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**Joint Committee of Inquiry into the Banking
Crisis**

Witness Statement of

Eugene McCague

Session 47b

16 July 2015 (a.m.)

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¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

Joint Committee of Inquiry into the Banking Crisis

Written Statement of Eugene McCague

18 June 2015

Joint Committee of Inquiry into the Banking Crisis

Written Statement of Eugene McCague

I am a partner in the firm of Arthur Cox. In my capacity as an external legal adviser to the Department of Finance, I have been directed, pursuant to the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, to provide a written statement and give evidence to the Joint Committee in relation to the bank guarantee decision (line of inquiry C3b). I make this statement pursuant to that direction.

In giving this statement and my evidence to the Inquiry, I am constrained by the duties I owe to the Department in respect of the privilege, including legal privilege, to which the Department is entitled. I have been informed by the Department that it has waived, solely for the purpose of my oral evidence to the Inquiry, the privilege which attaches to any advice given by Arthur Cox to the Department in September and October 2008 in relation to the bank guarantee. It has not otherwise waived privilege.

I set out below some background on my knowledge of the events in late September 2008 leading up to the bank guarantee decision.

1. On **Wednesday, 24 September 2008**, I was informed by my partner Pádraig Ó Ríordáin, who was then Managing Partner of the firm, that he had received a request from the Department of Finance to advise the Department in relation to banking sector liquidity issues, with a particular focus on Anglo Irish Bank (“**Anglo**”) and Irish Nationwide Building Society (“**INBS**”). Mr. Ó Ríordáin put together a team of partners and associates to work on the matter and asked me to be part of that team.
2. That morning, I, along with Mr. Ó Ríordáin and other colleagues, attended initial meetings with representatives from the Department of Finance, Merrill Lynch and subsequently with the Office of the Attorney General. We attended a series of further meetings with these people throughout the day. The principal task we were given was to work with the Office of the Attorney General in relation to draft legislation for the possible nationalisation of Anglo and INBS. The representatives of the Department emphasised to us that the legislation was being drafted as a contingency measure, in case it was required, and that no decision had been taken in relation to either institution.
3. A draft Bill had already been prepared by the Attorney General’s Office based, as far as I can recall, on the UK legislation relating to Northern Rock. Our task was to assist in identifying the range of legal issues which might need to be addressed in any such legislation and to give the necessary legal advice associated with this task.
4. I was asked to attend a further meeting either later that day or on the following day (**Thursday, 25 September**) with representatives from the Department of Finance, the Financial Regulator and from Merrill Lynch and PwC, at which PwC gave a report on the Anglo Loan Book. The meeting considered the potential State interventions in relation to Anglo and INBS. A note of that meeting, which is in the public domain, records these interventions as including ordinary liquidity support, an SLS type scheme, guarantees, nationalisation and a bad bank approach.
5. Following this meeting, there was a further meeting which was attended, as far as I can recall, by the Taoiseach, the Minister for Finance, the Attorney General, and representatives of the Department of Finance, the NTMA, the Central Bank and the Financial Regulator as well as advisers from PwC and from Merrill Lynch at which the potential options for Anglo and

INBS were again discussed. At the conclusion of that meeting, Arthur Cox was asked to continue to progress the draft Bill with the Department and the Attorney General's Office.

