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Houses of the
Oireachtas

Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Bernard Allen

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- "(a) with the prior consent in writing of the committee,
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¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

1. What was the role of your Committee in relation to the Dept. of Finance?

The role of the PAC is set out in Dáil Standing Order 163. The accountability requirements of Accounting Officers is set out in Section 19 of the Comptroller and Auditor General (Amendment) Act 1993, which includes being able to outline the systems processes and procedures employed by the Department to do its job..

I would make a number of points about the role of the PAC in relation to the Dept. of Finance:

- a. In examining the audited accounts of the Department of Finance, the PAC is reviewing expenditure or events that happened in the past. In the case of the banking crisis, the first occasion when the PAC was in a position to examine the Dept. on the basis of a report of the C&AG was when the Report of the C&AG had a chapter on bank stabilisation. That report was not published until September 2009 and was examined by the Committee at two meetings in April and July 2010, when the PAC questioned the Accounting Officer on the management of the crisis. The Department made available to the Committee a range of documents on the decision making process arising from the meeting in April and these were examined in great detail at the meeting in July.
- b. At the time in 2008, the PAC was not aware of the potential cost of the Guarantee or of the extent to which the banks would need to be supported.
- c. Importantly, the PAC cannot question the policy of the Government or the merits or objectives of that policy. I think this is important in the context of the examination by the Inquiry of policy choices.
- d. Every year I was the chair of the PAC, the Committee examined the accounts of the Department of Finance. This allowed the Committee to examine the business of the Department and there was robust questioning of the Accounting Officer and the senior management team at the Department. We questioned for example the capacity of the Department especially the low number of staff who had professional qualifications.
- e. As a post audit committee, the PAC would not have been seized of issues relating to the looming crisis and these were matters primarily for the Joint Committee on Finance which could call the Minister and the Governor of the Central Bank.

2. What is the role of your Committee in relation to the Central Bank and Financial Regulator?

The PAC cannot examine the accounts of the Central Bank as it is a body in Schedule 2 of the C&AG Amendment Act, 1993. The Central Bank is the only body in schedule 2 that is actually audited by the C&AG. The PAC can examine the systems processes and procedures deployed to ensure financial regulation arising from a Report of the Comptroller and Auditor General. Two such reports were examined by the PAC during my chairmanship.

On 22nd May 2008, the Committee did examine a special Report 57 of the C&AG on Financial Regulation and we did question the Regulator on the efficiency and effectiveness of the Financial Services Regulatory Authority. While the report of the C&AG did raise concerns about the regulation process, there was no indication of a systems failure and the Committee did get

assurances from the Financial Regulator that the process of regulation was working satisfactorily. I would point out also that the Report of the C&AG was published in May 2007, but because of the subsequent General Election, the PAC did not examine the report until a year later. At the meeting in May 2008, the Committee did have a dialogue with the Regulator about issues including 100% mortgages, the level of scrutiny via on-site visits to financial institutions, the lack of an good IT system which was resulting in returns from institutions being received in hard copy. That debate is available to the Inquiry and you will see the assurances that were given about liquidity for instance, having regard to what was happening in financial markets in 2008, especially in the USA. So I would conclude on this is that Members did ask the appropriate questions and as we did not have substantive evidence to further challenge the Regulator, we relied on the assurances given.

I would also point out that the PAC reported in May 2009 on the Financial regulator where we made a number of recommendations on improving the regulatory regime.

The C&AG further reported to the Committee in December 2009: Special Report⁷² dealt with the response of the Regulator to the Financial Market Crisis. The Committee examined this report at its meeting on 13th May 2010. That report outlined how the system of regulation had changed with greater resources devoted to on-site inspection and a greater intensity and risk focus being brought to regulation. At this stage also, the personnel had changed and the accountable person was Mr Elderfield who had spearheaded the change process having been recruited post the crisis. As is clear from the debate, the dialogue with the Regulator was about learning from the mistakes and the inadequacies of the previous regime. The PAC questioned the requirement of the Financial Regulator for extra resources for instance, and the need to up-skill staff, the ability to pay higher than civil service rates in attracting staff. We concluded as outlined in the debate that regulation was moving in the right direction.

Finally, the PAC has no remit to invite in the Financial Regulator unless it has a report of the C&AG before it. Unlike for instance the Joint Committee on Finance, the PAC has a limited role, whereas the Joint Committee can take evidence not just from the Regulator but also from the Governor of the Central Bank.

