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Oireachtais  
Houses of the  
Oireachtas

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

**Witness Statement of**

**Sean Fleming**

**Strictly Private & Confidential**

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

*Written Statement Witness Questions – Sean Fleming T.D.*

**1 R1a**

*What was the role of your committee in relation to the operation of the Department of Finance?*

**Answer:**

*The Joint Committee on Finance and the Public Service was appointed to consider various issues including:*

- 1. Such public affairs administered by the Department of the Taoiseach and the Department of Finance as it may select, including, in respect of Government policy, bodies under the aegis of those Departments;*
- 2. such matters of policy for which the Taoiseach and the Minister for Finance are officially responsible as it may select;*
- 3. such related policy issues as it may select concerning bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas;*
- 4. such Statutory Instruments made by the Taoiseach and the Minister for Finance and laid before both Houses of the Oireachtas as it may select;*
- 5. such annual reports or annual reports and accounts, required by law and laid before both Houses of the Oireachtas, of bodies specified and the overall operational results, statements of strategy and corporate plans of these bodies, as it may select.*

**2 R1a**

*What was the role of your committee in relation to the operation of the Central Bank and Financial Regulator?*

**Answer:**

*The Central Bank and Financial Regulator were included in the terms of reference of the Committee as outlined in Question 1. R1a.*

### **3 R1b**

*In your opinion is the current supervisory regime robust enough to prevent another crisis? e.g. i) in the event of a rapid rise of market interest rates, and its impact on household and commercial debt e.g. ii) in the case of a Euro-related crisis, such as Greece leaving the Euro*

**Answer:**

*In my opinion the current regulatory system is not robust enough to prevent another crisis.*

*Our main financial institutions such as AIB, Bank of Ireland, Permanent TSB and Ulster Bank are essentially regulated by the European Central Bank, with the Irish Central Bank overseeing matters on its behalf on a day to day basis.*

*However the European Central Bank is not independent and is overly influenced by the larger economies in the Eurozone area such as Germany and France. The Board of the European Central Bank tends to work on a consensus basis, but the hidden influence of the major economies on the E.C.B. means it generally works to those countries' agenda. While all relevant countries are on the Board of the ECB, voting rights are on a rotation basis. Therefore Ireland will not always have a vote on the ECB.*

*In relation to the impact of increase in interest rates on household and commercial debt in Ireland I believe that this will continue to be a risk as the priority of the ECB will be to look after the Euro currency despite difficulties that this may cause in individual countries. With any rapid increase in interest rates it will put pressure on households and businesses and thereby lead to a tightening in the economy and a possible recession.*

### **4 R1c**

*What was the role of the Oireachtas and its relevant Committees in scrutinising key government decisions addressing the banking and financial crisis since September 2008 in legislative and regulatory reform?*

**Answer:**

*Issues referred to since 2008 are outside the period when I was Chairman and these issues will be addressed, no doubt, by the appropriate person.*

## **5 R1c**

*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?*

**Answer:**

*The Committee Stage of the Central Bank and Financial Services Authority of Ireland Bill was dealt with by the Select Committee. Various amendments were proposed by the Minister at committee stage and were subsequently enacted in legislation. These amendments were discussed in detail by members of the Government and the Opposition during that debate.*

*Amendment to the legislation by members of the opposition such as Joan Burton T.D. specifically referred to the jurisdiction of the new organisation and its committees to be so constituted as to consist of not less than 40% of men and 40% of women. This amendment was voted on and defeated at the committee stage. A considerable portion of that debate at committee stage dealt with issues of consumer protection and the role of Credit Unions as well as the overall structure of the Bill.*

*On reviewing the work carried out by the committee over the years, the main issues in which the Financial Regulator was challenged by the Committee was in respect of consumer protection issues such as overcharging of interest on overdrafts, loans and credit cards. The issue of approval of transaction fees and fees charged by banks was also considered at length and discussed during these committee meetings.*

## **6 R1d**

*In May 2007, the Comptroller & Auditor-General undertook a Special Report into The Financial Regulator. Can you outline what that report said in relation to staffing and skill-sets. In your view did the findings of the report present an opportunity to address those issues which was not fully utilised?*

**Answer:**

*The Joint Committee was specifically excluded under its terms of reference to considering any matter relating to a body which has been, or which was, at that time, proposed to be considered by the Committee of Public Accounts pursuant to its terms of reference and the Controller and Auditor General (Amendment) Act 1993.*

