA with representatives of the Department of Finance, NTMA, the Financial Regulator's office ... other advisers. There was further discussion on the loan books of the banks, particularly of Anglo. Following that meeting, we continued to progress the draft Bill.

So how did that meeting inform or change the way in which you were working or did it? What was the purpose of the meeting?

**Mr. Eugene McCague:** Well, if I take this, it didn't change the way we were working because we went back to drafting the Bill. The purpose of the meeting, I think, was, in fact I've now learned, although I didn't know earlier, that the purpose of the meeting was a follow-up from a meeting on the Friday, which we hadn't been at. But it was essentially, as I say, a series ... there had been a series of meetings, of briefings as to how ... what the loan books were like, the first one being on Wednesday, the 24th which was our first day. It's in the core documents. It's dated Thursday, 25th but I think our view is, as others have, that it was the 24th. So the general discussion that day was a further update on what was happening. Merrill Lynch had produced the paper, the slideshow if you like, on the 26th I think and then they had the narrative paper that morning and I think the ... they didn't go through it in detail but they went through the options, which were the same options that had been discussed before.

**Senator Susan O'Keeffe:** Given that several days, as in banking days, had passed between you being appointed and that meeting, was there any reflection on activity during those banking days that changed the situation? Made it worse, made it better, *status quo* for the actual banks, do you remember?

**Mr. Eugene McCague:** Well things weren't getting better, I can certainly say that to you and I think the general sense was that things were getting worse but the difference is there was so much catch-up for the likes of the advisers like Merrill Lynch who, in fairness to them, had only come in on the Wednesday and what was happening was a detailed analysis of loan books and no matter what resources you put into that, that's a slow and painstaking process. I don't recall at that meeting, maybe I'm ... not to mix up two stories. I don't recall at that meeting there being updates on liquidity, I mean, we weren't necessarily being told about liquidity. But to the extent that there was a theme or a tone around the meeting, it certainly was that things were getting worse and not better.

**Senator Susan O'Keeffe:** The NTMA made clear to us in evidence that they were of the view that the model, so to speak, for Anglo and INBS was broken, it was a broken model that they were functioning under and that effectively they were insolvent. Did they make that view known to you, not necessarily in the succinct way they've done it here, but in the conversations were they making that clear? Because obviously you were at a meeting with them, more than one possibly.

**Mr. Pádraig Ó Ríordáin:** Will I take that? Senator, I certainly recall that view. I don't recall whether that was at that particular meeting because of course there were so many meetings afterwards but certainly I recall that view. And the view was a very straightforward one and, of course, in hindsight it was absolutely correct, which is that, you know, both INBS and Anglo funded their book with short-term debt to a certain extent and, in fact, to quite a material extent. And that meant that they were relying on the international capital markets being open to them at any given time. So, put very simply, they would borrow money for three months and

lend it to you for seven years, and therefore they had to keep renewing that money. Once the international capital markets closed, then obviously they ran out of funding. And that was why it was quite broken and also, of course, both Anglo and INBS were just pure property lenders, so they were monoline lenders. So the combination of those two things, I think, is exactly what the NTMA was pointing to and certainly that was a theme from early on but whether it was at that meeting or not, I can't recall.

**Senator Susan O'Keeffe:** Okay, so as monoline lenders with broken models, so to speak, were you in a position where you had to satisfy yourselves as lawyers with offering legal advice that the banks were all solvent? Did you have to stand back yourselves and go, okay these banks are solvent or they're not solvent, or were you just able to rely on, as it turned out, the Central Bank and the Financial Regulator's observation?

**Mr. Pádraig Ó Ríordáin:** Well, we had to rely on that observation because working out whether a bank is solvent or insolvent is very much a financial task, Senator.

**Senator Susan O'Keeffe:** But you'd heard the NTMA tell you that the models were broken and that they were in a bad state. And now you heard the Central Bank telling you they were solvent so were you, in your own mind going, okay I have to make a judgment call here or would it have made any difference to your advice?

**Mr. Pádraig Ó Ríordáin:** Well it certainly wouldn't have been part of our role to make a judgment in relation to solvency-----

**Senator Susan O'Keeffe:** No, but I'm asking ... I'm sorry maybe I'm misplacing the question-----

**Mr. Pádraig Ó Ríordáin:** Excuse me, yes.

**Senator Susan O'Keeffe:** As lawyers offering legal advice on the legislation, did you have to satisfy yourselves that banks that you were offering advice about were solvent, or not?

