

# 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, 30 Iúil 2015*

*Thursday, 30 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.

Cowen about what he had discussed with Bertie Ahern on that particular evening or day, there was absolutely no reference to the things that you have said Bertie Ahern gave in testimony to this committee. None whatsoever. Now, I ... or, I'm not saying that, that what Bertie Ahern said to this committee isn't a truthful account of what, what occurred or what they discussed, I don't ... the only two people who can answer that question are Bertie Ahern and Brian Cowen, but I can tell you, when Brian Cowen spoke to me he never referenced anything to do with what you've just said Bertie Ahern said, if you follow me.

**Chairman:** Thank you. I'm going to bring matters to a conclusion. Just before I do I just want to give members just a heads up for a very, very short private session that may assist moving things on more rapidly this evening, if they're ... just for, if they stay ... if we go straight into private session after we end this session. But, I just want to end this session by asking Mr. Drumm is there anything ... or, excuse me, my apologies. I'm getting tired and my apologies.

**Mr. Fintan Drury:** Chairman, this isn't good.

**Chairman:** I know, my apologies. I call people by ... my apologies. I just ... I want to bring things to an end, Mr. Drury, this evening, and I want to invite you in to make any final comment that you can make this ... excuse me, that you want to make by means of closing.

**Mr. Fintan Drury:** Enjoy your tea.

**Chairman:** Pardon?

**Mr. Fintan Drury:** Enjoy your tea.

**Chairman:** Thank you very much. With that said, thank you very much, Mr. Drury. I'd like to thank you for your participation today and for your engagement with the inquiry. You are now excused. I propose that we go straight into a private session and clear the Gallery.

*The joint committee went into private session at 5 p.m. and suspended at 5.03 p.m. The joint committee resumed in private session at 6.21 p.m. and went into public session at 6.31 p.m.*

### **Anglo Irish Bank-IBRC - Mr. Mike Aynsley and Mr. Alan Dukes**

**Chairman:** 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. Today, we will focus of the ... or, the focus of the inquiry is on Anglo Irish Bank and IBRC and at this evening's session we will here from Mr. Alan Dukes, former chairman of Anglo and IBRC, and Mr. Mike Aynsley, former chief executive of Anglo-IBRC.

Mr. Alan Dukes was a chairman of IBRC from July 2010 to February 2013, having previously been a public interest director from November 2008 to June 2010. Mr. Dukes is a former leader of Fine Gael and a Government Minister. He was also a former DG of the IEA and chair of the Asia Matters economics institute. Mr. Dukes, you're very welcome before the inquiry this evening.

Mr. Aynsley was chief executive officer at Anglo-IBRC from September 2009 to February 2013. Mr. Aynsley also held a number of senior positions in the financial services and consulting industries over the last 30 years. During his time he has worked with Deloitte Consult-

ing, ANZ Banking Group, National Bank of New Zealand and Security Pacific National Bank Group. And, Mr. Aynsley, you're also welcome before the committee this evening. And, in doing so, if I can maybe just acknowledge your co-operation and assistance with helping the committee with its schedule this evening and our apologies for the delay caused earlier to you.

If I can move onto the formalities, before hearing from the witness, I wish to advise the witness that by virtue ... or, the witnesses ... by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If you are directed by the Chairman to cease giving evidence in relation to a particular matter and you continue to do so, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given. I would remind members and those present that there are currently criminal proceedings ongoing and further criminal proceedings are scheduled during the lifetime of the inquiry which overlap with the subject matter of the inquiry. Therefore, the utmost caution should be taken not to prejudice those proceedings. Members of the public are reminded that photography is prohibited in the committee room. To assist the smooth running of the inquiry, we will display certain documents on the screens here in the committee room. For those sitting in the Gallery, these documents will be displayed on the screens to your left and right 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. So if I can now ask the clerk to administer the oath to both Mr. Dukes and Mr. Aynsley please.

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

Mr. Alan Dukes, former Chairman, Anglo Irish Bank-IBRC.

Mr. Mike Aynsley, former Chief Executive Officer, Anglo Irish Bank-IBRC.

**Chairman:** Once again, Mr. Aynsley and Mr. Dukes, thank you for coming before the inquiry. And if I can invite you to make your opening remarks and, Mr. Dukes, if I can invite you first.

**Mr. Alan Dukes:** Go raibh maith agat, a Chathaoirligh, agus tá an-áthas orm an deis a bheith agam cabhrú le h-obair an chomhchoiste fíósúcháin seo.

I intend to deal with some general issues before going into more specific areas, Chairman. The combination of financial and fiscal crisis that hit Ireland in 2007-2008 was totally unprecedented in modern Irish history. The Irish Government, the Administration and the regulatory systems did not have the tools that were required to deal with the combination of circumstances and problems that faced them. Prior to September 2008, there had been discussions about the nature of a possible bank guarantee and a framework of draft legislation for bank nationalisation had been prepared. There was no legislative provision for a bank resolution system until the Credit Institutions (Stabilisation) Act of 2010. Apart from the credit institutions winding-up directive of 2001, no bank resolution system was in place in the eurozone. The eurozone implemented the single supervisory mechanism in 2013 and the single resolution mechanism, which is intended to deal with future bank resolution requirements, will come into effect at the

beginning of next year. Prior to the Irish bank guarantee in September of 2008, the UK had dealt with the Northern Rock and the Bradford and Bingley cases. The Irish Government, prior to that, had gone through a dispute with the German Government on the question of which of them had responsibility for the Depfa affair. That was resolved by the German Government having to take responsibility for it.

Ireland was the first eurozone member to find itself obliged to take action. And I think it's fair to say that any action in an area like this by a first mover was bound to be controversial and, indeed, by definition, unprecedented. Other countries followed. Germany had to take action about Landesbanks, an issue that is still the subject of ongoing work in Germany. France, Belgium and the Netherlands had to take joint action to deal with the problem in Fortis bank. Spain, Portugal, Italy, Greece and Cyprus all had to take action and Latvia found itself obliged to take action in this area, in fact before it joined the eurozone. Of the early movers, I think it's fair to say that the action taken by Ireland was the most comprehensive of any. Indeed, I think it was probably to our disadvantage that the Irish Government at the time made it very clear that it was dealing with the whole banking system. Other countries took action that was virtually as wide in its effect but they didn't have to say they were dealing with their whole banking system.

Retrospectively, it has been suggested that once the burning of bondholders was ruled out, the options available to the Government in September of 2008 were, first, a blanket guarantee, accompanied by nationalisation of the entire banking system; or a blanket guarantee, accompanied by the liquidation of Anglo Irish Bank; or a blanket guarantee, accompanied by the nationalisation of Anglo Irish Bank; or, the liquidation of Anglo, accompanied by what's been described as a "political guarantee" for the rest of the system. In the event, the course of action that was adopted was a blanket guarantee, followed shortly afterwards - within a few months - by the nationalisation of Anglo and AIB and a partial nationalisation of the Bank of Ireland.

The evidence available is to the effect that the European Central Bank, some eurozone partners and some US authorities, made it clear that repudiation of bondholders would have serious, if unspecified, negative consequences. Relatively little attention has been paid to the fact that the repudiation of senior bondholders would, as a result of the *pari passu* treatment convention, have had very serious repercussions for depositors with deposits of over €100,000. These repercussions would have affected individual depositors, corporate depositors and other banks - both Irish and non-Irish banks. In his evidence to this committee on the 15th of this month, Mr. Paul Gallagher, who was Attorney General at the time, said of the relative positions of depositors and senior bondholders, and I quote, "The law at that stage was that they ranked equally". Liquidation of Anglo in September 2008 would have had, I think, the following consequences, *inter alia*: first, a draw on Government funds to cover the €100,000 deposit guarantee - Anglo was largely illiquid at the time - or measures to move the Anglo deposit book to another institution, which would have been a fairly complex exercise. It was done later and it wasn't a simple exercise to carry out. Other consequences would have been litigation issues arising from the absence of banking resolution legislation at the time. And the need for some type of vehicle to realise the banks assets in order to avoid the contagion effects on other banks of calling in outstanding loans on the Anglo books, including many cases where borrowers from Anglo were also borrowers from other banks in the system. NAMA didn't exist at the time, and I think it's fairly clear that any transfer of the loan book of Anglo to any other institution would immediately have spread the contagion to those other institutions. On the face of it, that would have been a much more complicated procedure than the one actually adopted. Again, in evidence given on the 15th of this month by Paul Gallagher, we find the statement that at the time, "It was quite clear to everybody that you couldn't take the risk of winding down a bank,

in whatever fashion.”

Liquidation of Anglo would, in my view, have cast very serious doubt on any political guarantee that might have been ... that might have accompanied it, particularly given the fact that the liquidation of Anglo would have required ... would have inevitably had a contagion effects on the other banks. And I think if there's need for any further illustration of the difficulties that would have accompanied a liquidation of Anglo at the time, I think we just have to look at what's happened since February of 2013. In that liquidation, which involved a very much smaller outstanding volume of loans - I think about €15 billion net - two and a half years later, the process has still not concluded. And that's not in any sense a criticism of the liquidators; I'm sure they're doing as much as they can. But I think that gives some indication ... a small indication of what the difficulties would have been of a liquidation in 2008. I have to say that, having listened, debated, worked over the period since September 2008 up to date, that had I been in the position of the Government of the day at the time, with the knowledge, or the lack of knowledge that they have, I don't think I would have done anything very different.

By the time that I was appointed to the board of Anglo Irish Bank in November 2008, that bank, and the other Irish banks, had greatly exceeded every prudential limit in terms of the concentration of lending by sector and by client. It was very clear that they had already, at that stage, found themselves in a very, very high risk position. This had happened under the noses of the regulators, who had access to all the information required to arrive at that conclusion. I don't know whether the failure to appreciate this can be ascribed to role confusion in the then bicephalous regulatory structure, or through any lack of capacity. Immediately after nationalisation, the Anglo board ... the new Anglo board set in train a detailed review of the banks provisioning policy. We commissioned an independent external review of the methodology, and, on 15 April 2009, we informed the Department of Finance that the recapitalisation requirement at that point was in excess of €4 billion, rather than the €1.5 billion that the Department had in mind at that point, with a very substantial downside risk from any further deterioration in property prices. And I don't think I need to remind the committee that property prices had been falling from some point in 2007. That fall actually accelerated very substantially in January 2009 and from then out. So, in mid-April of 2009, we informed the Department of Finance that the recapitalisation requirement for Anglo, as it was at the time, was in the region of €4 billion, with, as I say, a very substantial downside risk from further deterioration in property prices. That was clearly unwelcome news which also had substantial implications for the other guaranteed institutions. When we conveyed that the Department of Finance itself commissioned a separate study, to the best of my recollection by PwC, and that came to a conclusion broadly similar to the one that we had arrived at in Anglo. I have to confess, a Chathaoirligh, that I was a little taken aback to hear the second secretary of the Department of Finance say recently in the course of her evidence to this committee, “Anglo surprised on the downside every time you looked at it.” The Department should not have been surprised since a very clear warning had been given in April of 2009. I don't know whether the warning was understood or not.

Were the banks, including Anglo, insolvent in September of 2008? That has been a question that has exercised minds. I frankly don't know what the answer to it is, but my guess is that if the exercise had been carried out at the point when the guarantee was given, that Anglo would probably have proven to be solvent at the time on the basis of what was known, and the other banks I think would certainly have been. That situation changed, it deteriorated as I've said, very rapidly over 2009 and continued to deteriorate for some time after that.

The then Minister, the late Brian Lenihan TD, came to the view early in 2009 that the staff



resources in the Department of Finance were inadequate to deal with the issues facing it and personnel were drafted in from the National Treasury Management Agency. I have to say, a Chathaoirligh, that that body's very considerable expertise lies in treasury management, not in securing repayment from borrowers, which is a different function. Difficulties inevitably followed when staff of the Department, of the NTMA came to deal with issues of bank restructuring and dealing with externally recruited persons who had specific skills and a lot of experience in the area of restructuring.

The then head of banking in the Department of Finance proposed to me in 2011 that Anglo should be run, "as a subsidiary of the Department of Finance". That proposal was a non-starter in terms of governance and prudence but unfortunately the bank's rejection of that negatively influenced the relationship with the Department. And that problem was further compounded by the bank's later rejection of a suggestion made in a report commissioned by the Department of Finance from McKinsey's, a suggestion that the functions of chief financial officer and chief risk officer be combined. The combination of those two functions in the bank in 2007 was identified by the Nyberg report as one of the deficiencies in the bank's structure and risk management system - and the committee had some discussions with a previous witness this afternoon on that issue.

Notwithstanding all of that rejection of that proposal - which we regarded as very, extremely unwise - the rejection of that proposal by the bank was seen by the Department of Finance as yet another example of obduracy on the part of the bank. I have to say that a difficulty that continued throughout that period arose from what seemed to me to be an entirely inadequate appreciation by the Department of Finance of the role and obligations of the bank as a separate company set up by statute with all the duties that that implies under company law, and the duties and obligations of a regulated entity. It was required, and this was indeed acknowledged, in the first relationship framework to operate at arm's length from the Minister for Finance for very solid prudential reasons. And as I point out in the statement I submitted to the committee, I take issue with the current second secretary of the Department of Finance who observed to the Public Accounts Committee that that arm's-length requirement changed in some way when the bank was put into wind-down mode in 2011. To my mind, and to our minds jointly in the board of management of the bank, the wind-down mode did not in any way affect the necessity for the arm's-length relationship for the prudential protection of the Minister and of the State.

On a more general note, I have to say that since the onset of this crisis both the Eurogroup and the European Union authorities have been, I must say politely, dilatory in their approach to all of this and have only gradually recognised and attempted to get to grips with the flaws of the architecture of EMU. I think that's well illustrated by the fact that the crisis really began in 2007, the single supervisory mechanism came into effect at the beginning of 2014. I think that's an extremely slow pace of reaction to one of the most difficult crises we've had to deal with.

Having said that, I believe that against this very difficult and confused background, the Irish authorities have dealt extremely well with the macro-level consequences of the 2008 bank guarantee and the challenges of resolving highly distressed bank assets. And in that regard, I think NAMA has performed extremely well, and indeed the performance of all of the banks in dealing with the greater part of the distressed assets has, I think, been rather good. I'm not sure that I would have the same level of comfort about their mortgage books but that's perhaps something we could get into at a later stage. Apart from the Central Bank, it's my belief that the authorities here did not have the skills to micro-manage banks and should not have attempted to do so in any case. And I have to say that the Department of Finance frequently seemed to

adopt a defensive and hostile approach to outsiders who were recruited for their specific skills that they brought in. Following the liquidation of IBRC in February of 2013, the directors produced a statement of affairs as required by the legislation. This showed that, on the basis of the balance sheet, and the support measures in place up to the moment of liquidation, the bank was solvent. The joint special liquidators are reported to believe, or to expect that on completion of their functions, there will be a surplus of something in excess of €1 billion for distribution to unsecured creditors. The Governor of the Central Bank forecast that that institution will make an appreciable profit of several billion euro from its participation in the funding and the payment flows associated with the bank bailout process, much of which, of course, was associated with operations concerning Anglo and IBRC, and NAMA expects to return a surplus at the end of its operations.

The combined effect of those factors will produce a useful mitigation of what will still be a very large final cost to the State, of the banking crisis. Together with my colleagues of the board of management of IBRC, I'm happy to have been able to contribute constructively to the mitigation of that cost. Thank you, Chairman.

**Chairman:** Thank you, Mr. Dukes. Mr. Aynsley, if I can invite you to make your opening remarks.

**Mr. Mike Aynsley:** Thank you, Chairman, and thank you members of the joint committee. As you know, I came to Ireland in September '09. I definitely had the view when I arrived, based on what I'd been told and what was available publicly, that there was a big job to be done here. I had no idea that it would quickly become known as the most toxic bank in Europe. By the time of my arrival of course, the decision to establish NAMA had been made and you will recall that there was a number of 20%, in about mid-2009, being referred to as the likely NAMA haircut estimate across the industry. I've been involved in difficult situations previously, I knew that this was likely to be a light number. I knew that the full extent of the falling markets was not at that stage apparent, and we would see further deterioration, but I didn't expect the free-fall to continue as it did. By the end of 2009, the haircut was estimated at around 30% and, of course, right through 2010 it increased dramatically to the point where by the time all of the calculations were done, the industry average was around 58%. For Anglo Irish Bank, this was devastating, as it was for the rest of the industry. It produced a loss on transfer of assets to NAMA of €21 billion. And that €21 billion loss on NAMA assets, that was a 62% haircut on €33.9 billion of assets eventually transferred. Of course, that 72% of the overall €29.3 billion of State funding required to support Anglo and that's ... it's interesting to contrast that €29.3 with the original €1.5 estimate, just prior to the point of nationalisation. Now, of course, the loans that remained in the banks, they were a mix of good loans but also of distressed and non-performing loans that didn't qualify for transfers. So, the difference ... the other €8.3 billion of money that went in, went to offset provisions on those loans and also to recapitalise the bank ... put it in a position to maintain its regulatory capital thresholds.

Internally, what I expected to find at the bank was the requirement to fundamentally re-structure the organisation. I knew that that would be necessary, given past experience I'd had. I knew that there had been a substantial dislocation in the markets and that that pointed to a long period of uncertainty and that there would be a need for very, very careful management of the distressed loan portfolio. While the extent of the downturn was still very uncertain at that point, it seemed crystal clear that it wasn't just a cyclical aberration in markets; it was a structural change, and that was driven, primarily, by the global financial crisis and the collapse of the global funding markets.

So the business at Anglo needed to be restructured. People there were focused on growing and lending and the mindset of the lending banker needed to be changed. It needed to be changed quickly and it needed to be changed to, what you could refer to, as the mindset of a restructuring banker rather than a lending banker. We assembled a management team, which, I think, collectively was capable of addressing any issue that was put before it in the bank. The Minister for Finance, at the time, the late Brian Lenihan, specifically requested that the senior people hired should be unblemished and not have been associated with the Irish banking scene or involved in any way in the global financial crisis. The new team included specialists in corporate finance, debt restructuring and insolvency, as well as debt capital markets, balance sheet and capital management, enterprise risk management, corporate governance, finance, legal compliance and control in an environment wherein the management capacity and the mix assembled was equally applicable to a bank in full wind-down as it was to a bank going through a major restructure.

