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Joint Committee of Inquiry into the Banking Crisis

Further Clarification Statement of

William Beausang

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

William Beausang
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23/10/2015 03:02

To "biwitnessmanager@oireachtas.ie" <biwitnessmanag
cc
Subject Response to Chairman's letter of 2 October 2015

Ms Martina Daly
Witness Manager,
Joint Committee of Inquiry into the Banking Crisis,
Houses of the Oireachtas,
Leinster House,
Dublin 2.

Dear Ms Daly,

Please find attached to this email the voluntary statement requested by the Chairman from me in his letter of 2 October, in respect of the questions enclosed with his letter.

I am also attaching the supporting documentation referred to in my statement, as well as a completed metadata spreadsheet.

I would appreciate if you could bring the statement and the attachments to the attention of the Joint Committee.

In terms of my responses to the questions on the work of the Advisory Forum, you will note that I have not submitted all the documents referred to in my statement as - having consulted with the Banking Inquiry Unit in the Department of Finance - I have been advised that the relevant documentation had already been furnished to the Committee by the Department of Finance.

Please note that in circumstances that it is published, I do not believe it is appropriate for the Committee to describe the voluntary statement I am now submitting as 'clarification of material evidence'. It does not relate directly to matters addressed in my written statement (dated 27 May) requested by the Committee nor in any specific aspect to the evidence I provided in response to questions which I responded to at the hearing of the Committee which I attended on 24 June last.

If the Committee has any questions regarding the content of my voluntary statement or requires any clarification or further information on the matters to which it relates, I would, of course, be happy to assist the Committee further.

Finally, this email should be regarded as constituting part of my voluntary statement.

I would be grateful if you could confirm receipt for my records.

Yours sincerely,

William Beausang*
Assistant Secretary
Government Reform Unit

VOLUNTARY STATEMENT: WILLIAM BEAUSANG

1. The Advisory Forum on Financial Legislation (referencing specifically the meeting of November 2007 chaired by Pádraig O’Riordain).

a) What was the rationale and who made the decision to establish the Advisory Forum on Financial Legislation?

a.1 The Advisory Forum on Financial Legislation to consolidate and modernise financial services legislation was established on the basis of a Government Decision (see para. a.9 below.)

a.2 The rationale for the establishment of the Advisory Forum was the recommendation contained in the May 1999 Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority (i.e. the McDowell Report). The report recommended as follows:-

Summary of Main Recommendations

As soon as possible after the establishment of the SRA, legislation should be enacted to consolidate all the statutory provisions related to the SRA.

Chapter 9

(iv) Consolidation of Legislation

The Group recognises that the legislation proposed above would, by its nature, primarily involve amending provisions. In order to provide legislative clarity, the Group recommends that, as soon as possible after the establishment of the SRA, legislation should be enacted to consolidate all the statutory provisions related to the SRA.

a.3 In September 2004 (prior to my appointment to the Department of Finance) the Minister for Finance invited comments on how best to achieve consolidation and/or simplification of the legislation governing the regulation of the financial services sector. The summary of submissions received (together with a link to the submissions themselves) were published in February 2005 (see TAB 1 attached to this voluntary statement).

a.4 One of the main responsibilities assigned to me following my appointment to the Department of Finance in April 2005, therefore, related to progressing the recommendation on consolidation of legislation on financial services regulation contained in the McDowell Report given the formal establishment of the Financial Regulator on 1 May 2003. This is reflected in my Division’s Business Plan for 2005 - see relevant extract below from the Main Issues Paper dated 23 May 2005 (attached as TAB A with my written statement of 27/5).

4. Modernising the domestic legislative framework for financial services regulation

- *Addressing fragmentation of existing legislative framework (28 different Acts / 36 Statutory Instruments & Orders) – eliminating anomalies and discrepancies*
- *Provide modern, consistent and flexible legal framework for financial services regulation*

- *Principles based / cross-sectoral primary legislation*
- *Detailed rule making devolved to secondary legislation (Minister / Regulator) consistent with accountability requirements – dovetail with EU legislative approach*
- *Application of “Better Regulation” criteria (e.g. focus on regulatory effectiveness, proportionality, impact analysis)*
- *Public consultation highlighted need for structured advisory input from stakeholders*
 - *Identify operational issues for industry sooner*
 - *Discharge forward-looking risk-assessment role for new legislative proposals*
 - *Promote strong communication and information flow between Department, Financial Regulator and industry*

a.5 As set out above, the requirement for consultation to facilitate structured input from stakeholders - a key principle of the Government’s Better Regulation agenda – was highlighted through the public consultation.