3. In your opinion is the current supervisory regime enough to prevent another crisis (eg) in the event of a rapid rise of market interest rates and its impact on household and commercial debt or in the case of a Euro related crisis such as Greece leaving the Euro.

I can only point to the substantive changes that have been put in place since the crisis as was outlined in Special Report 72 of the C&AG. When the PAC examined this in May 2010, the new regime was bedding down and the Committee was, in my view, assured that regulation was going in a better direction as a result of the changes that were underway. At that time the Regulator told the Committee that his staffing requirement was still short of what he wanted so clearly the change process had not been completed. I finished as a Member of the Dáil in February 2011 and the Committee had not returned to the issue after May 2010.

4. What is the role of the Oireachtas and its relevant Committees in scrutinising key Government decisions addressing the banking and financial crises since September 2008?

The policy decisions of the Government, which were brought in to address the crisis, were subject to detailed scrutiny in the Dáil and Seanad and by the Joint Committee on Finance. The role of the Oireachtas was to pass the necessary legislation and to approve proposals that involved the spending of public funds. I would point out in this regard that the PAC did not have a direct role in scrutinising these policies because of remit but we did question the way such policies were working, for instance when we examined NAMA, the Department and the Financial Regulator.

5. To what extent was the performance of the Financial Regulator challenged by the Oireachtas and more specifically by the Oireachtas committees before which it appeared in the run-up to and since the crisis.

I refer to my reply to Question 2 above where the PAC did challenge the Regulator in respect of certain functions. I would point out however that until the crisis actually broke in September 2008 and even later that the issues arising were ones where the regulator had fallen down. We were being constantly told that all that was wrong was that the banks had liquidity issues. It was not until later that it started to emerge that there were solvency issues. At the PAC we dealt with the Regulator on two occasions. The second occasion allowed the Committee receive assurances from Mr. Elderfield as to how regulation was now more robust. As with a lot of issues, had the Committees, including the PAC, information about the extent to which the Regulator was at fault in terms of the financial crisis, I have no doubt that there would have been a far greater challenge arising from a more in-depth assessment of the performance of the regulator.

6. In May 2007 the C&AG undertook a special report into the financial regulator. Can you outline what the report said about staffing and skill-sets. In your view did the findings of the report present an opportunity to address those issues which was not fully achieved?

I refer you to my reply to Question 2 above. The report itself is now part of the public record. While I recall that an issue about staff turnover was referred to in the report, the Regulator when he appeared before the Committee in May 2008 did not identify the issue of staffing or skill-sets as placing his office under pressure or at an undue disadvantage over the institutions he was regulating. I should also state that the C&AGs report was most likely completed in 2006 and it predated any concerns about liquidity or solvency of our banking sector.

The examination of the report presented an opportunity for the regulator to make a case for more staff or more training and the Committee would most likely have supported that call had it been made. That level of disclosure by the regulator was not available in 2008 and in

any event significant change could not have been delivered in time to avert the crisis that overtook the financial services in 2008.

- 7. In September 2009 a further C&AG report was carried out in to the Financial Regulator. What material issues or deficiencies did that report identify. Were the issues or deficiencies applicable to the time covered by the previous special report?**

I refer you to my reply to Question 2. That report dealt with the changes that were put in train as a result of the crisis. As I outlined the regulator (Mr. Elderfield) in his evidence to the Committee was clear on what had gone wrong and on the steps taken to put things right. As the report was about learning from what had gone wrong, of course the deficiencies related to the time pre the banking crisis.

- 8. During its hearing the context phase of the banking inquiry, Professor Fitzgerald said that there was a cultural change in the Department of Finance in the last decade. It became more concerned in the politics of things and less interested in the technical detail. I would have less interaction” Would you like to give your own view on these comments.**

I can only assess the Department from its annual appearance before the PAC. It did not strike me that there was a major cultural change in the Department, nor was a change of culture manifest in the way the Accounting Officer of the Department dealt with the Committee. A Department of Finance official attended the Committee almost every week when the PAC examined votes of the various Government Departments. From what I recall, they were knowledgeable on the technical details of public expenditure: I cannot comment further on Professor Fitzgerald’s observations.