The work to transform Anglo-INBS - on merger, IBRC - into a fit-for-purpose vehicle was extensive and required essentially a rebuild of, not only the client relationship management functions, but also the governance risk management and control activities from the ground up. This had to be a progressive process, as markets were deteriorating rapidly and due attention to the immediate loan portfolio problems was critical. It was a difficult process, as the loan book at Anglo was characterised by a lack of thorough management information, poorly perfected security - in some cases, absent - and a need to retain and supplement the management teams themselves. Timeframes set by commitments to the European Commission needed to be respected and progress was desirable in the identification of management of a significant number of legacy issues. In both my main and supplementary statements to the inquiry, I've referred to a number of times to difficult aspects of the interaction between the bank and the Department over the period from nationalisation to liquidation. I remain of the view that most of the conflicts could have been avoided if there was a better understanding in the Department of the constraints the bank was under in complying with the various requirements it was subject to and the legal and prudential need for the bank to act independently. The bank was governed by the Anglo Act and as well as an associated relationship framework that required ongoing separation from the Minister and his nominees. In conducting interactions, there were often complex considerations required across multiple dimensions. These included, not only the regulatory obligations, but many others in managing the ordinary course of business, which referenced many possible overlapping areas such as the public interest dimension, the management of legacy issues, the management of stressed loans, the management of very large exposures, as well as the number of other relevant legal considerations. Importantly, the bank needed to be on top of all associated technical and commercial aspects and be aware of any potential dangers involved to both the bank and the Minister should the separation not be respected. Unfortunately, this ran against the grain of what became the preferred position of the Department from March 2011-----

**Chairman:** Your papers are up against the microphone there, Mr. Aynsley, so it's creating ... that's grand. Excellent, thank you very much.

**Mr. Mike Aynsley:** Unfortunately, this ran against the grain of what became the preferred position of the Department from March 2011 onwards of a more directive relationship based on a high degree of integration with the Department.

Notwithstanding the change in tack by the Department, the bank made significant progress against its targets by all measures. This included management through a period of unprecedented-



ed market turmoil whilst dealing with multiple high-profile legacy issues. It included building a new leadership team and driving significant changes in the broader organisation, including overhauling of risk functions and establishing new governance and control processes. It included conducting a thorough due diligence of NAMA bound and post-NAMA loan portfolios to identify the true quality and value of the underlying assets, establishing asset and loan recovery strategies and setting up specialist work-out units to proactively resolve distressed loans, maximise recovery and, where appropriate, restructuring loans so as to strengthen and improve asset quality.

The bank was also involved in supporting the Irish authorities' and the international authorities' broader restructuring of the bank and the Irish banking landscape. This work was central to the task of working through multiple alternative paths which ultimately led to the ... Anglo and INBS being placed into wind down. And, of course, we have successfully ... we have successfully executed the acquisition of INBS and downsized the total asset portfolios from pre ... pre-crisis highs of over €100 billion plus to some ... in total assets to a point where the net loan levels were around the €15 billion mark at the point of special liquidation. This included the sale of the substantial US-based loan portfolio in what was the largest single open market sale in the USA since the collapse of Lehman Brothers.

In summary, I feel fortunate to have worked in Ireland during the challenging period and to have been associated with a world-class team consisting of a very talented ... board and management team. If I have any immediate concern about what went on during the period, it is simply that I'm not certain that all valuable lessons have been learned with regard to the need to separate banking policy and operations functions within the State. My experience with the Department of Finance makes me worry that it is likely that the Department will not only continue to direct banking policy but also look to take an active role in directing operations and the regulatory function. In part, this approach was a significant contributor to the breakdown of the banking sector in Ireland.

As Ireland continues to move forward in its recovery, I wish it well and hope the outcomes of this banking inquiry and the very important work you're doing can productively be used to safeguard the sustainability of the financial sector for the future. Thank you, Chairman.

**Chairman:** Thank you very much, Mr. Aynsley. And we'll commence questioning now so if I can invite Deputy John Paul Phelan, please. Deputy, you have 15 minutes.

**Deputy John Paul Phelan:** Thank you, Chairman, and good evening, gentlemen, and welcome. Sorry for holding you up. We only have 15 minutes so I ... I'd encourage you to be as brief maybe in your responses as you can. I'll try and be as brief as I can in asking the questions. A gentle one first, Mr. Aynsley, for you. In your opinion, what were the main weaknesses in the Anglo business model ... in the years prior ... prior to nationalisation ... particular reference to corporate governance, maybe, and to the ... the overall business structure.

**Mr. Mike Aynsley:** Yes, there were many. The ... at the ... at the board governance level ... I ... I think the board governance level was weak. One of the aspects that was brought to my attention early on was the fact that there were sometimes two board meetings with ... small number of board members meeting and deciding on things and then having a larger group meeting and ... and pushing things through. The committee structures I don't think worked as effectively as they could have. There were a small number of people in the organisation responsible for very large decisions. The reporting frameworks I don't think were particularly detailed or complex and certainly not framed, in my view, in a way that properly informed the

board of the risks and the activities that were being undertaken in the bank. Risk management, I think, seemed to be a process that the organisation went through just simply to say that they'd gone through a process to approve lending transactions and ... I sort of recall one of my first meetings with the chief risk officer at the time of my arrival. He was an incumbent chief risk officer who had been at the bank for many years and he'd been at the front end of the lending business. And he described it as a role that he was put in because he started to question some of the transactions that were being done and they sort of banished him to the risk area where in, in his words, he was classed as a second-class citizen. So, you know, I think the ... the governance and the risk management and controls would be the key ones ... but it also gets down to just the embedded culture at the front end of the business and the thoughts that ... thought processes and mindset of the people going out and doing transactions.

Another good example, and of course a ... a foreigner coming to town, particularly an Australian coming to town ... to town, the local Australian embassy here ... I am here and they invite me out there one night. So the first ... first night I went out there for a dinner, there's a whole group of people. I ... I don't know anyone there, and this fellow came up to me, who will remain unnamed, and he says, "I love Anglo." He said, "I'm glad you're here." An Aussie. "I just love Anglo." So I ... okay ... talk to me, and he said, "You know, I've been buying properties, investing in properties, for a long time". And he said, "I don't know how they found out about it but I was at an auction one morning and a fellow came up and he handed me an envelope, and it was an Anglo Irish Bank envelope, and I opened it up, and there was a cheque inside, which represented slightly more than what the deposit would be and it says ... a note attached saying, 'Just in case you need the deposit'". So, you know, this is the mindset at the time. It was to go out there at all costs, find ways to go out there and grow the loan book and lend.

**Deputy John Paul Phelan:** Okay. I can empathise, maybe, with ... you're ... you've an Australian coming ... I've many ... family there myself. I want to ask, in relation to your statement, you're very critical of the Government, the Department of Finance and, in particular, JM, who I presume is Mr. Moran, John Moran. Did your relationship deteriorate to such a degree that - and I think, actually, you said it in your statement, it will leave "a bad taste in [your] mouth for some years to come", I think was the phrase - that you ever considered your position in your time as chief executive?

**Mr. Mike Aynsley:** Did I?

**Deputy John Paul Phelan:** Did it deteriorate to such a point that you considered ... you considered your position or, maybe, even to put it the other way, did it deteriorate to such an extent that you regretted arriving on these shores in the first place?

**Mr. Mike Aynsley:** Oh, look, I, I mean, you know, I think I, I've been in financial markets a long time. I don't sort of tend to put myself in a position where I regret things. This was ... this was difficult. I mean, you know, it was ... it was a situation that ... that deteriorated rapidly. You know, the country was in a lot of trouble and, you know, I sort of took the view that I was just going to work through it but, you know, I have to say, you know, at times I ... I would get fed up with it. I would have said to the chairman, you know, "Chairman, tell me, do you want me to stay around?" You know? But, you know, I think ... I didn't really get to the point where I ... I was going to pack my bags and go but-----

**Deputy John Paul Phelan:** Thank you. I want to turn, because time is moving on, to Mr. Dukes and a couple of questions that I wish to ask him also. Could I ask you, Mr. Dukes, could you briefly describe the prevailing culture again that you encountered when you were first ap-

pointed as a public interest director on the board of Anglo in December or, I think you said, November 2008?

**Mr. Alan Dukes:** Yes, well, I have to say that the prevailing culture didn't prevail for very long because very shortly after I was appointed, the chairman or the chief executive resigned and shortly after that, the bank was nationalised. All of the previous board resigned with the exception of one who became the executive chairman. He'd been on the board for only a short time before that.

Looking back over the picture as it was then, a few things struck me very, very forcibly in addition to what Mike Aynsley has said. Anglo developed a reputation. I knew Anglo when it was a very young bank. I had some dealings with them and it was a business bank and it struck me as being a very progressive and active outfit doing business lending. It went into property then, as you know, in a large way. It was successful and grew rapidly in the property sector in Ireland and looking at it from the outside, it seemed to me they had decided to diversify so they went and got into the property sector in the UK and grew very rapidly. Then they decided again to diversify and they went and did the same thing in the United States. So here we had a bank that was rapidly becoming a monoline with the same kind of risk in three jurisdictions. Now I know they had some other operations in Austria and in Germany but they weren't hugely material in terms of the total.

So there was a very great concentration of risk there. It developed, and they were very proud of it, I think, this kind of system of what they called relationship banking, which was that, and this was part of their picture, they knew their clients very well, they could rely on a relationship with their clients and they knew their clients well enough to know when they could be confident that this was a good loan or this other one wasn't, which resulted in a situation where, as was explained this afternoon at one point, 6% of the loan book constituted loans for land in Ireland on which there was no zoning. Now that to me indicated much more than a prudent appetite for risk and it indicated a failure to appreciate the dangers of the kind of concentration that they had. That was a concentration by sector and then when after ... immediately after nationalisation, we began to look through the loan book and tried to figure out what relationship banking was all about, it became apparent very quickly, and I have dealt with this in my statement, that it took quite a lot of time to find out just where the exposures were or what the level of exposure was to given borrowers. You would find a case where a given borrower ... there was a large exposure to the person in a particular project and then you'd find if you followed the threads through, there were other exposures to the same borrower and in fact-----

**Deputy John Paul Phelan:** Mr. Dukes, I am sorry now ... I just have to cut you because you're ... I'm down to five minutes and I've a whole heap more of questions that I wish to ask you. But I think I've got a flavour from what your answer ... I'm not trying to-----

**Mr. Alan Dukes:** They weren't sufficiently risk-averse.

**Deputy John Paul Phelan:** Yes ... well, I-----

**Chairman:** Other members might touch upon the cultural aspects as well as-----

**Deputy John Paul Phelan:** Briefly, also, I just wanted to ask you ... you weren't as forthcoming, at least in your original written statement, about the nature of relationships that existed from your time with the Department and the regulator. Can you elaborate and be as brief as you can? We're down under five minutes.

**Mr. Alan Dukes:** Chairman, I am not used to being accused-----

**Chairman:** I will give you time. I will give you time, Mr. Dukes. I appreciate where the Deputy is coming from but questions need to be answered coherently.

**Mr. Alan Dukes:** I just wanted to say, Chairman, I'm not used to being accused of being too tactful.

**Deputy John Paul Phelan:** The ... that nature of that ... those relationships-----

**Mr. Alan Dukes:** The problem was, as I've said, and it ... this is an understandable kind of problem, the Government decided that it would take a certain course of action with the bank. They nationalised it, which I think was a rational thing to do. And we had a relationship framework that was drawn up and it set out the concern of separation of the bank, which was a risky operation, from the State, which wanted to avoid risk to the extent that it could. And having done that, the Government decided they didn't trust the people that they had entrusted with this job of doing it. And that then was compounded by the fact that two key proposals were made to the bank at different times, one about the head of banking in the Department of Finance being on the board who would, in my view, have been seriously conflicted, and it did not seem to me that that was in any way a runner ... that was badly ... the rejection of that was badly received. And then the other point ... at a later stage, where it was suggested, on the basis of a report which was not shared with the bank ... we never saw that McKinsey report but one recommendation from it was to recombine the functions of chief financial officer and chief risk officer in a very risky bank where we were very concerned about protecting the State from the consequences of a default on the part of the bank or a cessation of business where it was absolutely the wrong thing to do - to mix the risk function with the finance function.

**Deputy John Paul Phelan:** Okay.

**Mr. Alan Dukes:** And that had been clearly demonstrated in the previous life of Anglo. Now, we resisted those two proposals and we were regarded as being stubborn, obdurate, unresponsive in doing that, where we felt we were doing the job we were properly charged to do and that was, maximise return for the State and keep the risk down as far as possible. So, I mean, that, kind of ... current. Now, I have to say that if you look at the relationship framework ... the two versions - the first one we had in 2009 and the second one that was there in 2012 - if you parse and analyse through those, the relationship framework say this should be operated at arm's length from the Minister, except where the Minister decides to do it otherwise. And there was always a conflict there, so there was always going to be unease in that relationship. And, finally, I know you want to be brief, I have to say - and I say this in all sincerity - I watched the evidence given to this committee by the current second secretary of the Department of Finance and if she and other officials in the Department of Finance had been as forthcoming with us about their state of mind through those years as they were with this committee, we wouldn't have had half the difficulties we actually had.

**Deputy John Paul Phelan:** Can I ask you, then, in my last minute or two, how did your appointment come about initially as a public interest director in Anglo?

**Mr. Alan Dukes:** The guarantee was given in September 2008. The Minister announced a short time afterwards that he was going to appoint two public interest directors to the boards of each of the banks and he was going to nominate those persons. I met the Minister by chance one day in ... in Leinster House. I'd known him for quite some time and we had a good relation-

ship and he asked me if I would agree to be considered as one of those 12 people. And it seemed to me that that was a useful kind of a thing to do and I said, “Yes”.

**Deputy John Paul Phelan:** Okay.

**Mr. Alan Dukes:** He published a list some time later and then I got a phone call from the then secretary of the Department of Finance, David Doyle, who asked me to come and meet him and he told me that Frank Daly and I were being appointed to the board of Anglo Irish Bank. And that’s how it happened.

**Deputy John Paul Phelan:** Okay. And then, also, subsequently, in terms of your appointment as chairman of the bank, how did that ... how did that happen?

**Mr. Alan Dukes:** Donal O’Connor had been chair from the point of nationalisation. He was executive chair up to the time that Mike Aynsley was appointed as CEO and he reverted to being ... you know, a normal non-executive chair. And I have to say, he put his heart and soul into it. He worked extremely long hours at it and he announced that he wanted to resign from the bank in mid-2010, so we had to look for another chair and the other directors, kind of, persuaded me to take it on.

**Deputy John Paul Phelan:** Do you have any views as to ... if you had your time back again ... the initial conversation with Minister Lenihan ... or the decision to-----

**Mr. Alan Dukes:** I wouldn’t do anything different. It has been an extremely demanding function, absolutely fascinating, terrifically frustrating at times, but I think we did some good work and I am glad to have done it.

**Deputy John Paul Phelan:** Okay. Thank you both.

**Chairman:** Thank you very much. We now move on to Deputy Michael McGrath.

**Deputy Michael McGrath:** Thank you very much, Chair. I’d like to welcome Mr. Dukes and Mr. Aynsley and if I can start with you, Mr. Dukes, and take you to the decision in February 2013 to liquidate the bank. Can I ask your view now of that decision and whether you believe that greater value would have been achieved for the State if the orderly wind-down of the bank as decided previously, if that had been implemented instead of a liquidation?

**Mr. Alan Dukes:** Chairman, without wishing to stray outside of the remit of the committee I will say by way of general introduction that guessing what might have happened if the bank had not been liquidated seems to me to be the kind of second guessing *post factum* of decisions which is rather dangerous, but I won’t go any further with that thought because I think you can probably understand why. There’s another commission of investigation coming down the tracks.

The decision to liquidate in February 2013 was motivated, and this is on the record of the Dáil, by a concern with dealing with the cost of the promissory note that had supported the bank for some time before that. I described the decision at the time as an astute piece of financial engineering, which I think it was. I feel vindicated in that view by the fact that the current second secretary of the Department of Finance has used the same phrase, I think, in evidence to this committee. I think it was an astute piece of financial engineering and it’s part of what I meant in my opening statement when I said that the State seemed to have dealt very well with the macroeconomic fall-out from the decision in the first place.



I think, and there will be other people who can give a different view on this, I think that had the bank not been liquidated, given the market conditions as they changed, you know, through 2013 up to today, I think it's possible to speculate that we might have made an even better return from the remaining assets of the bank if it hadn't been, in the course of being disposed of, in a liquidation but that has to be speculation. Having said that, as far as I can see, the special liquidators are doing an extremely good job. I don't know when they'll have concluded their work but it must be pretty soon.

**Deputy Michael McGrath:** Can I raise the issue of the acquisition of the loans, Mr. Dukes, by NAMA, and Mr. Aynsley referenced this. The discount in the end was 61%, almost €21 billion of a loss crystallised immediately onto the books of Anglo-IBRC. Can you just clarify in terms of the valuations placed on those loans by NAMA, was the bank in a position to challenge any of those valuations or was it a very structured rigid process which resulted in such a large discount being applied?