**Mr. Pádraig Ó Ríordáin:** No.

**Senator Susan O'Keeffe:** No?

**Mr. Pádraig Ó Ríordáin:** No.

**Senator Susan O'Keeffe:** Why not?

**Mr. Pádraig Ó Ríordáin:** Because ultimately the policy that was adopted was a policy that was adopted, so our role was very much to effect that and to work out what legal infrastructure was required, whether the bank was solvent or insolvent.

**Senator Susan O'Keeffe:** So your advice wouldn't change if ... let's say if you knew bank A was insolvent-----

**Mr. Pádraig Ó Ríordáin:** Yes.

**Senator Susan O'Keeffe:** -----would you have offered different advice?

**Mr. Pádraig Ó Ríordáin:** Well if bank A was insolvent then we would have been asked to advise, well, now that the bank is insolvent, what do you do? And we were never asked to advise in relation to that. Until of course, INBS was ultimately liquidated. But certainly in those

days, we weren't asked to do that because again the policy of the State was very much to stand behind each of the banks and keep them solvent.

**Senator Susan O'Keeffe:** Can I just ask for one clarification?

**Chairman:** Quickly.

**Senator Susan O'Keeffe:** And that is just, the NTMA was saying to you that the ... those two were monoline banks?

**Mr. Pádraig Ó Ríordáin:** Well, my recollection was that that was certainly a part of the discussion and I think it was probably part ... in fact, it was part of the view of the NTMA, yes.

**Senator Susan O'Keeffe:** Thank you.

**Chairman:** Senator Barrett.

**Senator Sean D. Barrett:** Thank you, Chairman, and welcome to our two visitors. Just taking up Senator O'Keeffe's point and it's covered in paragraph 9.8 of Mr. McCague's presentation and it says that "the Taoiseach asked Mr. Hurley on a number of occasions for his advice as to whether, in the Central Bank's view, Anglo was insolvent". Didn't the Taoiseach ask the wrong person? That was Mr. Neary's responsibility, he was micro and Mr. Hurley was macro.

**Mr. Eugene McCague:** Well, my recollection was he asked Mr. Hurley first, but my recollection as I go on to say is that I believe that Mr. Neary then came into the room and that the Taoiseach asked him that as well. But I'm fairly sure that it was Mr. Hurley was asked first. He asked both of them and they both gave the same answer.

**Senator Sean D. Barrett:** But he did ask Mr. Hurley first, isn't that-----

**Mr. Eugene McCague:** He did, yes. Well, that was because Mr. Neary wasn't there. My recollection is, and I think actually this is borne out in their own evidence, that Mr. Hurley left at some stage and then Mr. Neary came in at some stage. I can't remember the exact details.

**Senator Sean D. Barrett:** Because, as you know, we've changed those arrangements since. It was an issue at the time, as to whether that division was ... ever made any sense. And Senator O'Keeffe has spoken with you about the issue of whether it was liquidity, as Mr. Hurley said, or in fact it was the wrong business model, insolvency, and the NTMA believed that and they were in the building. And certainly the other ... the major banks believed it and they were in the building so unfortunately, it was ... it may have been a minority view, the one that prevailed, that it was liquidity and not solvency that ... the business model being unsustainable.

In Mr. Ó Ríordáin's presentation, and I thank him for it also, at 6.1, "the State ... formally accepted responsibility for most of Anglo's liabilities when it issued the guarantee in September 2008". Didn't the State believe, and everybody believe, that was for €1.5 billion and not a bill for €30 billion? Could anything have been done to say, we understand, as of now we're accepting €1.5 billion and not any higher number and certainly not €30 billion?

**Mr. Pádraig Ó Ríordáin:** Well, Senator, the point I'm making in relation to the €6.1 billion, is just the legal impact that nationalisation had, so the legal impact that nationalisation had, all that that did essentially was the State took ownership of Anglo at the time. But the point I was making is that actually the State was already on the hook for Anglo, from the time of the guarantee, essentially, so therefore in, in nationalising Anglo, it wasn't taking on any more li-

ability. But, certainly, I mean, my recollection of the early days was clearly it wasn't known that there was going to be a €30 billion gap.