a.6 Following consultations with the Financial Regulator, in July 2005 the Department issued a position paper “*The Way Forward*” on the proposed approach to the consolidation project (copy attached as TAB 2 to this statement with Appendix D of the paper attached as TAB 3).

a.7 The Department’s proposal for an advisory group to facilitate stakeholder input into the consolidation mirrored the successful approach pioneered by the Company Law Review Group in relation to company law. The Company Law Review Group is a statutory advisory expert body charged with advising the Minister for Jobs, Enterprise & Innovation on the review and development of company law in Ireland. It was accorded statutory advisory status by the Company Law Enforcement Act 2001 (see www.clrg.org)

a.8 In September 2006, the *Building on Success* Strategy for international financial services in Ireland developed by the Department of Taoiseach Clearing House Group highlighted the benefits of legislative reform yielding a more harmonised and integrated legal framework for financial services regulation. The Strategy also stressed the importance of a structured stakeholder input to the legislation through the proposed establishment of an Advisory Forum on Financial Legislation.

a.9 In November 2006 the Government agreed:-

- the preparation of a General Scheme of a Bill to consolidate existing legislation for the regulation of financial services;

- the establishment of an expert advisory forum consisting of representatives of the Central Bank and Financial Services Authority of Ireland, the Financial Regulator and consumer interests to advise and assist the Department in:-

(a) the preparation of draft Heads of the Consolidation Bill;

(b) complementary modernisation and simplification of the legal framework for the financial services regulation that can be achieved as part of the consolidation process.

a.10 The relevant Government Memorandum confirmed the advisory role of the Forum and that its membership should encompass the Central Bank which was responsible for the maintenance of financial stability and the Financial Regulator who exercised a specific statutory responsibility for prudential supervision and safeguarding the interests of consumers as well as other bodies representing consumer interests. It also highlighted that legislative modernisation and simplification was expected to be achieved by addressing overlap, anomalies and inconsistencies in existing legislation.

a.11 The legislative consolidation project was considered the final element of the reforms initiated by the McDowell Report. A key principle underlying the development of the proposed legislation was that the existing structures, responsibilities and accountability of the Central Bank and of the Financial Regulator would not be affected.

a.12 In addition it was recognised that the development of a consolidation Bill would take place within the strict parameters of the specific prudential requirements for financial firms laid down the EU legislative framework for financial regulation (such as, for example the Capital Requirements Directive for credit institutions).

b) Who determined the membership and leadership of the working groups, including the appointment of key positions, such as Chair?

b.1 The appointment of the Chair was made by the Minister for Finance on the basis of a recommendation made by the Department.

b.2 The Press Release announcing the appointment of the Chair includes relevant biographical information for the Chair (TAB 4) highlighting the legal technical expertise and knowledge required for the role in light of the Government's mandate for the Advisory Forum.

b.3 As set out in the reports of their meetings, technical expert working groups were established to examine and advise the main Forum on how the proposed model for the consolidated Bill could be developed in practice. In overall terms, the role of these sub-groups was to develop examples of draft Heads relating to the primary regulatory powers (e.g. authorisation, supervision, enforcement) for each of the main financial sectors (e.g. credit institutions, insurance etc.).

b.4 There was no uniform or formal process for determining membership of these expert technical sub-groups. The membership of the Forum as a whole was canvassed for 'expressions of interest' in terms of participation or suggestions as to suitably qualified persons and / or organisations and consultations would have taken place with the Chair on their composition. In all instances the Department of Finance given its responsibility for legislation and policy for financial services and the Financial Regulator given its responsibilities for prudential supervision and consumer protection participated on all the sub-groups.

c) Was there participation from the Central Bank, Financial Regulator and the Department of Finance in the Forum

c.1 Details of the membership of the Advisory Forum are set out in Appendix 1 of the report of the first meeting of the Advisory Forum on 6 November 2007 forwarded to me by the Committee in connection with its questions.

c.2 As can be seen from the attendance list the Advisory Forum comprised representatives of the Department of Finance – in light of its responsibilities to financial services legislation and policy as well as the Central Bank – given its responsibilities for financial stability – and the Financial Regulator responsible for, prudential supervision and consumer protection. The Office of the Attorney General was also represented on the Forum. There was, in addition, a specific project team comprising a Principal Officer, Assistant Principal Officer and Administrative Officer assigned to the legislative consolidation project in the Department of Finance.