**Mr. Alan Dukes:** Well, in general terms it wasn't possible to contest the valuations put on by NAMA. NAMA decided what the valuation was and that was that, and that's the way the legislation was written. Where it was open to discussion, and I'm open to correction on this, where it was open to discussion was whether or not a given loan or relationship actually qualified under the terms of what should be transferred to NAMA and there were some discussions about that. There was a point when the chief executive of NAMA expressed the view that Anglo was not being very frank with NAMA in terms of the valuations, the presentation of the loans. That, I think, was due to a misunderstanding. What is the case is that there was still, at the time in 2010 particularly, and we saw it later, there were difficulties, which Mike Aynsley referred to in his opening remarks, with some of the documentation underlying some of these loans, I mean title and so on-----

**Deputy Michael McGrath:** Okay.

**Mr. Alan Dukes:** -----were not always perfected in the way one would like it.

**Deputy Michael McGrath:** Sure.

**Mr. Alan Dukes:** And we had to deal with that subsequently because, as you know, after NAMA had taken over these blocks of loans from the banks, they kind of outsourced the management of certain parts of it-----

**Deputy Michael McGrath:** Yes.

**Mr. Alan Dukes:** -----back to the originating banks, so that we still had to deal with the question of perfecting the documentation behind the loans. But, basically, the answer to your question is that it was NAMA that decided-----

**Deputy Michael McGrath:** There wasn't a negotiation.

**Mr. Alan Dukes:** No, it wasn't.

**Deputy Michael McGrath:** By any means.

**Mr. Alan Dukes:** And it would be interesting to see, and I don't know whether we'll ever be able to do this sum, what kind of return NAMA got from the loans that were transferred to it. It's a kind of an interesting theoretical speculation, I think, in the case of Anglo loans, NAMA will turn out to have made more than a net 39% off the face value of the loans that were

transferred, and that'll go into making up the surplus of NAMA at the end of the day. From the State's point of view, it's just one pocket or the other.

**Deputy Michael McGrath:** Yes.

**Mr. Alan Dukes:** There's no net result, but from the point of view of the operators in the system, it would be an interesting study.

**Deputy Michael McGrath:** Okay. Mr. Aynsley, you say in page 15 of your witness statement, the main one, "I formed the view that much of the comment/challenge from the DoF increasingly became politically motivated." That's quite a serious charge to make. Can I ask you to elaborate on that, please? What do you mean by that?

**Mr. Mike Aynsley:** It's page 15? What's the context?

**Deputy Michael McGrath:** Page 15, after the first paragraph.

**Mr. Mike Aynsley:** Okay.

**Chairman:** Please can you highlight it on the screen, Deputy, if you could? It's up.

**Deputy Michael McGrath:** Yes. So, it's immediately after the top paragraph.

**Mr. Mike Aynsley:** Yes. Yes. Oh, I-----

**Deputy Michael McGrath:** It's two lines that sit on their own.

**Mr. Mike Aynsley:** Sorry. It relates to the-----

**Deputy Michael McGrath:** Yes, yes.

**Mr. Mike Aynsley:** This as well. Yes. I think ... I go on in this to talk about a couple of situations-----

**Deputy Michael McGrath:** Yes.

**Mr. Mike Aynsley:** -----that we had where there were ... in fact, there were numerous situations where Department officials would second-guess on transactions that were ... had been through a full credit committee process, a full transaction review process, full board process, and would seemingly then have unqualified people in the loan recoveries or the credit areas in the Department delaying transactions and asking questions that just didn't make sense to us. And this was an ongoing ... it's difficult to explain this because I can't talk about specific transactions and specific-----

**Deputy Michael McGrath:** Sure.

**Mr. Mike Aynsley:** -----client names.

**Deputy Michael McGrath:** But why do you believe it was political rather than motivated by what they felt was in the best interests of the State?

**Mr. Mike Aynsley:** Yes.

**Deputy Michael McGrath:** Why was it political, the motivation?

**Mr. Mike Aynsley:** There were times where specific client names were mentioned, and I can think of one in particular where the specific name was mentioned as one that the Minister would not really like to have to stand up and defend in public. There are a couple of these ... in fact, there was more than one of those.

**Deputy Michael McGrath:** And would that wish even-----

**Chairman:** Would Mr. Aynsley-----

**Mr. Mike Aynsley:** Sorry?

**Deputy Michael McGrath:** Would that wish even override what is in the best commercial interests of the bank?

**Mr. Mike Aynsley:** No, and this was always a point of conflict, and this is where we ... we always took the view that we had a situation with the relationship framework, with the requirements under the commitments letter, where we needed to act commercially and the Minister's role was to intervene in areas where there was a clear public interest in doing so, but the commercial aspects of the transaction, if there wasn't a public interest ... a true public interest perspective, then the commercial aspects needed to be pursued. And we did that. Now, we also recognised that if the Minister wanted us to act differently, then the Department officials and the Minister could organise for a ministerial instruction to provide us with the cover to do that.

**Deputy Michael McGrath:** Okay. You do raise one specific issue immediately after that reference, and I can't lead you into areas that will be covered by the commission of investigation, but it's quite an extraordinary extract from your witness statement, and I'm not going to question you about the execution of the transaction itself because that may or may not be examined by the commission, but your central allegation here is that an official from the Department of Finance indicated a preference that a bid, which was €100 million less than the highest bid, would be accepted because the highest bidder would not be of the liking of the Minister, essentially, if that bidder was successful.

**Mr. Mike Aynsley:** Yes.

**Deputy Michael McGrath:** That's an extraordinary allegation, Mr. Aynsley.

**Mr. Mike Aynsley:** And I think the ... you'll find the e-mail on file, so that should be sitting in my inbox in the IBRC. That inbox.

**Deputy Michael McGrath:** Has that e-mail been furnished to the inquiry yet?

**Mr. Mike Aynsley:** No, it hasn't, as far as I know, unless it's in the-----

**Deputy Michael McGrath:** But it would be in the possession of the special liquidator.

**Mr. Mike Aynsley:** It would be in the possession of the special liquidator.

**Deputy Michael McGrath:** And, essentially, the e-mail provides an account of a conversation, is it?

**Mr. Mike Aynsley:** Yes.

**Deputy Michael McGrath:** Okay. And it was sent to you by way of ... of a formal memo-----

NEXUS PHASE

**Mr. Mike Aynsley:** There was a formal-----

**Deputy Michael McGrath:** -----an e-mail memo.

**Mr. Mike Aynsley:** It was a formal memorandum to me from the head of the business unit that had the detailed discussion.

**Deputy Michael McGrath:** And what steps were taken ... like, when that was elevated to your level-----

**Mr. Mike Aynsley:** Yes.

**Deputy Michael McGrath:** -----I mean, if that is true, then it's a truly extraordinary situation. Like, how-----

**Mr. Mike Aynsley:** Well, I think there were-----

**Deputy Michael McGrath:** What steps did you take when you got that information? And that those-----

**Mr. Mike Aynsley:** Well, there were a series of steps taken.

**Deputy Michael McGrath:** Okay.

**Mr. Mike Aynsley:** And some of those was certainly discussed with the chairman of the bank and there were specific actions taken with regard to the individual involved, which I'm not certain we should go into-----

**Deputy Michael McGrath:** Sure.

**Mr. Mike Aynsley:** -----because if I did go into them it would specifically identify the individual.

**Deputy Michael McGrath:** Yes. No, no, we're not going anywhere near that space but-----

**Mr. Mike Aynsley:** Yes.

**Deputy Michael McGrath:** -----but just to be clear, other grounds weren't cited for this view being expressed by the official. Are you saying that the only reason cited for the preference being a lower bid to be accepted was because of the identity of the highest bidder?

**Mr. Mike Aynsley:** Yes, that's correct.

**Deputy Michael McGrath:** No other grounds were cited-----

**Mr. Mike Aynsley:** It was-----

**Deputy Michael McGrath:** -----according to the ... the executive who-----

**Mr. Mike Aynsley:** The particular-----

**Deputy Michael McGrath:** -----brought the information to your attention.

**Mr. Mike Aynsley:** Yes. The particular individual. That's correct.

**Deputy Michael McGrath:** Okay. Okay.

**Mr. Mike Aynsley:** But I think this was ... you know, this is ... this was part of an overall issue with ... you know, I go on also to talk about ... in the next example, of an issue around a wish to push us to enter into bilateral transactions. And we took a view very early on that everything that we did in terms of the loan recovery process and the ... in particular, loan sales, needed to be within a proper process, and that process needed to be open; it needed to be transparent; it needed to involve multiple parties, multiple bidders. And there were different ways of constructing sale processes and bidding processes but they were always constructed in ways which ensured that the correct oversight and diligence was conducted around every aspect, whether that was internally or externally or around the individual parties. So for us to enter into bilateral processes and to say "Okay, well, we'll just ... this guy's interested. He's knocked on our door" and move to the point where we negotiate a price for something that we just weren't interested in. And we feel that if we had gone down that pass ... path, it certainly wouldn't have maximised our main metric, which was the value of the loans recovered.

**Deputy Michael McGrath:** And how certain can you be that those views and the view on the particular transaction were not the rogue views of an individual as opposed to representing the Department view or the political view?

**Mr. Mike Aynsley:** Well, I think we ... we had also heard ... there's a number of these and I think there's a couple of documents in the e-mail system that would bear out the extent of these requests and the pressures that were put on us and I think, you know, if you get into those, it's very clear that they come from different people within the Department and, certainly, led us to the very solid view that this was a direction that we were being pushed.

**Deputy Michael McGrath:** Okay.

**Mr. Alan Dukes:** Could I just add one or two brief comments to that, if I may? Whether that was a rogue view of an individual in the Department, one can't be sure. I have to say, I frequently had the impression that information that we transmitted to the Department didn't percolate all the way through. You know, it maybe didn't percolate all the way through to where it should. And a second comment about a sales processes: we were very concerned at all points to ensure we got maximum value, which is how we designed the processes but there was, from time to time, a suggestion that we should do it differently. For example, I was urged at one point by an official to speed up sales of various performing assets, whereas, as I say in my statement, we tended to take the view that if there was a loan that was performing, meeting all of its requirements and covenants and it was going to mature within the wind-down period of the bank, there wasn't a good reason to go and try to terminate that early, although this was what was being urged. And when I asked the person in question why on earth we'd want to do that ... because if we had a performing loan and the borrower was meeting all the covenants the only way we could persuade the borrower to pay off the loan early would be to put some incentive on the table, which meant we would be getting less out of it than we otherwise would. But, you know, there was a view, sometimes expressed by some people in the Department, that if there was a good loan there, we should take the money and run, you know, force a refinancing or a sale on the basis that, you know, there was a time value of money and that a bird in the hand is worth two in the bush, whereas we took a different view that we had to look at recoveries over the whole period and, in addition, if you had a performing loan that was paying, it was making a contribution on a continuing basis to the running costs of the bank.

**Deputy Michael McGrath:** So, finally, is it your evidence that there was a pattern of pressure from the Department, when it came to asset sales, to have a less transparent, less open sales process than the bank?



**Mr. Alan Dukes:** No, I wouldn't say a pattern - occasional instances.

**Deputy Michael McGrath:** Occasional?

**Mr. Alan Dukes:** Yes.

**Deputy Michael McGrath:** How many times?

**Mr. Alan Dukes:** Oh, it is hard to put a figure on it. It certainly arose from time to time.

**Deputy Michael McGrath:** What rationale would be offered?

**Mr. Alan Dukes:** There was the other point which had to do with the rate of procedure to the wind-down. This is maybe trespassing on some other question. It was decided in 2011 that we should wind down the bank over ten years - maximum recovery for the State and maximum avoidance of risk, if you like. The actual outline proposal for the pace of the wind-down was one which the bank proposed. I proposed it at a meeting with the relevant authorities and it was accepted. I made the point, at that stage, that we could probably do a more rapid wind-down with not a very much bigger risk of execution and I was told, at that point, "No, do not propose that." And I assumed, and I think I was probably right in assuming this, that the authorities did not want to be corralled into a wind-down process that might be faster than we could actually deliver so we agreed on an outline wind-down proposal, what we called, in our own internal jargon, "the blue bars", which were the declining outstanding loan values in each year. But, from time to time, we would be urged to accelerate the process. Now we did actually wind down a bit faster than "the blue bars" proposal because we found we could do it without sacrificing the level of return and, in fact, the US book was a very good example of that. We certainly thought that had we done a series of individual sales of those assets, we would have made a better return out of it, but it would have taken much longer than the process that we actually engaged in and we were concerned, for other reasons, for other considerations, to wind down the American operation, you know, as quickly as we could and to get rid of all the outlying parts of the bank so that we could concentrate on the core.

But, you know, from time to time there would be pressure to say, "Well, can you not do it a bit faster?" and we said, "Yes, of course, we could do it faster but if you want us to do it faster than we have undertaken to do in the exercise, then please give us a formal instruction to do that", and that was never forthcoming.

**Deputy Michael McGrath:** Chair, I want to formally put on the record a request that Mr. Aynsley's witness statement, including that extract and the testimony that we are being given, would be formally sent to the commission of investigation looking at certain transactions and other matters at the IBRC, that we would write and send that to them.

**Chairman:** Okay, I just need to get legal advice with regard to the separation of the two committees. I understand what the intent of what the Deputy is actually saying. Further clarification on that request then will be dealt with, okay?

**Deputy Michael McGrath:** Okay.

**Chairman:** Thank you. I call Deputy Pearse Doherty.

**Deputy Pearse Doherty:** Go raibh maith agat, a Chathaoirligh, agus fáilte roimh an beirt agaibh. I'm gonna, Mr. Aynsley, just focus in on ... just that statement that you give on page 15 ... the shock that you referred to in your statement in January 2013 when you received the

e-mail memorandum from one of your direct reports. You go on to say about the Department of Finance official was opposed to the sale of a major asset to a named Irish businessman or his company and then go on to, as Deputy McGrath has questioned, about the fact that they would prefer if another sale wouldn't take place to the same Irish businessman or his company and would rather €100 million less from another party. The e-mails that you're referring to, are they e-mails that you have ... that are with the special liquidator ... are they e-mails directly from the Department of Finance or e-mails from an official within the bank who reports to you that recounts this story?

**Mr. Mike Aynsley:** This is an e-mail from one of my direct reports to myself, where he's informing me of meetings that he had with this individual.

**Deputy Pearse Doherty:** Okay, and in relation to ... that's the first transaction-----

**Mr. Mike Aynsley:** Which, by the way, are quite detailed and if you printed them out they'd go over, probably, three or four pages.

**Deputy Pearse Doherty:** Okay, I appreciate that.

**Mr. Mike Aynsley:** It's just not the one-liner ... it's "I had a meeting and it was rather formal in nature and this is what's come out of it."

**Deputy Pearse Doherty:** Okay. The first transaction that's referred to in your statement was completed and opposed by the Department. The second transaction wasn't and they were, as was said ... was requesting that it would be sold at €100 less than what ... €100 million, not €100 ... they'd maybe settle for that one ... a €100 million less to another party.

**Mr. Mike Aynsley:** Well, I think it says ... as it's sort of presented here, it was, well, you know, "With this particular client what are you doing selling these loans to this particular client?" To which the reply was, "Well, you know, what do you expect us to do, you know ... what do we do if there's ... the same client comes along to buy this particular asset, would you rather us sell it to him or to someone else for €100 million less?" And the answer is, "Well, sell it for €100 million less and I think the Minister will back that." That was the-----

**Deputy Pearse Doherty:** So, the second transaction is a hypothetical transaction. Is that what it is?

**Mr. Mike Aynsley:** Well, it's ... no.

**Deputy Pearse Doherty:** No, it's not a hypothetical transaction. Okay. But the figure is a hypothetical figure. Would that be correct?

**Mr. Mike Aynsley:** I suppose it would be. It reads like that, yes.

**Deputy Pearse Doherty:** Okay and what impact did that have in relation to the bank as to how they then progressed from there?

**Mr. Mike Aynsley:** Well, bear in mind this is January 2013 and 7 February there is a point of liquidation. There were a series of actions that I took when I got this because it wasn't the only ... you know, this is an extract of an event where there were quite a number of other events in the same vein that are also detailed in the e-mail. So, you know, I think the action that we took ... as I say if we ... if I went into it it may identify the individual but it's there to be scrutinised if-----

**Deputy Pearse Doherty:** Okay, can I move on to another-----

**Chairman:** Can I just come in for a second ... just for legal ... I would be advising you not to be identifying any individuals, Mr. Aynsley, at this point.

**Mr. Mike Aynsley:** Sorry?

**Chairman:** I would be advising you not to be identifying any individuals in this regard.

**Mr. Mike Aynsley:** That's what I just said.

**Chairman:** Perfect, thank you.

**Mr. Mike Aynsley:** I'd rather not go further.

**Deputy Pearse Doherty:** You go on to talk about your astonishment at ... another key point was the bilateral sales arrangement that the Department of Finance wanted you to engage on, something that you had previously embargoed in favour of open sales that were transparent, arm's-length and fully valued. Can you inform the committee again, without any details or any specific case, did such bilateral sale arrangements take place?

**Mr. Mike Aynsley:** To my knowledge, yes, but they were quite particular assets where there were quite particular problems with security and the ... again, there was a ... as I say ... sales processes ... they're not all the same. Bidding processes aren't all the same, you know. I'm not going to talk about Siteserv because that's gonna be the-----

**Chairman:** It just might be now, so-----

**Mr. Mike Aynsley:** I know I mentioned the name ... it's a naughty name to mention.

**Chairman:** I've had my own errors today, Mr. Aynsley, so you're okay but I'd ask you to revert back now.

**Mr. Mike Aynsley:** Without talking about that particular transaction, you're very well aware that there was a process around that that you would say is different to a process where the bank is ... has that company in receivership and is deciding to embark upon a sale process, and the bank is running at versus somewhat. There's different processes around these things and there's different governance structures that you put around them to ensure that the bank is protected at every stage.

**Deputy Pearse Doherty:** Okay, so if it were-----

**Mr. Mike Aynsley:** So ... so it ... you know, a lot of this is about ensuring that you're getting value and you know the bidding process is one way to ensure that you're getting maximum value but there's other ways of identifying price points to triangulate values to ensure that you're getting good value.

**Deputy Pearse Doherty:** Okay. So if there were, as you've said ... you did engage in bilateral sale arrangements, then why are you so astonished at the fact that the Department of Finance was asking you to enter into bilateral sales agreements and how do you say that the bank had embargoed them, given what you're just after telling us?

**Mr. Mike Aynsley:** Well the bank embargoed them generally. But as I say, if there was a way of creating price points or wrapping processes around them, we would do that. But this

was very few and far between. I can't think of more than two or three situations like that out of the entire loan portfolio.