- 9. In your time in the Committee, were there issues identified that could not be investigated due to limitations in the terms of reference, for example financial stability/fiscal policy.**

I cannot recall any specific issues and the Committee did not at any stage between 2007 and 2011 put forward proposals to change its terms of reference. Both financial stability and fiscal policy were matters that did not fall within the remit of the PAC and were the PAC to seek to examine such issues it would have required legislative change. The PAC could not examine the accounts of the Central Bank and therefore could not have had a dialogue with the Governor who is not an accountable person. Fiscal policy is a matter for the Minister who is accountable to the Dáil and the Oireachtas Committee on Finance.

- 10. Did the Oireachtas through its committees raise concerns about legislation that allowed the Irish banks to increase their exposure to risk, for example the Assets Covered Securities (Amendment) Act 2007. Did the Oireachtas Committees discuss these concerns with the Financial Regulator and the Central Bank?**

Firstly I am not aware of the provisions of that Act: As it was a policy issue it was outside the remit of the PAC whose remit was the systems processes and procedures employed in financial regulation.

11. What discussions can you recall about the likelihood or otherwise of a soft landing in the property market in period up to 2008? Bearing in mind there was an increased level of warnings in the public domain.

I do not recall any specific discussions about a soft landing in the property market. The events in the property market were not ones that fell directly within the remit of the PAC. I do recall that the PAC questioned the financial regulator about 100% mortgages, although these were not allowed at the time the Regulator appeared before the Committee.

I would also point out that while there were warnings, there were also people who were predicting a soft landing. The number of people who were sounding the alarm bells before 2008 were quite small from what I recall.

12. What is your view as to how the regulatory-supervisory bodies dealt with the financial institutions they were charged with overseeing. Do you believe that their engagements with the financial institutions were sufficiently robust?

I can only say, without using the benefit of hindsight, that it was not an issue that was being raised in the Oireachtas as a concern. The C&AG did raise issues about risk rating and allocating resources to where the risk was greatest and he also advocated a peer review and these issues were discussed with the regulator. At no stage did the regulator use these opportunities to call for more resources. As Committee members and parliamentarians we had little choice but to accept the word of the regulator as we had no evidence to gainsay what he was telling us.

13. One of the statutory objectives of the Central Bank is the promotion of the financial services industry in Ireland. In your view was there a conflict between this objective and the financial regulatory responsibility for prudential supervision?

I do not see that there should be a conflict. All financial services are subject to appropriate supervision whether they be located in London, Frankfurt or in Dublin. The promotion of the IFSC and the desire for foreign investment companies to locate here is not dependent on lower standards than those that apply to the domestic financial institution.

14. Macro- economic and prudential matters can be highly technical issues. What level of external expert advice was sought when examining issues arising under its terms of reference? Did you feel that the Committees had sufficient access to additional expert advice?

The PAC did not have the remit to examine macro- economic and prudential matters. These were matters that would only come to the Dáil through the Minister or to the Finance Committee through evidence of the Governor and his officials. I am not aware that Finance Committee sought additional expert advice when examining such issues.

15. Are Oireachtas Committees, the key tool available to the Oireachtas to hold Government to account and scrutinise legislative proposals, resourced with sufficient specialised expertise and advise on the complex policy issues?

The PAC can rely on the investigative work of the C&AG when it examines issues: this means that the ground work is done and the Committee is in possession of an investigative report with findings that have already been given to the witnesses. I would also point to the Constitutional independence of the Comptroller. I would question whether other Committees have similar back up. In my own time, it certainly was not the case and very rarely would a Committee be on an equal footing with a Minister when examining proposals as the Minister would have all the expertise on his/her side of the table. I would also point to one of the recommendations of the DIRT inquiry in 1999 in relation to Dáil reform which was never fully implemented.

16. What level of contrary and independent expert advice is sought by the Oireachtas and its Committees when examining key issues? Is such advice sought regularly or on an exceptional basis?

My own experience is that there is very little independent advice available to Oireachtas Members. Any expert advice is usually given to political parties rather than individual members. Parties receive public funding for policy research in that regard. I would also point out that, for many policy choices, there is a vibrant lobby system and all parties and individual members and especially spokespersons are approached by groups, some of whom are headed by professional lobbyists. That lobbying can be helpful when examining policy proposals from Government, but it is not a substitute for expert advice that is independent of the Minister and the Department. For the most of my years in the Dáil, there was not the scope to get that independent expert advice. In addition, almost all legislation passed by the Oireachtas comes from the Government and non-government members did not have the access to services which would allow them to draft legislation.