**Senator Sean D. Barrett:** Would it be possible to design contracts which would specify the amounts so that that, kind of, cost escalation, or, indeed, moral hazard problem wouldn't occur afterwards?

**Mr. Pádraig Ó Ríordáin:** Well, I think you'd have had to do that before the guarantee was given, and, you know, with any guarantee, you can put conditions on it and you can limit it, but I think in the circumstances that would have voided the guarantee of its effect really, which was to give people confidence in effect, depositors, for example, and other people confidence so they could continue to do business with the bank.

**Senator Sean D. Barrett:** But that leaves the taxpayer completely exposed to a massive escalation in the bill.

**Mr. Pádraig Ó Ríordáin:** Well, yes, I mean, the guarantee, that's exactly what happened. So, you know, the guarantee and the overall the ... financial sector generally did leave the taxpayer with that bill. I think too it's very important in that analysis, Senator, to remember that the losses that had occurred in the system, you know, predated the guarantee and were there in any case, so they had to fall at some stage.

**Senator Sean D. Barrett:** But we didn't really know what we were guaranteeing, that there was hidden losses in there.

**Mr. Pádraig Ó Ríordáin:** Yes, certainly. That was my understanding at the time, yes.

**Senator Sean D. Barrett:** Could due diligence have a different interpretation in case we have this repeated in the future? Could people have actually gone in and provided the estimate back to those in Government Buildings on 29 September, "This is what you're really getting into, not what you've been told"?

**Mr. Pádraig Ó Ríordáin:** I think, theoretically, yes, Senator, but that's a very, very long and very extensive exercise. That was, ultimately, done by the Central Bank, for example, in its PCAR and it's PLAR exercises, and that is a very, very extensive exercise. The other thing to remember at the time is that things were moving very quickly, so I suspect, and this is more of a financial question rather than a legal question, but if you had gone into the banks at the time and assessed the assets, you'd have been assessing them against probably the conditions over the previous number of months, as opposed to the conditions that were to come. So, again it's hard to say, I would say, whether that would have ... even if you had had the months that it would have taken to do that job, whether it could have been benchmarked correctly in the circumstances.

**Senator Sean D. Barrett:** And finally, your point on, on page five, there was no bank resolution available to the Government to resolve it in a controlled manner. Has that been rectified?

**Mr. Pádraig Ó Ríordáin:** It has now. I mean, it's been rectified. Firstly, we brought in ... well, the country brought in, in 2011, a domestic resolution scheme and the troika had required us to do that. But more fundamentally, just this year, from 1 January, the European Union has brought in the BRRD, the banking resolution and recovery directive, which actually does that in a comprehensive way. And it took the European Union, you know, five or six years just to formulate that. So that is a resolution regime that involves bail-ins, for example, that involves

bad banks, that gives all the tools that are required. In 2008, Senator, across Europe, most countries were actually without banking resolution legislation, and it's important to remember that no retail bank in the eurozone had ever been liquidated, so that's why at the time there wasn't, in any country, for example, in the UK as well, that there wasn't a pre-existing resolution legislation. But that is there now on the basis primarily of the new directive but also of our domestic legislation.

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

**Chairman:** Thank you very much. The next questioner is Deputy Kieran O'Donnell. Deputy O'Donnell.

**Deputy Kieran O'Donnell:** Thank you, Chairman. Welcome, gentlemen. Was there any reference to the advice given by Mr. Alan Gray earlier to the Department of Finance or by him again when requested to by the Taoiseach during the break in the meeting on the night of the guarantee?

**Mr. Eugene McCague:** No.

**Deputy Kieran O'Donnell:** Okay, can I ... Mr. McCague, can I take you to your statement and, more particularly, point 6 ... and you state: "On Sunday, 28 September, I attended a meeting in the offices of the NTMA". Who were you employed by? Were you employed by the Department or the National Treasury Management Agency?

**Mr. Eugene McCague:** No, we were employed by the Department at the time. I think the NTMA were ... provided the room, so to speak. In fact, I think I read some other witness gave evidence that it was to ... there were too many photographers and various other people gathered around the Department, so the meeting was held in the NTMA, but we were retained by the Department.