**Deputy Pearse Doherty:** And was the Department of Finance wanting you to do that at a massive level?

**Mr. Mike Aynsley:** Quite ... quite on a larger scale, yes.

**Deputy Pearse Doherty:** Okay. You talk on page 8 of your statement about the sale in July 2011 of a large part of Anglo's US portfolio-----

**Mr. Mike Aynsley:** Yes.

**Deputy Pearse Doherty:** -----a sale that you describe as, quote, "sub-optimal" in terms of recovery levels and one that would not have been undertaken by the bank, and to quote you again "without ministerial instruction". Mr. Aynsley, are you saying, or not, in your statement, that the sub-optimal sale of Anglo's US assets in July 2011 was done under ministerial instruction?

**Mr. Mike Aynsley:** The sale of the US portfolio was done under ministerial instruction, yes.

**Deputy Pearse Doherty:** What was your understanding of the reasons behind this sub-optimal sale?

**Mr. Mike Aynsley:** This is ... this is actually ... I think this is a very important concept because it gets right to the heart of, you know, the difference between the highest sale price and what is the best economic value in a transaction. And, in this particular case with the US book, there were economic value considerations outside the control of the bank and they were really at the State level. So whilst, you know, we're governed by the EC restructuring plan, we're governed by the commitments letter which says that we need to get certain returns on assets when we sell on a net present value basis, and we have to deal with timeframes for running down a portfolio so ... in other words you just don't want to go and sell a portfolio and fire sale it and say "I've done a good job because I've wound this bank down quickly." The idea is to wind it down no quicker than the timeframe, but to achieve the best result.

In this case there was a major result that the State was looking for apart from the financial return in Anglo Irish Bank, and that was to alleviate this very significant problem with the ECB funding levels. So the deleveraging of the system was something which was a statewide objective that we couldn't make a decision around. The Minister needed to make that decision, ultimately decided that this was an important component, formed part of the decision-making process and resulted in a ministerial instruction for us to sell the portfolio or include some assets in the portfolio that we probably or that we definitely would have kept for a longer period if these other issues were not at the forefront.

**Deputy Pearse Doherty:** And did you put up an argument with the Department in relation to what-----

**Mr. Mike Aynsley:** No, those sorts of issues we wouldn't argue with those sorts of issues, you know ... we understand those. Those are issues outside the control of the bank and they're satisfying broader objectives and if the Minister wants to do that it's a Minister's prerogative to issue us an instruction and ask us to do that. There were certain assets that we did say it makes far more sense with this particular asset not to include it for whatever reason. It might have

been, for example, that there was a timeframe that didn't allow for the perfecting of security and, therefore, if you included it, you would get a 40% return on it rather than 80% if you held it for longer. So there were some rational exchanges in making decisions around those assets.

**Deputy Pearse Doherty:** Were you able to put a potential value ... a potential amount on the loss to the bank if it were ... if it was sold at that period of time? Did you have a value on it?

**Mr. Mike Aynsley:** Yes, we had value on all of these assets. You know, the US portfolio-----

**Deputy Pearse Doherty:** What was the loss you believed by selling it early, as was instructed?

**Mr. Mike Aynsley:** I don't have those numbers with me but, again, you know, they're-----

**Deputy Pearse Doherty:** Was it less than €100 million? Was it well in excess of that?

**Mr. Mike Aynsley:** No, I think it was more than €100 million.

**Chairman:** You're getting a bit more specific here, Deputy.

**Mr. Mike Aynsley:** But, it is difficult to get. I mean, I can't give you specific numbers. I just don't have them with me.

**Deputy Pearse Doherty:** No, I was just looking for a range as a-----

**Mr. Mike Aynsley:** But they are relatively high numbers.

**Deputy Pearse Doherty:** In your witness statement, you note that in 2009, as part of the overall asset quality review, there was a need to repair and perfection of documentation and security. Can you briefly give us some idea as to the nature, extent of the repair and perfection exercise required?

**Mr. Mike Aynsley:** It was substantial across essentially every portfolio. And, you know, the old Anglo Irish Bank conducted its activities in, you know, a way that I hadn't seen previously. I'll give you a couple of examples. Boom markets - a client being banked by Anglo for a long period of time has value in the assets that are being financed that's increasing because the markets are going up. The bank at some point goes along and says, "You've now got all of this extra value in your assets. How about we lend you some more money so you can go off and buy something else?" So, they lend another €100 million with the agreement that what they'll do when he spends money is go back and pick up the security on those particular properties. And then, for whatever reason, it is not done. So, enter the new management team. We start get in loan by loan into these assets and we find that they haven't perfected security and it's really not just one or two transactions, it's endemic, and we need to go through it in a detailed fashion across every aspect of the loan portfolio - every category.

And, you know, I know the numbers that, you know, you saw coming out of Anglo were massive. The losses were massive and they seemed to never stop. And part of this was just the sheer work involved in getting through the portfolio at a detailed level. That wasn't something you could just do overnight and say, "Okay, we're done with it now." It took months and months and extended resources of internal and external specialists to come in and do this work.

**Deputy Pearse Doherty:** Can I ask you - and it was touched on earlier - in terms of the management team in Anglo challenging any of the asset valuations ascribed by NAMA which



resulted in the loss of €21 billion on sale or on transfer? Can you talk to me? Did you challenge them and why did you challenge them? What's your view on that?

**Mr. Mike Aynsley:** Look, I can't recall specific examples but I do recall there were some challenges and objections. I can't recall NAMA ever coming back and saying, "Yes, you're right, so we'll give you a better haircut on that", but I know that there were some challenges but I can't recall whether we ever had a good result.

**Deputy Pearse Doherty:** Mr. Aynsley, we've had a number of Anglo's biggest borrowers before the committee giving evidence. We've heard from Sean Mulryan and Joe O'Reilly. Both of them, in their evidence, said that they intend fully paying back everything as Anglo's debts are being recovered. Were the NAMA write-downs, in your view, given that they're-----

**Mr. Mike Aynsley:** Where did their what? Sorry.

**Deputy Pearse Doherty:** They both stated that they expect to pay back all of their loans, all of their NAMA loans, and they were the two of the largest borrowers with ... they were in the top category in terms of borrowing for Anglo. Given that we've heard from two of those, and it is only two, and they say that they will back everything, was the write-downs from NAMA justified? Could Anglo Irish Bank have dealt with those loans themselves under new management, under a new board? Can you talk to me about that there in terms of the write-down that was applied, the justification for it and what that did to the institution going forward?

**Mr. Mike Aynsley:** I mean, these are like, "Well, what if it had gone the other way?", sort of, questions and I mean, they are always very difficult, aren't they? I guess a couple of comments. Whether they were borrowers, distressed borrowers or staff walking into my office in the first couple of months - the first three or four months - it was like, "Well, of course, we're going to pay everything." And it became ... actually with clients really after the first couple of months, I decided I'd take a break, quite frankly, from talking to customers. And it was because I'd get one story and I wasn't at that stage across enough detail of the actual loans and the exposures. And I was finding that I'd get really good story spun by people who ... very engaging and then we'd go and look behind the scenes and find that the numbers looked totally different and, you know, in some cases, it was just irrecoverable. It's amazing what people will put forward as, "Well, if you'd only done it" ... you know, we had a situation where a client said, you know, an enormous amount of money, "We're gonna pay you back everything", but what it actually required was a loan in excess of half a billion to help support them and then they were going to pay zero on it for seven years. Well, you know, that's not a cost to the bank in that environment for us, that's a cost to the taxpayer and we just weren't in any position to do those sorts of transactions.

**Chairman:** I will bring you back in again in the wrap-up. I'm moving on. Senator Michael D'Arcy.

**Senator Michael D'Arcy:** Gentlemen, you're very welcome. Mr. Aynsley, if the liquidation - I know you're not that impressed with counterfactuals---

**Mr. Mike Aynsley:** Sorry?

**Senator Michael D'Arcy:** I know you're not that pleased with counterfactuals but if the liquidation hadn't not have happened in 2013, do you think that greater value would have been created for the shareholder if the bank had been allowed continue an orderly, slower, more careful write-down than liquidation forced?

**Mr. Mike Aynsley:** Yes, you know, there is counterfactuals and I think Mr. Dukes covered off very well that. You know, I guess the only thing I'd say is, like, markets are markets and there are lots of variables. You know, some of those variables ... you can put a lot of assets into a market at a point in time and the timing is right and you do very well off them, and, you know, the market's not the same three months later. We've all seen that. Now, having said that, I think we'd recognise that since the liquidation, the markets continued to rise and I think ... you know, if you look to spread out the loan sales over a longer period of time in a rising market, you're going to get a better result. But, I mean, it's academic, isn't it? You know, we're in the situation we're in.

**Senator Michael D'Arcy:** Can I ask you, Mr. Aynsley, in the old Anglo, pre the new team coming in, was the challenge presented by the risk function to lending strategies strong enough in the period prior to the crisis?

**Mr. Mike Aynsley:** I wasn't there, so it's difficult but-----

**Senator Michael D'Arcy:** What you saw from-----

**Mr. Mike Aynsley:** From a cultural perspective and talking to the people who were there I don't see how it could have been. As I say, you know, the risk people viewed themselves and were considered like second class citizens. They had processes and they went through processes but it was more finding ways that they could do the transactions, rather than examine the risks in the transactions and then overlay that against where they believed the market was going. So, I think it would've been a very difficult thing for a good risk person to be involved with.

**Senator Michael D'Arcy:** Mr. Aynsley, when the new Government entered office, can I ask you: did you feel there was a change of policy towards Anglo Irish Bank or did the previous strategy continue?

**Mr. Mike Aynsley:** So ... the ... you know, I think in my statement, I did highlight the Fine Gael manifesto which was pretty blunt in terms of, you know, "We're going to liquidate this bank by transferring its assets and obliterating it by the end of 2011." And that, sort of, runs counter to the approved plan that had recently been put in place with the European Commission, which looked at a measured wind-down over a 20-year period of time so ... look, you know, it seemed pretty obvious that there was, if you like, changes afoot, just what they were, you know, I have to say I didn't really know because, to be blunt, I can't really be sure what election promises are going to be fulfilled when the new Government actually gets in. So I didn't really know whether that would be the case. The other thing you don't know as well is, the new Government coming in, how quickly they are going to come to terms with what they've got their hands around. You know, they're not across all the detail as are the old Government. So, you know, there was uncertainty but, certainly, with the new Secretary General coming in, or the new head of banking policy, it became clear very quickly that the approach was to deleverage the system and deleverage, largely through Anglo Irish Bank, very quickly.

**Senator Michael D'Arcy:** Can I ask your knowledge of the deleveraging within the other banks, within AIB and Bank of Ireland? Was there not a similar deleveraging with those ... with their assets, that they were forced to sell?

**Mr. Mike Aynsley:** I think I refer ... there is a document, I don't know exactly where it is, which I found quite useful in, sort of, understanding this which is... I only had a photograph of it on my phone so I couldn't print it out to bring in so I had to draw this but I think it's useful

just thinking about the timing of the losses in the banks. And, of course, you know, Anglo took the early hit of €4 billion in the first half of 2009. By the end of 2010, they had taken €18 billion and then another €17.3 billion so €29.3 billion, so Anglo really did the work on the asset portfolio, understanding where the destruction in value was and took those hits up front. This report I'm referring to is labelled ... it's from the guarantee to bailout, looking at the cost of the capitalisation of the banks and the reference is Honohan, 2012. And from that, you know, the other banks really... Bank of Ireland did not take a €5.2 billion hit until March 2011 when they did PCAR and AIB didn't take a hit until March 2011 of €13.3 billion so whilst you could look in those early days and, you know, I had these discussions early on with the Department of Finance about the size of the hits we were taking and saying "Well, it sort of doesn't make sense to me what's happening in AIB because, given their activity, their involvement in the same markets over the same period of time, there should have been a direct read-across from what we knew about their portfolios." And that wasn't coming through in these numbers; that didn't come through until a lot later in those banks

**Senator Michael D'Arcy:** Can I ask, Mr. Aynsley, in terms of the further restructuring of the banking sector in Ireland, Anglo Irish turned out not to be systemic, did you feel-----

**Mr. Mike Aynsley:** Sorry?

**Senator Michael D'Arcy:** -----Anglo Irish Bank turned out - IBRC turned out not to be systemic, there was a decision to go down the route of two pillar banks.

**Mr. Mike Aynsley:** See, I think this issue of "systemic" is an interesting one because the systemic importance of Anglo Irish Bank changed as the market evolved. There was a massive level of international funding supporting all of the Irish banks. Of course it was a very, very high proportion of funds supporting Anglo Irish Bank from the international capital markets and I think we all know, with the fall in the markets and the reputational damage done to Ireland, that virtually all foreign jurisdictions began to withdraw funding from Ireland and this was a major problem. If ... in the early days, Anglo Irish Bank had large pools of retail deposit funds from the UK and they also had large pools of wholesale funds from the debt capital markets globally and from corporates globally. As time progressed and the bank wound down its asset portfolio and repaid a lot of these - and, indeed, a lot of them were replaced with short-term funding from European Central Bank - the systemic importance of Anglo waned.

**Senator Michael D'Arcy:** Is it the ELA?

**Mr. Mike Aynsley:** Yes.

**Senator Michael D'Arcy:** Yes. How much was the ELA at its peak to Anglo Irish Bank?

**Mr. Mike Aynsley:** €40 billion.

**Senator Michael D'Arcy:** And then other eligible collateral-----

**Mr. Mike Aynsley:** Hm-----

**Senator Michael D'Arcy:** -----was there, on top of the €40 billion-----

**Mr. Mike Aynsley:** Gosh, it took in the three numbers, the ELA numbers.

**Senator Michael D'Arcy:** Mr. Dukes, could I ask you ... you said in your opening statement that the Irish Government and regulation - I assume you're talking about the authorities

attached - did not have tools to deal with the crisis that hit? In previous evidence, Governor Honohan came back, he presented to us in the context phase but subsequently clarified that the Governor of the Central Bank did have tools available but he didn't use them.

**Mr. Alan Dukes:** Yes, but I-----

**Senator Michael D'Arcy:** Could I ask you your opinion in relation to the tools and the usage of those tools?

**Mr. Alan Dukes:** What I pointed out in my opening statement was that we didn't have a bank resolution scheme. We didn't have bank resolution legislation. And if it came to the point where a bank has to be wound down or liquidated, the only legislation that existed in 2008 in this country was the Companies Act. And that, you know, while it was appropriate for part of the operation, it wasn't appropriate to the specific things that you have to do, you know, when winding down a bank.

**Senator Michael D'Arcy:** Could I-----

**Mr. Alan Dukes:** I think-----

**Senator Michael D'Arcy:** You're talking about the special resolution regime.

**Mr. Alan Dukes:** There was no special resolution regime. Now-----

**Senator Michael D'Arcy:** Okay, but the tools I'm talking about-----

**Mr. Alan Dukes:** -----if there had been-----

**Senator Michael D'Arcy:** Sorry, the tools I'm talking about were, that were available to the Governor of the Central Bank via the previous Acts, the Central Bank Acts, in relation to financial stability. Those tools were available.

**Mr. Alan Dukes:** Oh, those tools were available and, by and large, I think it's fair to say had not been used or certainly had not been vigorously used.

**Senator Michael D'Arcy:** Could I just clarify-----

**Mr. Alan Dukes:** Well, I went through, for example, I looked back through - over a number of years - the financial stability reports.

**Senator Michael D'Arcy:** Okay.

**Mr. Alan Dukes:** Which, at various points going back to about 2002, pointed out to various worrying trends that were developing. And if you go back to - and I forget the exact year - the year that 100% mortgages came in, that was flagged.

**Senator Michael D'Arcy:** '04.

**Mr. Alan Dukes:** '04. That was flagged in a financial stability report the following year as being a danger. But there didn't seem to be anything more than some kind of polite suggestions from the regulator to the banks that they should maybe think again about doing these things. Now, I have to say that in the absence of a specific bank resolution regime, regulators anywhere have a big problem because if they really get annoyed or upset or worried about a bank, at the end of the day the only sanction they have is to remove the banking licence and that

is the nuclear button. I don't think any regulator ... I haven't heard of any case in the last decade where regulators have used that.

**Senator Michael D'Arcy:** Can I ... Mr. Dukes, Governor Hurley described the legislation and the tools as "theoretical". Did you hear him make that point?

**Mr. Alan Dukes:** Yes.

**Senator Michael D'Arcy:** Okay. Could I ask your view in relation to theoretical powers?

**Mr. Alan Dukes:** Yes. This is maybe a wider philosophical discussion; it's kind of common cause among people who comment on this that the problem we had was light-touch regulation. I don't think there was all that much wrong with the form of the regulation; it was the fact that it wasn't applied. And, you know, as you've recalled, Senator, there were tools there that weren't used that could, I think, have been used to head off some of the worst features of the problem. And I certainly think it was within the power of the financial regulators, (a), to say to the banks much earlier than had been said that they were over-concentrated from a risk point of view in certain sectors and to certain borrowers and, (b), to say to the financial institutions generally that 100% mortgages are banned. We now have rules that are much more constraining about mortgages and I think, probably, we would have been better off if we had rules of that kind from, say, 2004 on.

**Senator Michael D'Arcy:** Mr. Dukes, you were appointed to the board of Anglo with Mr. Frank Daly, former chairman of the Revenue Commissioners. And how did you find the board or, when you presented, in terms of the previous, the old model, as such, prior to nationalisation?

**Mr. Alan Dukes:** Well, as I say, I didn't have an awful lot of experience with the old board because it didn't exist for very long after Frank Daly and I were appointed. This is just an impression and I can't put my hand on my heart and say that this is the full truth, but I have the impression that a number ... that a lot of decisions made by the board of Anglo Irish Bank, previous to the appointment of the public interest directors, had been kind of worked out in advance by a smaller inner group and then presented to the board.