*Therefore this report by the C&AG was specifically outside the terms of reference and remit of the Committee.*

### **7 R1d**

*In Dec 2009, a further C & AG Special Report was carried out on The Financial Regulator. What material issues or deficiencies did that report identify? Were these issues or deficiencies applicable to the time covered by the previous Special Report?*

**Answer:**

*I was not Chairman of the Committee in December 2009 when the C& AG issued a special report on the Financial Regulator. Again I stress that any such consideration of this report was outside the terms of reference and remit of the Committee as it was a matter for the Committee of Public Accounts.*

### **8 R2b**

*During his Hearing in the Context Phase of this Banking Inquiry, Prof. Fitzgerald said (Volume 1, No 7, page 333): "There was a cultural change in the Department of Finance in the last decade. It became more concerned about the politics of things and less interested in the technical detail. I would have had less interaction." Would you like to give us your own view on these comments?*

**Answer:**

*I note the opinion of Professor Fitzgerald and he specifically said that during this period he had less interaction with the Department. It may be possible that his comments are in some way related to the fact that he had less interaction during the period he refers to. I dispute his comment and I do not believe there is any evidence to support it.*

### **9 R2b**

*In your time on the Committee, were there issues identified that could not be investigated due to limitations in the Terms of Reference? E.g. Financial stability, Fiscal Policy?*

**Answer:**

*The key issue that could not be investigated or examined by our Committee related to matters where the Central Bank referred to confidentiality issues. They said that they had obligations to other Central Banks and these would have had less trust in the Irish Central Bank if they did not operate to the level of confidentiality that applied in other Central Banks. This issue arose during normal discussions with the Central Bank and it specifically arose during the Committee's consideration of issues in relation to Freedom of Information. The Central Bank was very clear in maintaining that much if not all of its activities should not come under Freedom of Information because of the confidentiality issue.*

**10 R2b**

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

**Answer:**

*The Assets Covered Securities (Amendment) Act 2007 was passed by the Oireachtas on the 20<sup>th</sup> March 2007. This legislation did not come before the Committee as the committee stage of the legislation was taken in the Dáil Chamber.*

*My position as Chairperson of the Committee concluded in April 2007 and after that period I would not have had a role as Chairman in discussing this legislation or any concerns that may have arisen.*

**11 R2b**

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

**Answer:**

*The issue of a "soft landing" in the property market and related matters were discussed in the public domain. However issues in relation to planning, housing and other related issues were a matter for the Oireachtas Environment*

*Committee and would not have been within the remit of the Committee of which I was Chairperson.*

*Generally it was in early 2008 when very serious issues became apparent in the banking industry.*

### **12 R3b**

*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 engagement with the financial institutions was sufficiently robust?*

**Answer:**

*The regulatory/supervisory bodies were given substantial powers by the Oireachtas to carry out their functions. They were in control of their own budgets, resources and staffing. It appears now, at this remove, that the regulatory system was too timid and deferential to the institutions they were charged with overseeing.*

*The cloak of confidentiality which the Central Bank and the Regulator continually pulled down over their activities did prevent outside bodies accessing as to whether they were carrying out their work effectively. In hindsight this “veil of secrecy” should have been lifted earlier.*

### **13 R3b**

*One of the statutory objectives of the CB is 'the promotion of the financial services industry in Ireland'. In your view was there a conflict between this objective and the Financial Regulator's responsibility for prudential supervision?*

**Answer:**

*It is not necessarily the case that there has to be a conflict between the objectives of the Financial Regulator's responsibility for prudential supervision and with the Central Bank's role in the promotion of the financial services industry in Ireland.*

*In fact it would be very strange if the Central Bank was not involved in this as had they adopted a neutral position it could easily be interpreted as the industry not having the support of the Central Bank. Notwithstanding the support for the industry, this in no way obviated their obligation to carry out their prudential*



*supervision in a proper manner. It is important to point out that many companies in the Financial Services industry in Ireland were not all regulated here as many of them were regulated by Central Banks in other EU countries where they were licenced.*

#### **14 R4a**

*Macro-Economic and Prudential matters can be highly technical issues. What level of external expert advice was sought by committees when examining issues arising under its Terms of Reference? Did you feel that the committees had sufficient access to additional expert advice?*