**Deputy Kieran O'Donnell:** And at that particular meeting ... you finish off by saying that there was:

representatives of the Department of Finance, NTMA, the Financial Regulator's office and other advisers. There was further discussion on the loan books of the banks, particularly of Anglo. Following that meeting we continued to progress the draft [nationalisation] Bill.

So, at that meeting, what views were given by the National Treasury Management Agency, what views were given by the Financial Regulator, the Department of Finance as regards doing legislation around the nationalisation of Anglo and Irish Nationwide Building Society?

**Mr. Eugene McCague:** To be honest, Deputy, I can't remember the details of that meeting or what views were expressed by individual people, but the draft legislation for nationalisation was an ongoing piece of work and, you know I, I think we were still on alert, if I could use that word, that the legislation needed to be ready, if it was needed.

**Deputy Kieran O'Donnell:** So was there discussion around that time, and, more particularly, you had discussions on the loan books of the banks, particularly Anglo. Was there a discussion around that time ... two aspects: No. 1, around the solvency of the banks, more particularly Anglo, and was the discussion around that ... were you under the impression that it was still policy to look at putting in place legislation to nationalise Anglo?

**Mr. Eugene McCague:** Yes, I believe that still at that stage the, the view of the financial

advisers was that Anglo was solvent. That was the information that was coming through. There was some, you know, concern that the advisers hadn't been in place that long. This was all very, very much-----

**Deputy Kieran O'Donnell:** Merrill Lynch were the advisers for-----

**Mr. Eugene McCague:** Merrill Lynch, but I think at that stage there certainly wasn't any sense that they were saying that it was insolvent. But, perhaps, to come back to a point that somebody else asked me that might explain it, even if it had have been declared, let's state, objectively everybody had agreed it was solvent that day, I don't think, logically, they would have stopped the legislation being prepared because, as I think we said earlier, illiquidity can lead to insolvency, so even if their balance sheets were very strong, and even if their assets greatly exceeded their liability, if the liquidity crisis continued and if it wasn't addressed in some way, they could have ended up being insolvent and therefore having to be nationalised. So I think that probably explains why the work was being continued-----

**Deputy Kieran O'Donnell:** But, at that particular meeting, were all the parties working on the basis that you were putting legislation in place to give effect to the nationalisation of Anglo and Irish Nationwide?

**Mr. Eugene McCague:** They were all aware that we were putting ... getting drafts ready in case they were required, absolutely.

**Deputy Kieran O'Donnell:** And there was no question of a discussion around the guarantee at that meeting----

**Mr. Eugene McCague:** The guarantee was discussed as one of the options but it certainly wasn't discussed in any detail in terms of the shape or size or form of it, and it wasn't, if I could call it, certainly in my presence, it wasn't at that stage, if I could call it, the primary option.

**Deputy Kieran O'Donnell:** What was the primary option?

**Mr. Eugene McCague:** Well, I don't know whether there was a primary option, because all the information was coming in together, and I suppose maybe because I had been solely dealing with the nationalisation Bill, my brain was hard-wired towards the fact that I'd better get it ready in case that's what was needed. But in terms of the guarantee, it was still in the mix as one of the Merrill Lynch options, but it wasn't ... in fact, an awful lot of that meeting, Deputy, was really about the loan books and what was going on. And the discussion on the actual options, certainly when-----

**Deputy Kieran O'Donnell:** What was generally the discussion on the loan books? What was the general tenor of the discussion on the loan books, particularly in Anglo, at that meeting?

**Mr. Eugene McCague:** I think that the ... I can't remember what the sample, if you like, had been and how large a scale it was. I mean, certainly, the view was that they were stressed. That goes without saying, but I thought the general ... my recollection of the general tenor of that meeting, which was similar to the ones beforehand, was still the view that the assets would exceed the liabilities if they had to be called on. I think that would have been the view.

**Deputy Kieran O'Donnell:** Mr. Ó Ríordáin, in your statement ... page 3 you say about, paragraph 5.5, and you say ... you speak about giving a perspective, and you say, "Had a bank failed in 2008, there was no bank resolution legislation available to the Government to step in

to resolve it in a controlled manner.” So the question I suppose I want to ask you, is No. 1, you were brought in a week before the guarantee took place, you were brought in the 24 September. Was there in any way a discussion around putting in place a mechanism to allow an orderly wind-down of an insolvent institution? Obviously, I’m speaking specifically about Anglo and Irish Nationwide.