**Senator Michael D'Arcy:** So a board within a board?

**Mr. Alan Dukes:** Sorry?

**Senator Michael D'Arcy:** A board within a board?

**Mr. Alan Dukes:** That's how it seemed to me and I can't prove that but that is my impression.

**Senator Michael D'Arcy:** Was that your impression, Mr. Aynsley?

**Mr. Mike Aynsley:** Yes.

**Senator Michael D'Arcy:** Can I ask my final question to both of you? Was NAMA a mistake?

**Mr. Alan Dukes:** I don't think so. I got myself in bad odour with my previous party in 2009 for disagreeing with them both about NAMA and about the method of restructuring banks. It seemed to me that if you were going to wind down or cure the running sore that was distressed



loans in banks, it needed some kind of a vehicle to take over the distressed loans, and that would have been the case whether you liquidated them or set out to wind them down, or whatever. There was a need. At one point, in fact, probably early in 2010 when we were just beginning the process of transferring loans to NAMA - which was going to be a difficult process - I remember raising the question, just for discussion, whether we shouldn't transfer all of the Anglo loan book into NAMA and close down Anglo. The tenor of the replies that I got - I never made it as a formal proposal, but I kind of floated it - the tenor of the replies which I got which I think was reasonable, was that that would have been far too big a chunk to put together. Having said that, as I said in my opening statement, I think NAMA has worked rather well.

**Senator Michael D'Arcy:** And, sorry, Mr. Dukes, the €42 billion discount, the haircut, how much of that will be achieved by the State?

**Mr. Alan Dukes:** I don't know. I don't think we'll ever know for sure. But I think that if we could do the accounting, and particularly if the market stays roughly where it is now, NAMA will turn out to have made a profit-----

**Senator Michael D'Arcy:** I know, but the-----

**Mr. Alan Dukes:** -----and the "profit" that NAMA will make will be the direct mirror image of the "loss" that banks make from the haircut on the transfer to NAMA. From the State's point of view, it is a zero-sum game, you could say. It's just a question of the location and where you account for the losses.

**Chairman:** I just want to deal with one question, Mr. Dukes, and Mr. Aynsley can come in on this as well if you wish after Mr. Dukes has answered. You spoke about the ten-year, sort of, wind-down approach to IBRC and the kind of cost-benefit analysis of that and so forth. Maybe if I could ask you to elaborate a bit further and maybe give some background behind the liquidation of IBRC as a device to deal with the promissory note.

**Mr. Alan Dukes:** Well, on the wind-down, first of all, Chairman, the target was to wind it down over ten years by 2020. We had actually concluded by the winter of 2012 that we could do the wind-down by 2018. In fact, Mike Aynsley said to me early in December, I think, of 2012 that he thought we could do the wind-down by 2016, and we actually didn't get time to discuss that properly before the liquidation happened.

My understanding of the motivation for the liquidation at that point was that the State wished to avoid the necessity to pay a further €3 point odd billion every year at the beginning of March to fund its obligations under the promissory note, and that by winding down ... by liquidating Anglo the State believed it had the opportunity to replace the promissory note by cheaper money, basically through other means, and that that would allow ... a requirement of doing that was the liquidation of Anglo-----

**Chairman:** Yes.

**Mr. Alan Dukes:** -----and the removal of the basis for the promissory note from the system, and rolling that money over into cheaper money in another form, which is why, I think it was a piece of, as I said, astute financial engineering.

**Chairman:** Okay, so do you wish to add anything to that, Mr. Aynsley?

**Mr. Mike Aynsley:** Yes. I agree wholeheartedly.

**Chairman:** Okay.

**Mr. Mike Aynsley:** The promissory note, you know, there was an interest holiday component of the promissory note which was-----

**Chairman:** No, that's fine, yes.

**Mr. Mike Aynsley:** Yes, which was put in place not long after the note was issued, that created different accounting treatments on the State's and the bank's books. And, by doing this, it alleviated the issue that they had of starting to pay back this. Then there was ... as I said, you know this is ... a lot of these decisions are down to the best economic value, so it mightn't have been the best economic value for Anglo Irish Bank to liquidate the bank-----

**Chairman:** Yes.

**Mr. Mike Aynsley:** -----you could argue, but, you know, I think, as Alan says, it probably ended up being the best economic value for the State.

**Chairman:** Okay. And just to clarify, because the ... there was liquidation of IBRC with emergency legislation and one would envisage that that all didn't happen in one day, that there was preparation for that legislation over a period of time, were you, at any time, informed that there was going to be liquidation, and, as directors, if you had sight of that or with the roles that you had in the bank, would it have ... would it have put you in a position that you would have had to operate against the liquidation?

**Mr. Mike Aynsley:** Do you want a crack first?

**Mr. Alan Dukes:** Well, we were not informed in advance. Had we been informed in advance, we would have been obliged to make a market statement-----

**Chairman:** Yes.

**Mr. Alan Dukes:** -----and had we made that kind of market statement, I think it would have vitiated much of the value of-----

**Chairman:** Okay.

**Mr. Alan Dukes:** -----doing the liquidation.

**Chairman:** All right. With the business plan that you were proposing, with a ten-year wind-down, what would have actually happened with the promissory note?

**Mr. Mike Aynsley:** The promissory note would have kept on being ... being ... being remunerated-----

**Chairman:** For how long?

**Mr. Alan Dukes:** -----by the State.

**Chairman:** For how long?

**Mr. Alan Dukes:** Until ... I'm not sure for how long. I ... nine years, yes.

**Chairman:** For nine years, okay.

**Mr. Mike Aynsley:** So ... so from that perspective, it was reliant on the ELA funding, which, of course, it was pledged with the ... and this is ... this is again back to this left pocket right pocket, where the value is being taken and, I think Alan brought this up before, the real cost of Anglo Irish Bank or any of these initiatives involving NAMA are really not going to be known until a pretty complete reconciliation of all of these pockets is involved, including how much is being taken against the ELA funding, by the Central Bank, what the cost was for Anglo, how much NAMA has cost, how much NAMA has made-----

**Chairman:** Okay.

**Mr. Mike Aynsley:** -----what the liquidation has cost etc.

**Chairman:** It's just coming up to 20 past eight. I'm just proposing a ten-minute recess ... or suspension actually for a moment. In doing so, I'd just like to remind both Mr. Aynsley and Mr. Dukes that you're ... that you remain under oath. You can take a break as well from the committee room if you wish, and if you wish to discuss with any legal advisers or supports that you have here, you're entitled to do that so as well, but with no other person in that regard. So, with that said, I propose that we return at 8.30 p.m. and continue with proceedings. Is that agreed? Agreed.

*Sitting suspended at 8.18 p.m. and resumed at 8.39 p.m.*

**Chairman:** Can I just call the committee back into public session, if that's agreed? Okay, just where I was rounding off there before we broke, Mr. Dukes, just on the issue of eligible collateral and ELA ... that the ECB had exposure with regard to IBRC. Have you any quantification of that sum?

**Mr. Alan Dukes:** It hit a high of about €40 billion at one point, probably at the end of 2011 or early 2012.

**Chairman:** Okay. And how was that dealt with? How was it disposed of? What was the conclusion of that €40 billion?

**Mr. Alan Dukes:** Well, the ... the ... the objective was to wind down reliance on ELA as far as possible. It was interesting, Chairman, that for a time early in the whole process, when we spoke about ELA, we talked about emergency liquidity assistance and we were told no, that was not the official name. It was exceptional liquidity assistance but I think that distinction has since died.

**Chairman:** Deputy Eoghan Murphy.

**Deputy Eoghan Murphy:** Thank you, Chairman. Thank you to both the witnesses. Mr. Dukes, if I may, I want to go through your opening statement just to get clarifications on a couple of items in it. On page 3 of your opening statement, you talk about the actions that you had to take ... by the board immediately following the nationalisation in January '09 and the first thing is an immediate review of the bank's provisioning policy, which led to at the end of March, the conclusion that the recapitalisation required at that point was €4.5 billion rather than the €1.5 billion estimated by the Department of Finance in January. So why was there a difference in that short period of time?

**Mr. Alan Dukes:** We had looked, as I've said, at the provisioning and if I can just give you an example. On the provisions for impairment, just basically what we are talking about here,

in the report for the year ended 30 September 2008, the total provision for impairment of those accounts was €879 million, which had been presented rightly at the time as the largest impairment provision that any Irish bank had ever made. For the accounts for the 15 months ending 31 December 2009, the provision for impairment was €15.1 billion and, you'll recall, during the course of 2009, we changed the accounting year for the bank. It had been, you know, October to September and we adjusted it to be a full year so we did a 15-months accounting at the end of December but the provision for impairment on loans over those 15 months was €15 billion compared to €879 million for the year... the accounting year immediately preceding that and that was directly as a result of working back into the bank's balance sheet, the information that we had about the decline in property prices.

**Deputy Eoghan Murphy:** But January to March ... that difference ... Finance has a figure of €1.5 billion it's estimating in January and in March you have it at €4.5 billion.

**Mr. Alan Dukes:** Yes.

**Deputy Eoghan Murphy:** Am I right that Finance didn't believe your numbers? Did they have an external review done as well? Is that-----

**Mr. Alan Dukes:** I'm not saying they didn't believe our numbers. They were shocked. It was a huge surprise to them, a most unwelcome surprise, and, as I said, we had commissioned two experts to do a study of our methodology and we had done an internal review of the provisioning policy. The Department of Finance, after we had given them that particular piece of bad news, commissioned, I think it was, PwC to look at the same material we had looked at and they came to broadly the same conclusion on the basis of market information as it was then.

**Deputy Eoghan Murphy:** Okay, moving on then-----

**Mr. Alan Dukes:** But, as I've said - I'm sorry to interrupt you - the information we had about the market was that market prices had been going down from September to December of 2008 but there was an acceleration of the ... the rate of decline from January through the first quarter into the second quarter of 2009.

**Deputy Eoghan Murphy:** Okay, thank you. I just want to move on then to another thing that you had to do following nationalisation, which is the restructuring plan in September '09. You did two plans and you worked with them in conjunction with the Department of Finance, the Central Bank and the NTMA and both plans were rejected by the EC and you say "It subsequently emerged that the Department of Finance had not supported the plan in [their] discussions with the EC" and I think this was unique amongst member states in support programmes, as you point out. Can you explain to me what's happening there and why you're not getting the support from the Department of Finance who've agreed this restructuring plan with you?

**Mr. Alan Dukes:** I honestly don't know and, in fact, that came to our knowledge because the Department inadvertently released to us a document which was prepared for some official who was making a statement about the whole thing and this was a kind of a prompt sheet for dealing with questions and answers and it included the point that the Department, of course, had not supported the May 2010 plan that we had put together. The Department were very embarrassed by that and they, they decided to take that piece out of the document but it had already been said. But it was a difficult time. When we had to do the second restructuring plan, and I don't know why the Commission turned down the first one, we were never told the full detail of that, during the second one, it took quite a long time for us to get engagement from the Central

Bank and the Department in doing the plan, and the NTMA. At a very late stage in putting that plan together, the Central Bank came along with another twist which was difficult to include in the plan but from recollection, I think it's ... I've referred to it in the statement ... there was only one occasion when anybody from the bank was involved in any engagement with the European Commission about the restructuring plan. I found out subsequently, in conversation with a senior Commission official, that other countries that were presenting restructuring plans for their banks brought the banks along to the discussion with the Commission. Personally, I think it would have helped us ... second ... certainly, the second time around and, clearly, the third time around if we had been involved in the discussion with the Commission so that we knew what kind of expectation they had in terms of restructuring.

**Deputy Eoghan Murphy:** Why would the Department agree the plan with you - the second plan - and then not support it?

**Mr. Alan Dukes:** I don't know. You'll have to ask the Department that.

**Deputy Eoghan Murphy:** Did you ask the Department? Did you go to the Department and say, "What's happening here?"

**Mr. Alan Dukes:** Yes.

**Deputy Eoghan Murphy:** Did you see it as a breach of good faith?

**Mr. Alan Dukes:** Yes, and they said, "Oh sorry, you shouldn't have got that document. We'll take the offending piece out of it."

**Deputy Eoghan Murphy:** They apologised for the offending document, not for the action?

**Mr. Alan Dukes:** Yes.

**Deputy Eoghan Murphy:** Okay. I want to move on, if I may then, to a document you supplied in your opening statement - the first document you supplied - which is bullet points for, I think it's John Moran's meeting with the board in May 2011 and I don't know if we can get that up on the screen, Chair. Thanks. A number of bullets points there but the second, kind of, section of the document is, "D. Fin/NTMA, influence has slowed down adjustment process", and a series of bullets. The first one:

- Indecision on restructuring policy approach (now on version 4, still undecided).
- Sep. 2010 "funding bank + recovery bank" proposal never made any sense.

[down to the bottom bullet point]

- Official demand for external validation of Bank analyses and proposals has simply increased expenditure on external consultancies...

At the bottom of the page, "The moral of the story: get them off our backs and things will happen faster, better." Can you just explain for me what that means? And the second question is: was the way in which the Department was engaging with you costing you more money and costing the State more money, ultimately?

**Mr. Alan Dukes:** Well, the point I made is that things were taking longer to get done because the NTMA and the Department were slow in arriving at decisions. If you look at the second section of the document there, the third bullet point, the bank's original liquidity management



exercise in 2009, which was burning the subordinated bondholders ... our original proposal was considered too aggressive by the Department so-----

**Deputy Eoghan Murphy:** And you mentioned that in your opening statement as well and I wanted to come to it. I mean, could you elaborate on that, please?

**Mr. Alan Dukes:** Well, we were proposing that we would pay subordinated bondholders somewhere in the twenties per cent. The NTMA reckoned that that was too aggressive and we ended up paying somewhere in the thirties per cent - I have the exact figures somewhere but I can't quite recall them at the moment - which meant that instead of saving somewhere over €2.2 billion, we saved €1.8 billion on that exercise. In 2010, we proposed another exercise to cram down subordinated bondholders and it took almost six months to get agreement of the authorities to do it. That was a more aggressive one.

**Deputy Eoghan Murphy:** I don't understand "too aggressive" though. I mean, what does that mean?

**Mr. Alan Dukes:** Well, on the second one, we offered to pay people very little - I can't remember the exact figure - if they agreed by a certain date and if they hadn't agreed by that date, they got nothing.

**Deputy Eoghan Murphy:** Why would the Department or anyone else want to go more softly then on ... in terms of this exercise? What would be the benefit?

**Mr. Alan Dukes:** I think because they felt that there would be a bad market reaction to it. As far as we could see, neither of those exercises created any particular difficulties in the market.

**Deputy Eoghan Murphy:** And staying with you, Mr. Dukes, but looking at the statement from Mr. Aynsley, if I may, we've had the Wright report into the Department of Finance in 2010 which came through with a series of recommendations. They were all reviewed for the public accounts committee and gone through with the Secretary General at the time and we've had the other various reports talking about failings in the Department of Finance and the move now to rectify them post-crisis. But if we look at Mr. Aynsley's statement ... on page 2, he talks about a skills gap in the Department of Finance; on page 3, "ongoing lack of banking knowledge and experience in the Department of Finance"; on page 4, "It appeared increasingly to be driven by political considerations"; and then, on page 7, we have a resignation letter from the CFO, "The authorities are stuck in their old ways. They do not recognise nor understand conflicts of interest." So, in terms of the Department of Finance, as you understand it, and as you have dealt with it until very recently, have you seen any significant change over the Department of Finance that was there prior to the crisis, which was criticised so heavily in things like the Wright report and the Nyberg report?

**Mr. Alan Dukes:** No, frankly. We found, as I ... that note that you referred to in the beginning, that was a note I prepared for my own guidance in chairing the meeting with Mr. Moran in May of 2011. It set out areas where I felt that the interaction between the bank and the Department was not producing the kind of result that it might have. For example, I think we were more aggressive ... we were more constructive about restructuring Arnotts, for example, than the Department would have been and we consulted them about that because that was an area that we thought might be an area of public interest ... you know, an iconic department store in a sensitive part of Dublin ... you know, there might be considerations to be taken into account but NTMA was nervous about the kind of deal we were doing. And the same, there was another

deal ... a Champion deal, which NTMA was nervous about but which we went ahead with because it was our commercial judgment that that was in the best interests of the bank. And if you see on the section directly above that ... “Anglo board has real concerns about liability issues”. That goes to the heart of the way the relationship worked. I felt at that time that we had to make it clear that the ultimate responsibility for what happened in the bank rested with the board and not with the NTMA or the Department of Finance and that it was the board’s necks that were on the line for decisions that were made and we couldn’t legally or prudently leave too many of those decisions to be made by other people, whose concerns were not, maybe, as informed by the realities of commercial life as ours were. We found, from time to time, in discussions with the Department, that they raised questions, which was a legitimate thing to do, but some of the questions were extremely naive. And as I said earlier on, we were never entirely sure just how far up in the Department the responses percolated and we found, from time to time, that it seemed to be difficult to come to a conclusion on an issue with the Department. The Department would raise a series of questions, legitimately, about a particular set of activities or whatever. We would sit down with them, explain it all, go through it all and they would ... we’d end the meeting and it would appear that that was concluded. And, a couple of months later, they would come back to us with the same set of questions, so it seemed to be difficult to be sure that we had concluded on an issue with the Department. I could go further about particular issues that I’m not allowed speak about here-----

**Deputy Eoghan Murphy:** Okay.

**Mr. Alan Dukes:** ----but you know what I mean.

**Deputy Eoghan Murphy:** Thank you. Thank you, Chair.

**Chairman:** Thank you. Next questioner is Deputy Joe Higgins. Deputy Higgins, ten minutes.

**Deputy Joe Higgins:** Mr. Dukes, just in relation to what you said were aggressive cuts to bondholders that you tried to inflict. Which authorities ... was it national or European were reluctant?

**Mr. Alan Dukes:** National. Those were two exercises for subordinated bondholders-----

**Deputy Joe Higgins:** Yes.

**Mr. Alan Dukes:** -----where there wasn’t any blanket ban on them doing it. The official hesitation or ban was on doing anything with the senior bondholders.

**Deputy Joe Higgins:** As you know, Mr. Dukes, the whole question of haircuts to bondholders or burning bondholders, so-called, they have been quite a controversial one ... just with the benefit of what you’ve seen in Anglo would you have a comment on the ... that general issue since the bank guarantee? Do you think that there were opportunities for much more severe haircuts to bondholders rather than taxing the taxpayer with their debts?