6. On **Sunday, 28 September**, I attended a meeting in the offices of NTMA with representatives of the Department of Finance, NTMA, the Financial Regulator's office and the other advisers. There was further discussion on the loan books of the banks, particularly of Anglo. Following that meeting, we continued to progress the draft Bill.
7. On **Monday, 29 September** I continued work on the draft Bill. I was also preparing a first draft of a Step Plan, the purpose of which was to set out, in some detail, the steps, in relation to governance and other matters, which would need to be taken in the event that the legislation was passed leading to the nationalisation of either or both institutions.
8. On the evening of **29 September**, I went to the Department of Finance at around 9.30 p.m. to join my colleague Pádraig Ó Ríordáin. Some time later, I was asked by Mr. David Doyle, the Secretary General of the Department of Finance, to attend a meeting in the Office of the Taoiseach.
9. My principal recollections from the remainder of the night of **Monday, 29 September** and the early morning of **Tuesday, 30 September** are as follows. These events did not necessarily occur in the order set out below:
 - 9.1 When I joined the meeting, there were present the Taoiseach, the Minister for Finance, the Attorney General and the Governor of the Central Bank, as well as a number of representatives from the Department of Finance and the Department of the Taoiseach. It was apparent to me that the meeting had been in session for some time.
 - 9.2 While I attended the meeting, I was not asked for, nor did I give any advice for the duration of the meeting.
 - 9.3 Representatives from AIB and Bank of Ireland joined the meeting very shortly after I did. These were the Chairman (Dermot Gleeson) and Chief Executive (Eugene Sheehy) of AIB and the Governor (Richard Burrows) and the Chief Executive (Brian Goggin) of Bank of Ireland.
 - 9.4 Mr. Burrows of Bank of Ireland spoke first and briefly. He outlined the bank's concerns about the likely impact on Bank of Ireland of a default by Anglo.
 - 9.5 Mr. Gleeson of AIB spoke at greater length about the collapse in the Anglo share price and how a further collapse when the markets opened on Tuesday would likely be seen as a proxy for a serious risk to deposits which could cause a run on all the banks. Mr. Gleeson stated that Anglo and INBS needed to be dealt with and that the remaining banks should then be guaranteed.
 - 9.6 I recall that Mr. Goggin and Mr. Sheehy also spoke briefly, mainly about the pressures on liquidity.
 - 9.7 The two banks were asked by Mr. Hurley (the Governor of the Central Bank) to provide emergency liquidity to Anglo. The Chief Executives of the banks were clear that any funds that might be provided would need to be backed by a Government guarantee and that they would need the funds repaid to them by the following weekend to meet their own liquidity requirements. They later confirmed the availability of €10 billion between them having checked with colleagues at their banks.

- 9.8 There were a number of discussions throughout the night regarding the liquidity and solvency position of Anglo and INBS. Towards the end of these discussions, when the AIB and Bank of Ireland representatives were not in the room, the Taoiseach asked Mr. Hurley on a number of occasions for his advice as to whether, in the Central Bank's view, Anglo was insolvent. Mr. Hurley said it was not and the issue that was facing Anglo was a liquidity issue. At a later stage, the Financial Regulator, Mr. Neary, was asked the same question and he expressed the same view as Mr. Hurley.
- 9.9 Having heard from the two banks and the Governor of the Central Bank and the Financial Regulator, the Taoiseach and Minister for Finance decided that given the rapidly deteriorating situation, the Government needed to act to protect the banking system and the correct course of action would be not to nationalise Anglo or INBS, but rather to put in place a guarantee covering six institutions, AIB, Anglo, Bank of Ireland, EBS Building Society, INBS and Irish Life and Permanent. The representatives of AIB and Bank of Ireland were invited back in and informed of the position.
- 9.10 Mr. McCarthy, the Secretary General of the Department of the Taoiseach, then contacted the members of the cabinet for the purpose of an incorporeal meeting.
- 9.11 A press release was also prepared, I believe by the representatives from the Department of Finance with the assistance of the Attorney General. After the decision had been communicated to the AIB and Bank of Ireland representatives, the Attorney General asked me to seek information from the AIB and Bank of Ireland representatives on the names of the banks' subsidiaries which they felt should be covered by the guarantee, so that these details could be included in the press release. I asked the banks for this information, but ultimately, it was decided not to include the details of the subsidiaries in the press release, particularly because this information would not have been available in respect of the other banks being guaranteed.
10. I had no involvement in relation to the bank guarantee after the night of 29/30 September.
11. While I have been asked to comment on the appropriateness of the bank guarantee decision, I do not have the expertise to do so, nor do I have knowledge of the full range of matters which were being considered by the Government or the information available to the Government in the days leading up to the guarantee decision. I have described the events leading up to and on the night of 29/30 September 2008 to the best of my recollection. From what I observed on that night, it seemed to be the view of the Government representatives that the position was so critical that the Government had to protect the banking system and, having regard to the views of the Governor of the Central Bank and the Financial Regulator that the issue for Anglo and INBS was one of liquidity rather than solvency, that the most decisive way to do so was through a guarantee of the six institutions.



Eugene McCague

18 June 2015