**Mr. Pádraig Ó Ríordáin:** Sure. No there wasn’t, Senator, because the ... I think the ... the policy the entire time was to stand behind the banks and I think that the feeling at the time, and you’ll see it actually in the rest of 5.5, if you go through what actually would have happened at the time, seeing an insolvency, even for example the €100,000 guarantee scheme, there was two things; firstly those depositors would not have got their money for three months and in addition, there was a question of funding that, that scheme, so the Government would have had to come up with the cash to fund that immediately. So I think ... and that’s only ... and that’s the least of the problems. You then see how that would impact the other banks and depositors in other banks. It would have complicated the problem very significantly I would have thought. So as a result that ... that week it was not ... that was not part of the ... of the discussion.

**Deputy Kieran O’Donnell:** So, so it ... could it be said or not that the mechanism wasn’t in place to allow the option of a bank being allowed to fail, that that particular legal measure hadn’t been put in place and wasn’t an option for consideration?

**Mr. Pádraig Ó Ríordáin:** Well there was no special regime so it would have fallen back just on the normal bankruptcy rules. But as I said that was true throughout Europe and also bank resolution regimes are very complex things to put into place and as I said, the European Union took five years to do it, which is just in place now. So I think two things to be clear; firstly there wasn’t ... the resolution mechanism, that wasn’t part of the policy and the direction was more a nationalisation and with the supporting liquidity scheme, the CLS scheme that we’ve been discussing.

**Deputy Kieran O’Donnell:** And can I just finish up on the point, for either of you ... if Anglo was nationalised, what would have been the practical procedures in terms of nationalising? Could it have been nationalised in a night? Would it have been required that, you just ... you would have put the liquidity funding in place to fund Anglo in terms of over the next number of days? What’s the practical procedures in terms of nationalising?

**Mr. Pádraig Ó Ríordáin:** Well I think, Senator, the probably the easiest way ... or sorry, sorry, Deputy, excuse me ... the easiest way to look at that is actually when Anglo was nationalised in 15 January 2009 and that was done overnight. So in terms of ... of nationalising a bank it’s very important always to make sure that you retain confidence and certainty in the sector generally speaking. So you would tend to pass the legislation that was there on the night of the guarantee and was there that week, and ultimately, a version of that was enacted in January 2009. So essentially what you do is you ... you remove the ... you go in, you take the shares, so the shares transfer from the shareholders to the State. You then change the board, which means that ... that there’s new controls in relation to it and you just take ownership of the bank.

**Deputy Kieran O’Donnell:** So there was no reason we’ll say if ... if the Government wanted to make a decision on the night, that the following morning of the 30th, that Anglo wouldn’t have been nationalised?

**Mr. Pádraig Ó Ríordáin:** That ... that’s correct and it wouldn’t have affected liquidity, so for example the liquidity issues would have been the same I think pretty much either way.

**Deputy Kieran O'Donnell:** Okay, thank you.

**Chairman:** I'll just move to wrap things up and then I'll invite Senator MacSharry and Deputy Phelan back in and then Mr. Ó Ríordáin and Mr. McCague. If I can just deal with one issue, and either or both of you or just one of you might be able to answer this for me, and that relates to the issue of: did the draft legislation provide for a blanket guarantee at the time of engagement?

**Mr. Pádraig Ó Ríordáin:** This is on 24 September Chairman?

**Chairman:** Yes.

**Mr. Pádraig Ó Ríordáin:** The, the what was called the XXS Bill at the time which was the nationalisation Bill, it provided for the Minister to provide financial support to any credit institution and certainly from our perspective, the way we would have read that is, if you're nationalising one bank - it was in the nationalisation legislation - if you're nationalising one bank, the Minister may need to intervene in various ways to support other banks. But there was no discussion that we were party to, at least throughout that time, that there would be a blanket guarantee.

**Chairman:** That would be ... it wasn't explicit or implied to you at that time it was going to be a blanket guarantee, no?

**Mr. Pádraig Ó Ríordáin:** No, I mean ... no.

**Chairman:** Okay thank you. Also then to ask, and it just comes back to Mr. McCague's opening statement of today where he talks about representatives of AIB and Bank of Ireland were invited back in and informed of the position. If I could ask you Mr. McCague, is it your view that both AIB and Bank of Ireland were made aware that there was a decision to guarantee the banks prior to them leaving Government Buildings that night?