**Mr. Alan Dukes:** Well, in terms of dealing with senior bondholders, we had to be policy takers rather than policy makers. It was a matter of, you know, settled Government policy that the senior bondholders were not to be cut.

**Deputy Joe Higgins:** If you had your own way?

**Mr. Alan Dukes:** I would be reluctant to do it because of the effects that it has on your

subsequent capacity to borrow, the effects it has on markets. I know there's a great deal of talk about it, and various pop economists talked about the mirth and the joy there was among senior bondholders and champagne corks popping and all that and how they would come back the following day and lend you more money. I think a lot of that is very fanciful. If you look at the experiences of countries where senior bondholders have been burned, I don't think you can conclude that it's an exercise that doesn't have very serious costs involved in it.

**Deputy Joe Higgins:** Okay. And, Mr. Dukes, you were public interest director when Anglo was nationalised in January of 2008. What was the total loan book at that time, can you remember?

**Mr. Alan Dukes:** The total balance sheet was about €100 billion at that point. Loans ... total assets were €100 billion. The loans to customers were about €67 billion, loans and advances to banks were about €7 billion and there was about €12 billion of investments in financial markets.

**Deputy Joe Higgins:** Okay. So then, €33.9 billion was transferred to NAMA. I think that's the correct figure.

**Mr. Alan Dukes:** Yes.

**Deputy Joe Higgins:** So, leaving about €40 billion with Anglo. Would that be correct?

**Mr. Alan Dukes:** Yes..

**Deputy Joe Higgins:** Okay. What was the ... can you say that there was a profile of the customers that remained with Anglo at that stage? I mean, the big developers had gone. What was the general profile of those who remained?

**Mr. Alan Dukes:** Oh, there was quite a variety. There were still a number of very large borrowers left, some with fully performing loans, others with loans that were less than fully performing but, you know, where something was happening. And I think it's fair to say that not all of the distressed loans were transferred to NAMA. There was also, to the best of my recollection - and I'm open to correction on this - I think there was a lower limit on the exposures that would be transferred to NAMA. There was a figure below which the loans would not be transferred to NAMA.

**Deputy Joe Higgins:** Yes. And you both then spoke about, you know, various dates that had been set for the wind-down of the bank - 2020 perhaps and then 2016. Was it at any stage considered whether there was the possibility of turning this bank around and making a good bank of it?

**Mr. Alan Dukes:** Yes. In fact, both the first and the second restructuring plans were done on the basis that the bank would be a going concern. The May 2010 restructuring plan separated ... proposed to separate it into a good bank and a bad bank and, if memory serves me correctly, I think we were looking at an outstanding loans base of somewhere in the region of €15 billion at that point, but the European Commission decided at that stage that the bank ... it could no longer be treated as being prospectively a functioning bank into the future.

**Deputy Joe Higgins:** Right.

**Mr. Alan Dukes:** And it was after that discussion around September of that year that talk began about the idea of winding it down.

**Deputy Joe Higgins:** Okay. Did you believe that it was possible, Mr. Aynsley, to take the bank forward on a different basis?

**Mr. Mike Aynsley:** It depends at what time you're talking about, like all of these things. And I think what Mr. Dukes says is 100% valid. One way of looking at this is if you think of the discussion we had earlier around the systemic importance of Anglo. One of the reasons was the level of deposits that it had, both domestic but largely international. So, if you go back to September 2008, their customer accounts liabilities were running about €52 billion; March 2009, they'd dropped to €34 billion; December 2009, €28 billion; by the time we got to December 2010, they were down to €11 billion. So, what you had ... two things happening. You had a flight of deposits out of the country, and this was just not impacting on Anglo, it was impacting on every Irish bank, and that was the reason why you saw this very substantial growth in ECB funding.

**Deputy Joe Higgins:** Right, okay.

**Mr. Mike Aynsley:** But, at the same time, you had this destruction in asset values with the falling real estate markets.

**Deputy Joe Higgins:** Yes.

**Mr. Mike Aynsley:** So Anglo found itself in a situation where the asset values were falling, and falling dramatically. There was very little asset portfolio left that you could use, at the end of the day, to centre-post a new good bank. And even if you argued that, well, perhaps it was big enough to create a small business bank, the funding issue was a large one. Deposits were still leaving the country and this is why one of the reasons was taken to structure up quickly this funding bank structure to take the deposits that were left out of Anglo and put them with an institution, AIB, that could use those to support its business as one of the pillar banks going forward.

**Deputy Joe Higgins:** Okay. Mr. Dukes, you note in your statement that one of the board's urgent key tasks was the identification of a series of legacy issues. Could you, please, provide an insight into the legacy issues identified in the context of lending and recovery policies and risk assessment and appetite?

**Mr. Alan Dukes:** Well, they're all separate categories. The legacy issues ... I think broadly I'd characterised those as the issues that were identified and taken up by the Office of the Director of Corporate Enforcement and the Garda Bureau of Fraud Investigation, who started their investigation in February of 2009. There was a whole series of outstanding issues there, some of which are still subject to litigation, but they were, if you like ... and I think I can use the phrase, colloquially, "the sins of the past" that needed to be examined and have people held to account for them-----

**Deputy Joe Higgins:** Okay.

**Mr. Alan Dukes:** ----which was a major piece of work, including trawling through records and making records available to the ODCE and the Garda Bureau of Fraud Investigation. Those were legacy issues.

**Chairman:** If you could refrain from the sins of the past and maybe give us a better analogy that may not be so judgmental.

**Mr. Alan Dukes:** “Legacy” is the most neutral word-----

**Chairman:** Okay, perfect.

**Mr. Alan Dukes:** -----I could use for-----

**Chairman:** Thank you very much. That’s it. Drive on.

**Deputy Joe Higgins:** Okay. Gentlemen, the ... you were under pressure from the euro system to sell off the assets so the banks had money to pay back to the ECB as I understand it. Did you feel you were under political pressure from the State or from the Government for any political reasons to advance sales more quickly?

**Mr. Alan Dukes:** No, not specifically. As I said, a wind-down programme was agreed in the early part of 2011, which we over-fulfilled. From time to time after that, there were people in the Department of Finance seeking to encourage us to wind the bank down faster, which we did not think was always that wise, and we felt that as long as we stayed within the objectives of the wind-down targets that we had proposed and we took opportunistically other opportunities to dispose of assets at what we regarded as a reasonable price, that we would do so.

**Deputy Joe Higgins:** And, lastly, Mr. Dukes, this is to yourself. The appropriateness of the relationships between the Government, the Oireachtas, the banking sector and the property sector and in your written statement you say, “This issue has been a rich source of modern mythology.” Considering the history of tribunals which have shown relationships between political parties, politicians, developers and then a perceived closeness between some parties or politicians and big developers, do you think that that might merit a more considered response?

**Mr. Alan Dukes:** I considered that response very carefully. You use the word “perceived” which, I think, is an appropriate word in this case. I mean, I think there is a fact that is hugely overlooked in some of this discussion, and that is that for many, many years the construction sector in Ireland has persuaded all political parties, not just Fianna Fáil but Fine Gael and the Labour Party and, I think, others that ... on the basic proposition that they make that construction is good for the economy. I’ve always thought that that is the wrong causation. A strong economy is good for construction and I think that an over-reliance on construction as a motor of growth has turned out, in our case and indeed in other economies, to be a very bad idea.

There is frequent comment to the effect that there are, kind of, cosy cartels between bankers and politicians and all the rest. My observation, both in politics and out of it, in dealing with bankers is that, by and large, they prefer to stay as far away from politicians as they can. I think until 2008, most of them thought they knew more about what was healthy for the country than the politicians did and I think they found out that they don’t necessarily.

Again, in relation to developers it’s frequently alleged that developers are more friendly to one particular party than another. Frankly, my experience has been that they’re very, very flexible as to who they support. I think the whole political system probably pays too much attention to them than they actually deserve. So, I mean, that’s where I think the mythology comes in.

**Chairman:** Right, thank you. Senator Susan O’Keeffe. Senator.

**Senator Susan O’Keeffe:** Mr. Aynsley, in your opinion, was the decision to liquidate the bank something that had been the ultimate objective all along?

**Mr. Mike Aynsley:** No, I don’t think so. The initial discussions I had prior to joining the



bank and then after I joined the bank with the Minister for Finance, the late Brian Lenihan, were very much along the lines that the preference the State had at that point was to repair the banking system, repair Anglo. It was in the early days and they believed that Anglo would remain as a systemic part of the financial sector. So, the view was to convert the stub of the bank or not the stub of the bank or the cleaned up entity into a bank that focused more broadly on business banking and SME banking. But, you know, as I said, as the markets developed and deteriorated, it ended up not being possible. So, I think then it became a matter of how do you move it to ultimate resolution and in what timeframe and that was really the subject of the ultimate pieces of work that resulted in the final plan and subsequent liquidation.

**Senator Susan O’Keeffe:** Before I turn to the Department of Finance, can I just ask you, Mr. Aynsley, we’ve heard evidence about how difficult it was to get good evidence or good knowledge about the state of the banks in September 2008, particularly in relation to Anglo? Would it have been possible to have had information at least about the level of personal guarantees, the concentrations in various sectors and so on? Would that information have been easily found or was it in fact-----

**Mr. Mike Aynsley:** No.

**Senator Susan O’Keeffe:** -----a job for real experts to spend real time on?

**Mr. Mike Aynsley:** A job for Superman, it really was.

**Senator Susan O’Keeffe:** Why is that? Is that true of all banks or was it just true because of the convoluted-----

**Mr. Mike Aynsley:** I can’t talk for the other banks.

**Senator Susan O’Keeffe:** No, and I’m not asking you to.

**Mr. Mike Aynsley:** Every bank has computer systems within which they store data. They complete a transaction, they store the data and that data changes as interest rates change or maturity dates happen and get reset, etc. But, it also records security data and any other number of aspects of a transaction. What we found was that they were in such a hurry to transact business and write new business that they had put a minimum amount of information into the computer systems. So, it then becomes a matter of going back, file by file, back to the original documents, original files, and rebuilding that over time. That is, again, one of the enormous pieces of work that needed to be done, just so we knew where we were because in the absence of a .... I mean a lot of its guarantees were worthless but there were some that were worthwhile. But if they weren’t on the system and you didn’t know they were there, you really didn’t have a solid basis to value the loans. So, it kept on coming back to a process of revisiting the original loan documents and rebuilding that data from the ground up. To answer your question, back in ‘08, if somebody walked in and said “we need to do a quick look at this portfolio and see its real health”, it would have been very difficult to do that.

**Senator Susan O’Keeffe:** Does that mean also, Mr. Aynsley, that for the bank executive, was it also difficult for them if it was piling one on top of the other? Would they equally have been losing track of their own system if it was not adequate?

**Mr. Mike Aynsley:** Well, I think, yes. The processes they had in place are different than certainly what I have been used to throughout my career because, you know, there is no substitute for a fact base of information. It seemed that a lot of the information relied on reports that

were provided by the relationship managers who were dealing with the clients day-to-day, and they would make assumptions and put forward reports and then they were rolled up to the next level. The information just wasn't built off a solid fact base.

**Mr. Alan Dukes:** Chairman, could I just add one or two reflections to that as a kind of a non-banker? As I said earlier on, the information was there about the concentration of risk by sector, and by borrower, and it was there available to the regulatory authorities.

The second point I would make is that I think this was common cause for most of the banks. If they were asked about their loan exposures in the property sector they would have said, and probably would have believed, that they operated a 70% loan-to-value ratio. On deeper examination I found, and this is making it very broad - this is broad brush kind of stuff - if you really examined their loan books, and tracked through individual borrowers, you would find that in a number of cases, and a not insignificant number of cases, the 30% equity that was supposed to go with this 70% loan-to-value ratio was borrowed funding either from the one bank or from another bank and brought in as equity to support a loan. So that, in fact, the concentration by sector and by borrower was actually exacerbated by the loan-to-value ratios that actually existed in real terms. The first two parts of that were information - if you like, gross level information - that was available to regulators and that should have set off alarm bells. Regulators should have said "Stop, you are over concentrated." The last bit of it was much more difficult to find out and that was partly related to the design of the bank systems and the kinds of things that Mr. Aynsley has been talking about.

**Senator Susan O'Keefe:** Thank you. Mr. Aynsley, can you recall whether there was a level of borrowings by the actual directors of the banks? I do not suppose there is a sort of-----

**Chairman:** No-----

**Senator Susan O'Keefe:** I am not asking at all-----

**Chairman:** I need to ask the witnesses to be on notice as well.

**Senator Susan O'Keefe:** It is a collective question. What I am just trying to establish is whether or not that level was higher or lower than any other experience you'd had, just in the broad sense. That is all I am asking. Was it higher or lower?

**Chairman:** We must be very guarded here with regard to directors' loans.

**Mr. Mike Aynsley:** In general terms, other banks I've worked at in the past, in fact they have taken different paths.

**Senator Susan O'Keefe:** Okay.

**Mr. Mike Aynsley:** Some banks have a blanket policy and in fact we in the new Anglo adopted this which was no more direct loans. We barred director loans post-nationalisation. Others will allow them in a normal retail banking business. You know, universal banks that provide loans for mortgages or normal personal loans. You know, directors subsequently or since they become a director of a bank they may maintain normal banking relationships. Others it ceases and moves on to another bank.

**Senator Susan O'Keefe:** Mr. Dukes, if I may, you included in ADU-0002, it was the document, the letter that you wrote to Mr. Moran in 2011, where you talked about the decision to appoint another set of advisers - McKinsey. You said that was the Department's decision

and one which has “retarded the bank’s process and has added little value”. You go on to say, “The McKinsey team, none of whom appear to have any real depth of experience of banking, seemed unaccountably to be unaware of the very elementary proposition that the risk function in a bank should be separated from the finance function.” What had happened here that these advisers had been put in and what happened to the original advisers, Bain and Co, that the bank had appointed?

**Mr. Alan Dukes:** Bain and Co, as far as I remember, were still in place at that point.

**Senator Susan O’Keeffe:** Were they removed?

**Mr. Alan Dukes:** No. We had a contract with them and I have to say that we were very happy with the work they did.

**Senator Susan O’Keeffe:** Yes, but you were asked to remove them, weren’t you?

**Mr. Alan Dukes:** No.

**Senator Susan O’Keeffe:** You say, the bank should dispense with the services-----

**Mr. Alan Dukes:** Perhaps that was suggested, yes. But, I mean, I think the central point I was making there was that the Department, for its own reasons, decided to hire McKinsey to do a piece of work. We were never told about it and I was annoyed by the fact that not only had the Department appointed McKinsey to do this work on their behalf but they had the grace to inform us that we were going to have to pay the bill for McKinseys. Frankly, I wasn’t at all impressed with the people I met who were carrying out that and I think the same could be said of other people, and I was absolutely astounded when I was told. We never saw the report, incidentally.

**Senator Susan O’Keeffe:** But why would the Department of Finance choose to put in, never mind the quality of them, but why would they choose to do that?

**Mr. Alan Dukes:** Frankly, God alone knows. You’ll have to ask the Department of Finance.

**Senator Susan O’Keeffe:** But did they never say to you, look, you know, we have our own-----

**Mr. Alan Dukes:** No, they told us they had hired McKinsey and they were going to send us the bill and then McKinsey produced this God-awful, stupid proposal to ... to merge the ... the finance and ... and risk functions-----

**Chairman:** Be careful Mr. Dukes.

**Mr. Alan Dukes:** I beg your pardon, Chairman. Gabh mo leithscéal. But, I really was annoyed by that.

**Senator Susan O’Keeffe:** I can tell.

**Mr. Alan Dukes:** It was a proposal that flew in the face of every common concept of how to run a bank properly and the proof is there that ... the Nyberg report quotes that as one of the serious deficiencies in the old Anglo and here was the Department of Finance endorsing a proposal from another outlet, that we were going have to pay for, to do something stupid.

**Senator Susan O’Keeffe:** Finally, if I may-----

**Mr. Alan Dukes:** I didn't like it.

**Senator Susan O'Keefe:** No, I get that. I get it.

Mr. Aynsley, in relation to the concerns that were discussed previously by other members on page 15, did you, on foot of what had happened there, did you ask to speak to anybody else in the Department of Finance? Did you ask to speak to the Minister for Finance? What did you do on foot of those ... because I know you've said that there is a trail of e-mails to support that part of what you've discussed but I'm asking ... you clearly were concerned about what happened, so what did you do?

**Mr. Mike Aynsley:** I raised it ... raised it with the chairman but bear in mind, this is at the death of the bank, the death of the management team of the board. This is, like, January 2013, so 7 February was the point of liquidation, so I could only speculate, I guess, on where we would have gone next with that but it was definitely actioned. I can't talk about the action.

**Senator Susan O'Keefe:** I understand that.

**Chairman:** Senator, I need you to wrap up now.

**Senator Susan O'Keefe:** Yes, and finally, I mean, effectively, you have noted that the relationship was governed by the so-called relationship framework, the RF. Do you believe that in your tenure there, was that relationship framework breached in any way, specifically? I mean, given all the concerns and they're in ... they're noted here ... was it actually breached?

**Mr. Mike Aynsley:** No. No, I don't believe so, at any time. I mean, we were accused of, of breaching it at one point after the new one came in, you know, the new one made it very clear on what you need to notify the Department or the Minister of, what you need to consult the Minister on and what you need to do to seek consent. And I recall, probably the first week, there was a notification requirement so we notified and the next thing ... you know, notified, executed what we were doing and the next thing we get a letter of ... expressing difficulty with our decision because we hadn't asked them whether we could do it.

**Senator Susan O'Keefe:** Was it breached by the Department of Finance, though?

**Mr. Mike Aynsley:** Sorry?

**Senator Susan O'Keefe:** Was it breached by the ... I mean, it was a relationship between-----

**Mr. Mike Aynsley:** No, no.

**Senator Susan O'Keefe:** ----- the two sides. Was it breached by them at all in their actions towards the bank? That's what I was trying to get at..

**Chairman:** Sorry, Senator, I must ask you to wrap up.

**Senator Susan O'Keefe:** That's what I was trying to get at. Given the ... no, in fairness, Chair, I did ask the question. You said ... in relation to the observations you made about the Department of Finance, do you believe that the relationship framework was, at any time, breached by the Department of Finance in relation to you?