#### **Answer:**

*Essentially the Oireachtas Committees had little or no access to additional expert advice. They essentially relied on officials from the relevant Government Departments to provide information. The research facilities available in the Oireachtas at that time did not have sufficient staff or resources to provide the level of independent expert advice that would be required in a modern parliament to deal with these issues.*

#### **15 R4a**

*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 advice on complex policy issues?*

#### **Answer:**

*Oireachtas Committees are not the key tool available to the Oireachtas to hold Government to account and scrutinise legislative proposals.*

*This is a function of the Dáil and the Seanad where all members can participate. Many legislative procedures do not go through committees at all and are dealt with on the floor of the Dáil and Seanad. Oireachtas Committees have a subsidiary role in carrying out some delegated work as determined by the Orders of the Oireachtas as proposed by the Government.*

*I stress there is not sufficient specialised expertise and advice to deal with complex policy issues.*

## **16 R4c**

*What level of contrarian or independent expert advice is sought by Oireachtas and its Committees when examining key issues? Is such advice sought regularly or only on an exceptional basis?*

### **Answer:**

*Oireachtas Committees regularly get advice from a variety of stakeholders which includes contrarian views in relation to proposals by Government. It has also to be recognised that they are coming with a particular point of view to perhaps lobby in respect of the issues they are interested in. This can be helpful to the process but it could not be deemed as independent expert advice.*

## **17 R5a**

*Did the Government consult the Oireachtas and its Committees through a pre-legislative consultative process prior to any of the major policy decisions taken in the years running up to the crisis and during the financial crisis? Has it done so since September 2008?*

### **Answer:**

*Government did not consult the committee through the pre-legislative consultation process on major policy decisions during the period when I was Chairperson.*

## **18 R5a**

*How open to scrutiny were the governmental decision-making processes? Was the Oireachtas sufficiently aware of the stakeholders with whom Government Ministers consulted in the pre-legislative stage? Was this information available to the Oireachtas?*

### **Answer:**

*Government decision making continues and has always been quite secretive. Oireachtas Committees would not be aware of the stakeholders with whom Government Ministers consulted in the pre-legislative stage, in the normal course of events. Occasionally some of the stakeholders made contact with the Oireachtas Committee to put their point of view, so it could be aired in public, but there was no formal structure for this to happen in all cases.*

## **19 R5b**

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

**Answer:**

*I have no knowledge of the quality of advice provided by the Department of Finance to the Government and the analysis that any such advice was based on as I was not be privy to any such discussions.*

## **20 R5c**

*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 total income identified as a risk?*

**Answer:**

*There was no advance analysis in relation to budgetary policy considered by the committee. Various organisations contacted the committee seeking matters to be included on Budget day. Many of these organisations were requesting additional expenditure. Other organisations came in requesting various amendments to taxation rules for e.g. the film industry was very active at different stages seeking tax relief for their industry.*

*The issue of reliance on once off taxes was an issue and it was clear at national level. Tax receipts were running very high during some of the years. The Minister introduced The National Pension Reserve Fund to which 1% of all GNP was transferred to fund future pensions.*

## **21 R5c**

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

**Answer:**

*My understanding is that all Programmes for Government commenced with the introduction that any expenditure plans were subject to financial resources being available.*

*I recall around 2003 that there were slowdowns in the level of capital expenditure increases because of the tightening situation. Setting income aside for future purposes under The National Pension Reserve Fund was one aspect of taking some measures to counteract the overspending.*

*Also issues like the Special Saving Incentive Account did encourage people to save and not to spend all their money through each of those years. This was designed to take the heat out of the economy which could add to inflation.*

*Social Partnership Agreements did contribute to increased expenditure and had impacts on costs and competitiveness. However, they also contributed to stability in the economy, social cohesion, little no days lost due to industrial action and economic growth.*

## **22 R5d**

*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 the stability of the financial system? '*

**Answer:**

*The democratic system in Ireland has been that the Government has the majority in the Oireachtas. The day a Government does not have a majority in the Dáil they are replaced by an alternative Government or a General Election is called. By definition therefore, the Government is in a position to control the Oireachtas.*

*As things stood then and now, the Oireachtas has no capacity to act independently of Government in performing its oversight and accountability with respect to the stability of the financial system or any other system. The controversy over the membership of the Banking Inquiry proves this.*