**Mr. Eugene McCague:** Yes.

**Chairman:** Explicitly?

**Mr. Eugene McCague:** Yes.

**Chairman:** Okay, and was that a blanket, all-inclusive guarantee that they were informed of or was it a general concept?

**Mr. Eugene McCague:** No, I would have ... I believe they were informed of the ... of the nature of the ... of the nature of the guarantee.

**Chairman:** And its full architecture?

**Mr. Eugene McCague:** And its full ... its full architecture as known then, yes.

**Chairman:** Okay. All right, thank you. And can I also ask you Mr. McCague is ... are you aware of the evidence of Mr. Beausang to the inquiry in which he states that he was ... it was his understanding that a draft press release had been authored in the Central Bank many hours earlier than the decision?

**Mr. Eugene McCague:** Yes, I am, yes.

**Chairman:** Okay and what is your recollection of the origin of the draft press release?

**Mr. Eugene McCague:** I do remember that there was a draft press release or draft announcement in the room when I came in, I didn't know who had drafted it and ... subsequent I have seen it was drafted by the Central Bank. I remember it specifically because somebody there, I can't remember who it was, had the task of collecting all the copies of it because Bank of Ireland and AIB were coming in, so there was definitely, as far as I was concerned, there was a draft in existence at that time. I can't remember whether I knew it ... who it was drafted by.

**Chairman:** And there seems to have been a number of drafts over the course of the evening-----

**Mr. Eugene McCague:** Correct.

**Chairman:** -----I think 12, maybe, inclusive. Were you there at the first draft or did you come in during the drafting process when there was still more to be done but some done already?

**Mr. Eugene McCague:** I honestly don't know, but ... but there was one there before I arrived.

**Chairman:** And on your first sight of that draft was that statement an all-inclusive guarantee?

**Mr. Eugene McCague:** I honestly can't remember.

**Chairman:** Okay, thank you. Senator MacSharry.

**Senator Marc MacSharry:** Nothing further Chair.

**Chairman:** Okay, Deputy Phelan.

**Deputy John Paul Phelan:** Briefly Mr. McCague, in relation to paragraph 6 of your opening statement, the meeting on the Sunday 28th, in the NTMA building with Department officials where further discussions on loan books, in particular Anglo, took place. Did you form a view, I suppose on the night of the meeting in question, we've had evidence that the NTMA weren't directly present in the room, as to why they weren't there or did you have a view as to whether they should have been physically in the room giving their opinion or ... rather than having it filtered through a third party?

**Mr. Eugene McCague:** I didn't form any view, I didn't ... I mean, obviously now that I'm seeing the evidence of Mr. McDonagh and so on, it didn't ... it didn't actually cross my mind that they were or weren't there-----

**Deputy John Paul Phelan:** Do you think that they should have been?

**Mr. Eugene McCague:** I don't think there was a need for them to be in the room but I assume they were available, if required.

**Deputy John Paul Phelan:** Okay. Mr. Ó Ríordáin, in relation to my earlier question, did you say ... I didn't pick you up properly, you might clarify that Cleary Gottlieb were employed by the IMF in relation to the issue of burden-sharing?

**Mr. Pádraig Ó Ríordáin:** No the ... the Cleary Gottlieb were ... Lee Buchheit of Cleary

Gottlieb had worked quite a bit with the IMF over the years in various countries that the IMF had done work in, so they simply introduced Lee to ... to the team over, I think of a weekend, it was a two-day period, so that he could just talk about how this had been done in other, in other jurisdictions.

**Deputy John Paul Phelan:** So did you have direct contact with Mr. Buchheit?

**Mr. Pádraig Ó Ríordáin:** Yes.

**Deputy John Paul Phelan:** Was he ... was he in Ireland?

**Mr. Pádraig Ó Ríordáin:** He was in Ireland yes but for ... for a very brief period, I would say over ... my recollection is that it was over a weekend.

**Deputy John Paul Phelan:** When would that have been roughly in your recollection?

**Mr. Pádraig Ó Ríordáin:** I ... to be ... I can't tell you Deputy, I couldn't put that in a particular timeframe.

**Deputy John Paul Phelan:** Yes, the reason I suppose I'm asking is that he is somebody who is extensively involved in other countries, particularly Greece and I wasn't aware until now that he had any involvement in the Irish context. But in relation to the discussions that took place, were there discussions on restructuring with respect to the sovereign or was it specifically on the issue of the possibility of burden-sharing? And was he specifically employed by the IMF on the ... on this ... on the Irish matter or was it just that he was on retainer?