**Mr. Mike Aynsley:** I don't think so. It's close. I think ... I think it could have been if we'd let it. I think, you know, there was ... and that was part of the conflict ... there was this ongo-

ing push-back because of the recognition that there were very many conflicting elements that needed to be considered and, you know, if we'd conducted certain activities in conjunction with the Department of Finance, it may have had a direct impact and caused a default and accelerated and created a cessation of business risk for us ... or an event. So, you know, we had to push back on many, many things. So, I think the answer is "No, there wasn't", but there could have been.

**Mr. Alan Dukes:** I think, Chairman, the document ... the two relationship frameworks are probably in the committee's briefing notes. If you have time and patience, read through them. They're not pellucidly clear and discussion along the second one went through 29 different drafts - becoming increasingly bureaucratic as they went through - and it was resolved finally when our chief executive officer lost patience with the whole process and he said "Why don't we refer this to the two sets of legal advisers?". They looked at it and came back with a much more workable draft in the space of a few days.

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

**Chairman:** Senator Sean Barrett.

**Senator Sean D. Barrett:** Thank you and welcome to our two visitors. Mr. Aynsley, first, if I may, you say on page 16 "When I arrived in Ireland in September 2009 there was still little appreciation of the scale of damage done by the pre nationalisation Bank Management". And could you describe the prevailing culture you encountered on your arrival in Anglo in September '09?

**Mr. Mike Aynsley:** I think ... I started to say earlier, I mean, one of the things I recall when I came in ... within the first week; I don't think there was one member of the management team ... the old management team that were still there didn't walk in and ask for an audience and start talking through what they'd done and within the first 15 minutes put their hands up to say "Well, you know, of course, well I didn't do anything wrong throughout this whole process". In those days, the discussions around the loan portfolio ... it's not really, you know, "We've got a better loan portfolio than anyone else. The other banks have followed us and they've pushed this harder than us after the fact". There was a denial, I think, about the quality of the loan portfolios. There just wasn't an acceptance that this was a particularly serious situation. This was a fair way in. This was September ... August-September 2009. And I'd say that the culture of denial about what had gone on and what was still unfolding was probably the thing that struck me the most.

**Senator Sean D. Barrett:** Yes, because it was going on for about a year at least at this stage. So it's-----

**Mr. Mike Aynsley:** But, of course, you know, the business ... at that stage, you were seeing a flight of deposits out of the country but not compared to what we were going to see. You had seen the market fall significantly and I spoke at the beginning about the expectation at that ... middle of the year there was a 20% haircut on NAMA assets, by year end it was 30, it ended up being 58 overall. Just the extent of what was unfolding hadn't really struck a lot of people. And bear in mind, a lot of people hadn't ... in Ireland ... hadn't been through this type of crisis and no one really in major jurisdictions had seen the extent of what was going to happen.

**Senator Sean D. Barrett:** Some of the witnesses - and one has to say on the borrowing side - presented an image of a most meticulous bank with all sorts of detailed document, much more rigorous and difficult to borrow from than any other bank they'd ever experienced. Did



you find that from the inside when you went there in September '09?

**Mr. Mike Aynsley:** No, not at all. In fact, the reputation internally was we'd find a way to get a deal done.

**Senator Sean D. Barrett:** Thank you and if I might turn to your colleague, Mr. Dukes. Did Anglo-IBRC ever receive a direction from the regulator as a result of non-compliance with the terms of the Credit Institutions (Financial Support) Scheme 2008 to conduct its business so as to reduce the risk to the Exchequer under the guarantee?

**Mr. Alan Dukes:** Not that I can recall. We had a number of occasions when we had detailed discussions with the regulator about detailed aspects of the schemes, but I don't think we were ever issued a direction to do something that we hadn't been doing up to then.

**Senator Sean D. Barrett:** Now, on your page 9, you say on regulation, "My personal view is that simple, clear and even brutal rules with a minimum of exceptions are to be preferred to complex, detailed rules with numerous exceptions." Could you describe for us the Alan Dukes model of simple, clear, brutal bank regulation and what would be in it, because we will have to address that, obviously, as we come to the end of our work?

**Mr. Alan Dukes:** Yes. To give an example, it has taken a long, long discussion in the United States to get something apparently simple like the Volcker rule implemented. I'm sure the Senator is familiar with this. It was decided I think four years ago and it only came into operation this year with great reluctance on the part of the banks. And I think that rule, if it were rigorously applied to banking systems through the world, would actually reduce the complexity of regulation because it just takes a whole area of activity away from the proper activities of investment banks.

That particular statement represents what I suppose you would call a prejudice about it. I've been looking at detailed regulation of various kinds since 1967 and I find both in various customs regulation, in tax law and in banking regulation, the more detailed the rules you have, the more the incentive is there and the more the opportunity is there to find a way around the rules. Now, detailed rules give rise to detailed avoidance procedures. Simple rules are much more easily implemented and I think, you know, there is a big discussion here around the question of what do we want the banking and financial system to do for the real economy. And I think the answer to that is something much simpler than they do today. So, let's have simple statements and simple rules.

**Senator Sean D. Barrett:** Thank you. And, Mr. Aynsley, Canada has been referred to a lot at this committee. I think Australia and Singapore would also be places, which ... where bank regulation is admired. Could you give us a brief synopsis of what we might look towards from Australia?

**Mr. Alan Dukes:** Have you got a couple of weeks?

**Senator Sean D. Barrett:** He has come a long way.

**Chairman:** We might go down there for a trip for the month of August.

**Mr. Mike Aynsley:** I beg your pardon.

**Senator Sean D. Barrett:** Mr. Aynsley-----

NEXUS PHASE

**Chairman:** I said, Mr. Aynsley we might go down over August. It's not that we don't have enough to do. We will have a look at it, Mr. Aynsley.

**Senator Sean D. Barrett:** I mean, what would Australia have done to prevent the situation you walked into on September '09?

**Mr. Mike Aynsley:** I think this gets down to making sure that the banking policy and direction of regulation are adequately separated. I think, you know, this is one of the areas I spoke about in my opening. You know, I think, you know, there's evidence here that the areas have been confused and the roles haven't been clear. The regulator hasn't ... pre-rebuilding of the regulator, you know, the regulator wasn't regulating properly and banking policy wasn't clear and banks just seemed to do what they wanted to do. And I think, you know, certainly in Australia the roles are very separate and I think rightly so. I think, you know, there is clarity around what the regulator is doing. There is clarity about the way they supervise the expectations that are levied on the banks and banking policy is not confused by the Government.

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

**Chairman:** Thank you very much. Deputy O'Donnell.

**Deputy Kieran O'Donnell:** Thank you, Chairman. Welcome, Mr. Aynsley and Mr. Dukes. Apologies for the delay. How did Anglo - this is for you, Mr. Aynsley - how did Anglo's culture and governance structures compare with other financial institutions with which you would have been previously associated? How did it differ?

**Mr. Mike Aynsley:** The ones I have been associated with previously were essentially universal banks or more akin to an AIB or Bank of Ireland, not monoline real estate banks. And, of course, you know, the very much larger institutions are a function of organisations that have evolved over particularly long periods of time and have activity that's a lot more represented in every sector of the economy. And with these organisations, you get bureaucracy and you get structure-----

**Deputy Kieran O'Donnell:** Well, if you were, we'll say-----

**Mr. Mike Aynsley:** -----and you get process.

**Deputy Kieran O'Donnell:** -----if you were to distil it down, we'll say-----

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** -----Anglo's loan book-----

**Mr. Mike Aynsley:** Uh-huh.

**Deputy Kieran O'Donnell:** -----between 2004 and 2007 went up threefold.

*(Interruptions).*

**Chairman:** You've a bit of phone interference there, Deputy.

**Deputy Kieran O'Donnell:** No, it's not mine.

**Chairman:** Yes, that's fair enough.

**Deputy Kieran O'Donnell:** And what's ... if you were to identify what were the weaknesses within this structure - the governance structures, the processing structures within Anglo - that gave rise to-----

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** -----that level of growth in ... in ... in purely property-----

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** -----based-----

**Mr. Mike Aynsley:** I think ... I think the control ... the link between growth and risk is particularly important and, you know, this is obviously the ... the focus of the new regulatory regime-----

**Deputy Kieran O'Donnell:** So were they going in different directions?

**Mr. Mike Aynsley:** -----around the world.

**Deputy Kieran O'Donnell:** Was growth going up and risk effectively-----

**Mr. Mike Aynsley:** Yes, you know, the ... the growth of the books relative to the risk involved in growing them and the risk that's manifesting in the economy itself and how that affects the organisation. And with ... at Anglo, the funding structures, you know, highly reliant on very short funding of assets for a ... extended period of time and the access to global sources that could continue to provide it. So it's sort of like a ... a false belief that you're always going to be able to fund anything, so you just go out and lend. And providing you're lending at a higher rate in a rising market, you're not going to see delinquencies and losses as markets rise and-----

**Deputy Kieran O'Donnell:** So was it all based ... was it predominantly based around capital growth?

**Mr. Mike Aynsley:** They grew their capital through-----

**Deputy Kieran O'Donnell:** When I say capital ... the growth in asset value, was there-----

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** -----did they drive their loan book on-----

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** -----on the premise that-----

**Mr. Mike Aynsley:** Asset value and-----

**Deputy Kieran O'Donnell:** -----the price of property was ... asset values were going up?

**Mr. Mike Aynsley:** Asset value, funded short.

**Deputy Kieran O'Donnell:** Fine.

**Mr. Mike Aynsley:** Yes.

**Deputy Kieran O'Donnell:** Rather than underpinned by, we'll say, a sustainable income

stream.

**Mr. Mike Aynsley:** Correct.

**Deputy Kieran O'Donnell:** Okay. Can I ... can I move on?

**Mr. Mike Aynsley:** Although some would say, you know, a sustainable income stream ... income streams can be sustained for a ... a very, very long time. All right, you know, you had a 16-year bull market before this thing turned over and, you know, there are people that've grown up in that industry that haven't seen anything else and, you know-----

**Deputy Kieran O'Donnell:** Well, again, can I ask a quick-----

**Mr. Mike Aynsley:** -----they have gone through it and they think that that's all there ever is.

**Deputy Kieran O'Donnell:** If we hadn't had a bank crash here-----

**Mr. Mike Aynsley:** Uh-huh.

**Deputy Kieran O'Donnell:** -----would Anglo have still ended up on the rocks?

**Mr. Mike Aynsley:** Sorry, I can't answer that question. I mean, I think we did have a bank crash here and I think we had a bank crash around the world for, you know, different reasons, but a large part of it was this whole growth in access to cheap-----

**Deputy Kieran O'Donnell:** I suppose-----

**Mr. Mike Aynsley:** -----funds.

**Deputy Kieran O'Donnell:** -----was the Anglo model unsustainable?

**Mr. Mike Aynsley:** Yes, I think it was in terms of its ultimate level of annual growth.

**Deputy Kieran O'Donnell:** Can I just go back? Page 14 of your statement, Mr. Aynsley, and the second last paragraph, you speak about "A number of accusations have been made alleging that I, as CEO, and others in the Bank's Executive team [had] close relationships and provided private commitments to certain named key customers."

**Mr. Mike Aynsley:** Uh-huh.

**Deputy Kieran O'Donnell:** Can you tell me how did you manage ... what was your policy in terms of managing relationships with clients? And just can you expand on ... on that particular accusation?

**Mr. Mike Aynsley:** Well, I think we're ...you know, we were ... we have a code of ... or we, sorry, we developed a code of conduct, there wasn't a document there previously. One of the first things we did was put a code of conduct in place, which is a board-approved document that goes through, you know, all of the aspects that you'd expect, including hospitality and ... and these sorts of things.

**Deputy Kieran O'Donnell:** Well, did you ... did you ... did you-----

**Mr. Mike Aynsley:** So what I was referring to here was ... as you know, and I, you know, I suspect it was either perhaps even you who questioned me at one of the Oireachtas committees, you know, about, you know, texts that were flying back and forth with Paddy McKillen, you

know, and I think I ... I covered off that on that then. And I don't think there's, you know, anything untoward in the way we ever managed our ... our clients. You know, dealing with large clients requires careful management. You know, we managed through a structure and a process in the organisation that ... that required contact to be undertaken at the relationship management level and carefully managed at all levels.

**Deputy Kieran O'Donnell:** And would that have involved, we'll say, going ... going to meals-----

**Mr. Mike Aynsley:** Uh-huh.

**Deputy Kieran O'Donnell:** -----dining out? Would you regard that as a normal feature of managing a relationship or would you say that should be done in the ... in the office?

**Mr. Mike Aynsley:** Yes ... you know ... no, I think it is in certain circumstances and it's an accepted form, not only in banking but in many industries. People that do business together, you know, from time to time they'll get together and they'll have a meal. We had policies in place to make sure that this wasn't excessive. You know, I for example, I think I said in my statement I can count on, you know, two hands over three and a half years the number of lunches and dinners I had with clients and I have to say, you know, always in the company of a relationship manager, someone else from the bank.

**Deputy Kieran O'Donnell:** Okay. Can I ask, Mr. Dukes, the distrust between the Department of Finance and Anglo, was it personality driven or was it policy driven?

**Mr. Alan Dukes:** I think it was probably a bit of both. It was policy driven to the extent that there was a certain lack of clarity in the relationship, even in the relationship framework-----

**Deputy Kieran O'Donnell:** And you might just clarify the relationship framework, your letter here to Mr. Moran was dated 6 October 2011.

**Mr. Alan Dukes:** Yes.

**Deputy Kieran O'Donnell:** When was the revised relationship framework, when was it actually put in place?

**Mr. Alan Dukes:** 2012.

**Mr. Mike Aynsley:** March.

**Mr. Alan Dukes:** I think March of 2012.

**Deputy Kieran O'Donnell:** And why did it take the bones of six months to put a revised one in place?

**Mr. Alan Dukes:** Because we went through 29 different drafts of successively more bureaucratic presentations-----

**Deputy Kieran O'Donnell:** But did you not go into a room and say, you know, "let's do business"?

**Mr. Alan Dukes:** That's what we would've liked to do. In fact, if you look at the documentation you'll find that I think I had sent to the Department some time in advance of the opening of those discussions a draft relationship framework, which they found far too light. But the



problem was that it was very difficult to find out where to draw a line between the independence of the bank and the right or the inclination of the Department/Minister to intervene.

**Deputy Kieran O'Donnell:** I suppose the question I'm asking is, did personality clashes become more of a feature of the relationship than policy clashes?

**Mr. Alan Dukes:** I don't think ... if there hadn't been policy clashes, there wouldn't have been personality clashes, I'll put it that way. But, I mean, just to give one example of where the difficulty was, the Department was always keen to ensure a flow of information from the bank, which they got - they got it in spades. But in some of the drafts, for example of the relationship framework, if the Department wanted information it had to be supplied on the spot. If the Department was required to give a response, they had seven days or ten days or whatever to reply, which was very uneven. In some cases it was not at all unusual for the bank to say, "here is an issue, here is something we feel we need to do or we want to do, and we need to do it in the next three days". It was no good to us to have an answer back in ten days time, you know. That didn't seem to register with the Department as an objective difficulty on our part.

**Deputy Kieran O'Donnell:** We had Mary Harney and John Gormley in before us yesterday and they both stated that the late Minister, Brian Lenihan, had indicated to them prior to the nationalisation of Anglo that Anglo was insolvent. So-----

**Chairman:** I'd much rather when people are quoting witnesses that they actually quote from the text. There's a general assumption that can be taken in that regard, okay?

**Deputy Kieran O'Donnell:** Thank you, Chairman. I haven't had an opportunity to look on the-----

**Chairman:** I know that. People have been busy.

**Deputy Kieran O'Donnell:** And, really, I suppose, what would be your view on that particular point expressed by both?

**Mr. Alan Dukes:** Well, I addressed that in my opening statement. I can't be sure. The problem, as presented to the Government, as I understand it, in September of 2008 was a problem of liquidity in the banks. I think I said in my opening statement the question is: were the banks or was Anglo insolvent at the time? This is a pure guess, I have no scientific basis for saying it, but I think, you know, this is probably not too far from reality. At the actual point at which the guarantee was given, I think it was probably the case that technically Anglo was solvent because the real damage to the asset values happened sometime after that, fairly quickly after that, and certainly from January 2009 on. But I would think that had the kind of examination that Senator O'Keefe was talking about earlier on ... had that been done in advance of the bank guarantee I think the probability is that Anglo would still have been solvent at that point and I think the other banks would have been solvent by a bigger margin, if you like, at that point.

**Deputy Kieran O'Donnell:** In substance, do you think, it was-----

**Chairman:** Final question now Deputy.

**Deputy Kieran O'Donnell:** Well it is ... yes, you said "technically". In substance, was it insolvent?

**Mr. Alan Dukes:** In the sense that the assets, as they would have been valued at that point, would have exceeded the liabilities.

**Mr. Mike Aynsley:** Do you mind if I add to that? You know, if you look at September '08, the organisation had a capital base, equity base of €4.1 billion at that point. And, of course, we know not long after that there was estimates done that said well you know, probably going to need a €1.5 billion of capital. And I think, you know, this is all about where asset values went over a period of time versus where they were perceived to be at that time. So, likely to be solvent, I would suspect.

**Chairman:** Thank you very much, Mr. Aynsley. I am going to move to begin the wrap-up. I'll invite the leads in. I'll ask them to be as concise and as brief and to avoid any repetition of material that's been covered already. If further clarification is needed, of course, we will have to do that. If I could just begin with maybe the same question to the both of you. And Mr. Dukes dealt with some of my latter questioning already, just before we broke earlier. But the general question to the both of you would be: what was your own preference for the future of the bank from among the options identified in the various restructuring plans?

**Mr. Alan Dukes:** I think, Chairman, we've been through that. At a point in 2010, we believed that it would still have been possible, as Mike Aynsley has said, to centre-post a continuing bank on the basis of the assets as they were then. Asset deterioration subsequently, I think, made that impossible and, by September of 2010 ... I think it was in September 2010, that we began to look at the reality of the need to wind down the bank.