17. Did the Government consult the Oireachtas and its Committees through pre legislative consultation processes prior to the major policy decisions taken in the years running up to the crisis and during the crisis?. Has it done so since September 2008?

The short answer is no: Many of the legislative proposals brought in to deal with the crisis did not allow for pre legislative scrutiny as many of those were introduced at a time of crisis, and it was not a feature of the Oireachtas in the time that I was a member. I am aware that pre-legislative scrutiny is now a feature of this Dáil and I welcome that, but in my time, the first occasion when a Government published its proposals was when the bill was published. On major issues, the Government will produce white or green papers, but that was not the norm.

18. How open to scrutiny were the Government decision making processes? Was the Oireachtas sufficiently aware of the stakeholders with whom the Government met/consulted with in the pre-legislative stages? Was the information available to the Oireachtas?

The information on the engagement with stakeholders was not available to the Oireachtas. For instance, all negotiations with the social partners were conducted in secret and there was no role for the Oireachtas. In addition, there is extensive lobbying of Ministers and senior civil servants and that is not open to scrutiny.

I accept that the rationale behind the decisions taken by Government are explained in parliamentary debate, but that debate will not deal with the submissions received from interested group.

19. What is your view of the quality of the advice provided by the Department of Finance to the Government and in particular the analysis on which that advice was based?

All the PAC, when it questioned the Department, could do was to ask whether the Department of Finance had the appropriate skill-set and knowledge to give advice. The PAC could not question the Accounting Officer of the Department of Finance on a policy decision and on whether the Department was fully supportive of the decision taken or that full consideration of alternatives had been undertaken. That discussion is beyond the remit of the PAC as is clear from Standing Order 163(7) which states:

- (7) The Committee shall refrain from—
- (a) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and
 - (b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

20. Please describe the level of analysis of budgetary policy carried out by the Committee. Was the increased reliance on pro-cyclical or once-off taxes as a percentage of the total income identified as a risk?

PAC is not allowed carry out analysis of budgetary policy having regard to Standing Order 163 (7). The PAC is a post audit committee, which examines the expenditure and to that end and based on value for money reports of the C&AG, the PAC would examine whether the money was well spent and did it achieve what was proposed. However analysis of budgetary policy which takes place in advance of the appropriation of funds was a matter for the Dáil and the Joint Committee on Finance.

21. Programmes for Government and Social Partnership Agreements were key drivers on the expenditure side. In your view how appropriate were those plans in the light of the volume and sources of available income to fund those policies?

My understanding, although you may have to check this, is that the C&AG was excluded for examining any aspect of the social partnership process. Therefore the PAC did not have a remit to question the processes involved, nor could the PAC engage with the social partners. While the PAC could examine for example the Vote of the Department of the Taoiseach, it is unlikely that the Accounting Officer of that Department would be in a position to engage with the Committee on the detailed discussions and the outcome of the social partnership process. I accept that social partnership played a positive role in the recovery of the economy from the early 1990s when there needed to be a tight rein on public spending and that as the economy grew, the partnership deals of the late 1990 and into the 2000's were key influences in a massive increase in public spending. My own view is that it placed a huge burden on the exchequer which was not sustainable after the economic crash of 2008.

22. Would you support the view that the dominance of Oireachtas by Government in terms of setting the agenda affected Oireachtas capacity to perform its oversight and accountability roles with respect to stability of the financial system?

While the Government dominates the Dáil in terms of setting the agenda, I do not accept that it has such control that bodies such as the Central Bank become unaccountable. The simple fact is that until 2008 stability of the banking system was not a hot political issue. Every quarter the Central Bank issued its bulletin and year on year the banks were reporting strong growth and good profit margins. Opposition members, whether it be the party leaders in the Dáil who raise issues through leaders questions, the order of business or spokespersons who sit on Committees and who take a lead role in setting the agenda for the Committee cannot be silenced simply because the Government parties dominate. What was lacking was a better and more independent flow of information to the Oireachtas that is not filtered through Government Departments. That would have improved oversight, so therefore the issues is not dominance but more a question of resources.