**Mr. Pádraig Ó Ríordáin:** Well I'm ... I'm not sure in what exact capacity he was there. He was there as simply somebody who had done this in other countries. He was there I would say quite briefly in relation to this, so we, we had, we had worked out - and I don't want to get into advices for example here - but certainly in terms of burden-sharing the legal structures would have been available in Ireland to do that. And then a lot of ... a lot of it was actually about well, how do you deal with the bond markets in respect of this and, you know, those types of issues. And Mr. Buchheit advised on those but, as I say, over a relatively brief period and that was the period that I mentioned earlier where the IMF were still focusing, at least to my ... in my experience were quite focusing on burden-sharing with senior bondholders.

**Deputy John Paul Phelan:** In light of his views and he's a man who's been commented on a lot in the media, particularly in relation to Greece but also Iceland and a lot of financial crises that have emerged in the last 20 or 30 years, was his presence a matter of secrecy or discretion, the fact that he was here, in light of the fact that it might have caused difficulties or issues within the market?

**Mr. Pádraig Ó Ríordáin:** Yes absolutely it was, so it wasn't publicised at all that ... that he had, that he had come.

**Deputy John Paul Phelan:** Okay, and can I ask when were you first informed that the matter of burden-sharing was off the agenda so to speak? And who did that? Who informed you?

**Mr. Pádraig Ó Ríordáin:** Again, I can't remember distinctly, Deputy, in relation to that. I would expect it was just at the start of 2011 because at that stage the IMF were in, so clearly it must have happened in late December or January or February of 2011, is my expectation, but I don't have a distinct recollection of precisely when.

**Deputy John Paul Phelan:** Finally, are you at liberty to divulge the categories of bondholders that were being discussed in those meetings with Mr. Buchheit or, indeed, the institutions that might have been ... been discussed? I don't want to walk you into-----

**Mr. Pádraig Ó Ríordáin:** Well, no, it wouldn't have been ... I mean, this was just part ... I think, I wouldn't overestimate the discussions with Mr. Buchheit in truth. This was just part of the discussions in relation to would senior ... could senior bondholders contribute to the outcome? And that was just one part of the conversation. That conversation obviously went on for a much longer period than that.

**Deputy John Paul Phelan:** Okay, thank you.

**Chairman:** Thank you very much. With that said, I'll just invite Mr. Ó Ríordáin and Mr. McCague ... if there's anything further you'd like to add or by closing comment or anything else.

**Mr. Pádraig Ó Ríordáin:** I don't think there's anything that we would like to add, Mr. Chairman, except to thank you for inviting us here today.

**Chairman:** Mr. McCague?

**Mr. Eugene McCague:** No, thank you.

**Chairman:** With that said, I now propose so that we actually suspend. In doing so, I'd like to thank Mr. Ó Ríordáin and Mr. McCague for their engagement and participation with the inquiry today and to formally excuse the witnesses. I propose that we come back at 3.10 p.m. to commence our next session this afternoon, just to facilitate matters in between now and then. Is that agreed? Agreed.

*Sitting suspended at 2.21 p.m. and resumed in private session at 3.18 p.m. Sitting suspended at 3.21 p.m. and resumed in public session at 3.27 p.m.*

### **Department of the Taoiseach - Mr. Bertie Ahern**

**Chairman:** I will now call the committee back into session, is that agreed? Agreed. In our public hearing this afternoon is with Mr. Bertie Ahern, former Taoiseach. The Committee of Inquiry into the Banking Crisis is now resuming in public session and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off please?

Today we continue our hearings with senior members of the Government who had key roles during the crisis period. This afternoon, we will hear from former Taoiseach, Mr. Bertie Ahern. Bertie Ahern was a TD from 1977 until February 2011. He held several senior positions in Government, including that of Minister for Finance. He succeeded John Bruton as Taoiseach in June 1997 and continued to serve as Taoiseach until his resignation in May 2008. Mr. Ahern, you are very welcome before the committee this afternoon.

**Mr. Bertie Ahern:** 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