**Chairman:** Sure.

**Mr. Alan Dukes:** And just to complete the point, it is related to something Senator O'Keeffe raised earlier on. I think - and maybe it's not really useful to say this, but I think it should be said - there is quite a difference between winding down a bank, getting bank into a wind-down position, and liquidating it. If you wind it down, you get to the point where you have satisfied all of the demands of creditors, there is still some base of assets left, there's enough left to deal with the tail risks that are there or else the tail risks are of a magnitude that it's safe to hand over to somebody else without creating a problem. And I think, at the end of the day, that was, if you like, our preference to wind the bank down in that way. As Mike Aynsley has said, from the State financing point of view, other priorities supervened and it became more interesting or more valuable from the State's point of view to liquidate the bank and get the benefit in terms of the easement of the promissory note burden rather than to continue with disposing of the assets.

**Chairman:** Would you agree with Mr. Dukes's summary or would you like to add anything else to it, Mr. Aynsley?

**Mr. Mike Aynsley:** Yes, I would agree with that. I guess the only other thing that like ... I still think, looking back on it - sorry, I still think looking back on it - I think, looking back on it now, even if there had been €12 billion or €15 billion and you could have funded this new entity, I still think it would have been difficult given the perception around the ... the historical perception around Anglo Irish Bank and the name, and the perception around what it had done, right or wrong. And I think that's something that I had no idea of until I came and lived here for a while and everywhere you went, you know, people would say, "Great, really glad you're here, something really needed to be done about that bank, you know, the sooner it's gone the better." Just the level of dislike and the level of hate is something that I had no idea until probably mid-2010.

**Chairman:** And that lines up the final question for the both of you actually, is ... in your opinions was the decision to liquidate the banks something that had been the ultimate objective

all along?

**Mr. Mike Aynsley:** No, I think I ... I covered off that one earlier I think. I ... I think originally the extent of ... of what was happening was unclear and the thought of turning it into a ... the beginning of a third force starting with a business bank that was a little bit more diversified and better focused was the thought process. That's where it started from and the liquidation aspect of it came in subsequently, driven by events.

**Chairman:** All right, okay, thank you. I'm going to wrap-----

**Mr. Alan Dukes:** There's points, Chairman, where-----

**Chairman:** Yes, Mr. Dukes?

**Mr. Alan Dukes:** -----you wonder where the intersection between politics and practicality comes. It was made very clear to me, certainly from an early stage, that the ... that Brussels wanted Anglo gone. There was a great deal of political comment from all sides of the political spectrum from 2010 on and certainly for a period in early 2011 when other things were going on, when people were saying "Yes, get this off the landscape, get rid of it as quickly as possible." But as these things often happen, when people find themselves with the reins in their hands they find the horse is not going to go quite where they thought it was going to go in the first place and that it's maybe better to jump the ditch than to take the gully over the other side of the road.

**Chairman:** Okay. All right guys, I'm going to move to wrap things up.

**Mr. Mike Aynsley:** Chairman ... Chairman, can I just make one comment though?

**Chairman:** Sure, yes, yes.

**Mr. Mike Aynsley:** Because, I mean, I'm just aware that it is easy to bash Anglo and I just want to make the point that there are a lot of staff that were not involved in these bad practices, if you call them bad practices. And, you know, they deserve, I think, recognition that they worked hard, particularly the ones that have stayed through and helped. And a lot of those were there before in different positions and you know they've worked hard to resolve this bank.

**Chairman:** Okay, thank you. I'm moving to wrap things up and if I could ask the Deputies to assist me to be as quickly as possible. Deputy John Paul Phelan.

**Deputy John Paul Phelan:** Always quick, Chairman. Briefly, Mr. Dukes, who told you from European level that Anglo had to be wound up as quickly as possible? Who was that conversation with, can you recall?

**Mr. Alan Dukes:** Well a whole ... a whole variety of conversations ... people in the Department of Finance, in the Central Bank, in other various associations I've been involved with. It was very widespread view.

**Deputy John Paul Phelan:** Outside of the ... your encounter with Minister Lenihan in Leinster House when you were asked initially to becoming a public interest director, were you giving any ... given any instructions or direction or riding orders as to what your role would be?

**Mr. Alan Dukes:** Yes, a briefing was organised in the Department of Finance for Frank Daly and myself with a couple of officials from the Department and a couple of legal advisers, who

spoke to us about the normal duties of a director of a company. And then they, kind of, superposed on that of the duties of a director of a bank. And when I asked what the specific duties of a public interest director were, the conversation got a bit abstract and ... and vague, and quickly came back to the point of saying that, yes, you had a duty to the company and, yes, you had a duty to the shareholder and, yes, you had a duty of care to the employees of the company and you still had to bear the public interest in mind. But where all these things met was never clear.

**Deputy John Paul Phelan:** It was never really explained?

**Mr. Alan Dukes:** I rationalised it to myself and I ... I think other members of the board kind of disagreed with me about this, but, being a simple-minded person, I rationalised it to myself on the basis that I was there to look after the public interest, the shareholder in the bank was the Minister for Finance. The Minister for Finance has a duty to the public interest and in a sense kind of embodies the public interest, so the objectives of the Minister for Finance satisfied the requirements that I look after the public interest.

**Deputy John Paul Phelan:** Okay. Simple-minded, I ... I ... I think others would dispute that assessment. Mr. Aynsley, Senator D'Arcy asked earlier - and I think Mr. Dukes answered - in relation to NAMA, had it done a good job. I don't recall if you had answered that question. If you did, feel free to say you did. But what's your view on NAMA, briefly?

**Mr. Mike Aynsley:** Yes, look very briefly, I think, you know, NAMA's had an incredibly difficult job. I am a big believer that the NAMA structure ... whether you call it NAMA or not is another matter, but the NAMA-type structure is very important in cases like this because, you know, one of the key aspects of it is that it crossed all financial institutions in a ... in a country that provided banking facilities to, you know, single borrower groups from multiple entities. And I think it's the only way you can really corral all of these relationships and get them in shape to be resolved. Now, whether they did a good job doing that, I mean, I don't know.

**Deputy John Paul Phelan:** Finally, do you think that your remuneration package, such as it was, which was significantly ahead of the cap that was proposed by the Government ... that it was a cause of the souring, or potentially partly at least, a cause of the souring of relations between the Department of Finance and management in Anglo?

**Mr. Mike Aynsley:** Yes. Firstly, let me take issue with the first part which is it wasn't significantly ahead of the cap. It was on the cap. The cap was set under the CIROC guidelines and there were aspects within the CIROC report ... the CIROC guidelines. And my package, which, by the way, I didn't structure, it was offered to me, there were aspects that I negotiated around ... moving here. It was a structure that was arrived at by the bank in conjunction with the Department of Finance and the Minister. And the Minister personally signed off on it on the basis that it complied with all aspects of the CIROC guidelines. Now, you know, the level of these things ... I know this is a lot of money but, you know, there's a market and if you want to bring people to the country to resolve issues, there's a price.

**Deputy John Paul Phelan:** Thank you.

**Chairman:** Deputy McGrath.

**Deputy Michael McGrath:** Thank you, Chair. Mr. Dukes, can I ask about the information flow between the bank and the Department of Finance? Under the original relationship framework, which was put in place, I believe, in 2009 ... July 2009, can you clarify when did the practice of sending board packs from the bank to the Department commence?

**Mr. Alan Dukes:** I've been trying to get a handle on that for some time. I can say that already in August of 2011, and this is from recollection, I was able to say that the practice of sending board packs and minutes to the Department was already well established by then. Now, that's ... so by early 2011, long before we started talking about a new relationship framework, that practice was in place.

**Deputy Michael McGrath:** Okay.

**Mr. Alan Dukes:** I can't be more specific than that but I can tell you that from 2009, from nationalisation on, when Donal O'Connor was chairman of the bank, I remember saying to him one day - because I worked very closely with him - that I had the impression that he almost told the Department of Finance what he had for breakfast. His orientation was to tell the Department everything so that they knew exactly what was going on.

**Deputy Michael McGrath:** Okay, but you believe... sorry.

**Mr. Alan Dukes:** I don't know at what date we started sending board packs and minutes but it was certainly a lot earlier than has been claimed in some quarters in recent times.

**Deputy Michael McGrath:** Okay, and earlier than August 2011, in your view? Sometime earlier than that.

**Mr. Alan Dukes:** Oh yes, yes.

**Deputy Michael McGrath:** And what would board packs contain?

**Mr. Alan Dukes:** They'd contain all of the documents that were being put up for consideration by the board. And the board packs would normally contain a report of any committee meetings that had taken place since the last board meeting.

**Deputy Michael McGrath:** Minutes of ... of board committees?

**Mr. Alan Dukes:** Minutes of board committees ... of meetings that had taken place since the last board meeting.

**Deputy Michael McGrath:** And would that be all board committees, including the credit committee?

**Mr. Alan Dukes:** No, the credit committee was not a board committee. The audit committee, the risk and compliance committee, the nomination and governance committee and the remuneration committee, those were the committees. So, the minutes of all of those ... any of the matters that were being presented for board approval ... and if it was a case, for example, where a transaction was being submitted to the board for approval and we had a threshold for transactions being submitted to the board, it would have contained a complete documentation pack on that transaction, including reports from the credit committee and where it had been through one, a transaction review committee.

**Deputy Michael McGrath:** And what was the threshold above which a transaction would come to the board? From memory, if you recall?

**Mr. Alan Dukes:** I can't remember off-hand.

**Mr. Mike Aynsley:** It depended on ... I mean, it's a whole series-----



**Mr. Alan Dukes:** It's a whole series of criteria.

**Mr. Mike Aynsley:** -----of controls.

**Deputy Michael McGrath:** Okay. And would a transaction normally come to the board for the first time for final sign-off or could there be a series of discussions?

**Mr. Alan Dukes:** I wouldn't say there was a general rule about that.

**Deputy Michael McGrath:** Okay.

**Mr. Alan Dukes:** There were some transactions. Let me give an example. We had a number of assets in the north east of England which were in a fairly distressed position and at a given point we had a report from the UK office about what the condition of that particular group of assets was, with a number of suggestions as to how we might go about prospecting the market to see how that would go. Some time later, another report came back detailing what kind of progress had been made on that and what kind of problems there were with that portfolio. And then, some time later, there would have been a number of specific proposals to the board as to proposals for disposal of assets. And, you know, they were subject to quite a lot of discussion.

And I can remember a series of board discussions at successive board meetings about how we were dealing with, for example, one transaction I can remember ... and I can talk about it because it is not going to be ... it was in the UK, a group of hotels in the UK, where there were a number of iterations of the plan to dispose of them, including a provision for restructuring some of the loans in order to get the thing into shape. So there was quite a lot of discussion at board.

I mean, it was one of the arguments - discussions - we had with the Department of Finance. In 2009 and 2010, for example, we had an enormous number of both board meetings and committee meetings, and it was represented to me that we were having too many meetings. And it was even said to me by people in the Central Bank. But once we explained to them what the subject matter of the meetings was, it was agreed that we were ... it was reasonable, if onerous. And I, as I have said to so many other people who have raised this with me, I think if the other members of the board had felt that I was convening board meetings too quickly, they would have been on my case pretty damn quick.

**Deputy Michael McGrath:** Thank you.

**Chairman:** Right, thank you Mr. Dukes. Deputy Doherty.

**Deputy Pearse Doherty:** Go raibh maith agat. Mr. Aynsley, I want to refer to page 14 of your statement that you've furnished to the committee. And this is where you address the accusations that ... and allegations that have been made against you as CEO-----

**Mr. Mike Aynsley:** Yes.

**Deputy Pearse Doherty:** -----that you had close relationships and provided private commitments to certain named key customers. Can I ask you did you ever provide private commitments to any customer of IBRC-Anglo Irish Bank?

**Mr. Mike Aynsley:** Never at any time. I've spoken on ... I was just about to finish off on that last question. I don't think ... there's not one name that hasn't, that's come up ... there's not one name that's come up in the last six months - so that's a bunch of names that's come up in the media that'll, that everyone has been discussing - where the overall strategy to do with those re-

relationships and the method of approach was not taken up to the board in every single case. And I think to cap it off ... I think it's quite important to understand the process that we'd have with very large customers. You know, this is ... the financial shock and dislocation that happened was equally as distressing to good clients as it was to clients that couldn't weather the storm.

**Deputy Pearse Doherty:** Okay.

**Mr. Mike Aynsley:** They needed time, particularly dealing with a bank that was going out of business, winding down to zero, to refinance their businesses. So, you know, we were dealing with an approved timeframe and, as Mr. Dukes has already explained, we were dealing with a timeframe to allow us to wind the book down to 2020. Then what we would do is we would work out the best way of handling that particular client and creating the space for them to refinance their business to another borrower.

**Deputy Pearse Doherty:** Okay.

**Mr. Mike Aynsley:** That was all designed to get 100% return back and in each case we got a 100% return back.

**Deputy Pearse Doherty:** Okay. In relation to when you took over in terms of new management, you carried out a review in terms of the hospitality expenditure done by Anglo Irish Bank between 2006 and 2009 and, as part of that, golf seemed to come up very ... quite often. We see in a table that was published in Simon Carswell's book that there was €1.37 million spent, of which a large proportion of it was on the likes of golf balls, where €208,000 was spent, and umbrellas where there was in excess of, I think, €100,000 spent. There was golf days, €102,000, and so on.

**Mr. Mike Aynsley:** We never found all those golf balls.

**Deputy Pearse Doherty:** Yes. It was reported that there was only 1,000 of the 125,000 left over and you were searching frantically for them.

**Mr. Mike Aynsley:** In fact, I think it is in the book. Mr. Carswell walked in and presented me with a golf ball that he had been sent from someone in Spain who had found it on the golf course.

**Deputy Pearse Doherty:** On that point, there is also there, in terms of golf miscellaneous, which was €155,000 which was spent over them four years. Would that include corporate accounts that Anglo Irish Bank had with golf clubs?

**Mr. Mike Aynsley:** Could do. It could do.

**Deputy Pearse Doherty:** Simon Carswell also says that Anglo Irish Bank had a corporate account with Druids Glen in County Wicklow. Are you aware of that?

**Mr. Mike Aynsley:** Druids, yes, that had run out, interestingly, so I think it was one of these things where they gave, you know ... you could play so many times a year. They had all expired by, I think, the middle of 2009, end of 2009. So we had no value that we could take but what we did do with them is we had one of the PAs, who had a good relationship, talk to them from time to time and we would use those for staff. You know we couldn't do things for staff and we would ring them up and say "Look, you know, this has expired but do you mind if we send a couple of our operations people down?", for example.

**Chairman:** You need to wrap up Deputy.

**Deputy Pearse Doherty:** And was the account with Druids Glen just in relation to green fees or did it go further than that?

**Mr. Mike Aynsley:** No, that is all it was, as far as I know.

**Mr. Alan Dukes:** That was all pre-nationalisation. The golf balls actually were in great demand for charity auctions.

**Chairman:** This is wonderful, now, but I need to stay within the terms of reference and I need to get this session concluded as well but I am sure this will be a good conversation at some time or other. Senator D’Arcy, please.

**Senator Michael D’Arcy:** Mr. Aynsley, *The New York Times* article “[Could] one bank bring down a country?” Are you ... *The New York Times* article “[Could] one bank bring down a country?” Were you aware of that article?

**Mr. Mike Aynsley:** Yes, broadly.

**Senator Michael D’Arcy:** Do you think it is a fair headline? Do you think it is accurate?

**Mr. Mike Aynsley:** Well, I think it is a headline. I mean, it gets people to read the paper, I suppose, and that is what most of them do.

**Senator Michael D’Arcy:** I asked you was it a fair headline?

**Mr. Mike Aynsley:** Could one bank bring down a country? I think, as I said, I think it is a ... I think it is a headline and I think it’s debatable. I think one bank in a country like this - it is a small country relatively speaking. It is a small financial sector and if you embed cultural behaviours you can generate contagion that can have a negative impact so ... not out of the question but I think it is drawing a long bow.

**Mr. Alan Dukes:** You wanted an answer to the headline. There is an answer to that headline. It is very simple - it is a good headline too - it didn’t.

**Senator Michael D’Arcy:** Mr. Dukes, can I ask you in terms of the Nyberg report, it stated that the banking crisis was home grown, although there were international impacts. Do you agree with that assertion?

**Mr. Alan Dukes:** Yes. I think there was a failure of regulation. There was, clearly, a failure of risk appetite, risk management on the part of the banks. There was excessive reliance by the banks on short-term interbank funding, which dried up. So, yes, all of those problems could have been dealt with domestically and if they had been properly dealt with domestically, we certainly ... we wouldn’t have been immune from the effects of the international crisis, but the effects would have been a good deal less than they actually were.

**Senator Michael D’Arcy:** And, Mr. Aynsley, the same question to you.

**Mr. Mike Aynsley:** Can you please repeat the question again?

**Senator Michael D’Arcy:** Mr. Nyberg said that the banking crisis in Ireland was home-grown.

**Mr. Mike Aynsley:** Yes.

**Senator Michael D'Arcy:** Do you agree with that?

**Mr. Mike Aynsley:** I think in terms of the growth in real estate markets, yes. And in terms of the systemic impact on the funding side, no. I think that was more driven from a global perspective.

**Chairman:** Right, I'm going to bring matters to a conclusion. When I do, I'll just be proposing a five-minute suspension where we return in private session as there's a number of matters that we need to get through before we conclude the committee's own business tonight before we adjourn the public sessions for the month of August, resuming in September. So with that said, I'd like to thank Mr. Dukes and Mr. Aynsley for your participation today and this evening and also for your co-operation in assisting us to get our programme completed in July. And I'd also like to thank you for your positive engagement with the inquiry here this evening as well. So with that now said, I formally excuse both witnesses with a five-minute suspension to return at 10.15 p.m. Okay? Thank you.

**Mr. Alan Dukes:** Thank you, Chairman.

Sitting suspended at 10.07 p.m. and resumed in private session at 10.19 p.m. The joint committee adjourned at 11.24 p.m. until Tuesday, 1 September 2015.