d) What was their role, what actions were taken as a result, by them and how were those views fed back to the Minister?

d.1 The Terms of Reference setting out the role of the Advisory Forum are set out in TAB 5 attached.

d.2 *The Way Forward Document* referred to above discusses the basis on which it was proposed to undertake the consolidation process. Some of the key issues for consideration by the Advisory Forum in assisting the Department in the development of the consolidated Bill are set out in the *Chairman's Themes Paper* presented to the Forum (TAB 6).

d.3 The Memorandum submitted to Government seeking approval for the establishment of the Advisory Forum stated while industry and consumer input was of considerable benefit in advising the development of the proposed legislation, that it would of course be necessary for the Department to retain final control on the content of the proposed legislation (in consultation with the Office of the Attorney General) with the Minister and the Government ultimately having the decisive role on the published Bill.

d.4 As discussed at b.4 above, the critical role of the Central Bank, Financial Regulator and Office of the Attorney General on the Advisory Forum (and in the case of the Financial Regulator on the sub-groups) reflected the importance of the relevant roles and responsibilities discharged by those bodies.

d.5 As can be seen from the report of the meeting on 23 September 2008 furnished to me by the Committee in connection with its questions, the Forum was working at that time with the objective of making a report to the Minister in Q1 2009 on the general policy approach to be adopted for the preparation of a General Scheme of a Bill to Consolidate Legislation on Financial Services Regulation.

d.6 This report was not progressed owing to the intensification of the banking crisis from end-September 2008 onwards. The project team from the Department of Finance were fully engaged at that time in implementing Government Decisions responding to the banking crisis including legislation to introduce the Bank Guarantee, developing and bringing into effect the CIFS and later the ELG Guarantee Schemes, finalising legislation to nationalise a credit

institution and securing State Aids clearance from European Commission for various banking interventions.

d.7 In responding to Parliamentary Questions on 3 February 2009 (Nos. 195 and 198), the Minister for Finance stated the following:-

“While the implications of the international financial crisis clearly raise issues for the work of the Forum; the consolidation of existing financial services legislation remains an important priority. I expect the first report of the Forum in the coming months at which time the strategy and focus of the Forum can be evaluated in the context of national and international developments.”

d.8 The requirement to provide a ‘blanket’ Bank Guarantee and subsequently to nationalise a credit institution had highlighted for Government the urgent need to revisit the ‘hybrid’ institutional structures comprising an autonomous Financial Regulator within the CBFSAI. In the context of a Memorandum for Government dated March 2009 relating to the Reform of the Institutional Structures for Financial Regulation, the Government agreed to defer the reporting of the Advisory Forum on Financial Regulation. The report provided to Government at that time on the work of the Advisory Forum on Financial Legislation was as follows:-

The Advisory Forum on Financial Legislation was formally launched in January 2008 comprised of a range of stakeholders; industry, consumer, professional and statutory bodies. The Forum’s mandate is to consolidate and, in so far as possible within the timeframe envisaged for the Forum, to modernise Irish financial legislation, which had developed over 20 years in a fragmented and sometimes un-coordinated way. Progress during 2008 included; – agreement on working methods and drafting templates, a tracking database developed and populated with the circa 5,000 legislative provisions to be dealt with, initial agreement on an overall consolidation.

d.9 Having consulted my own electronic file records, I believe my responsibility for this area of work ended in Q4 2009 and I have no further direct knowledge of the financial regulatory legislative consolidation project.

d.10 In a response to a Parliamentary Question on 2 December 2009, the Minister stated that:-

The decision [to defer the work of the Advisory Forum] was taken in light of the more pressing priority of preparing and implementing significant changes to institutional structures for financial regulation and to commit resources for this purpose, and of the high likelihood of changes in the regulation of financial services that could not be anticipated by the Forum.

e) Were there alternative forums that represented other groups, such as consumer groups and how where (sic) their views considered and incorporated?

e.1 As discussed in response to question a. above, the inclusion and representation of all stakeholder perspectives was fundamental to the design and operation of the proposed consultative approach underling the establishment of the Advisory Forum. This is evident

from the membership of the Forum as set out in response to question c.1. In terms of representation from 'other' groups, it should be noted that the membership included:-

- The National Consumer Agency
- The Consumer Association of Ireland
- The Small Firms Association
- Society of St Vincent de Paul

e.2 In addition, as can be seen there was representation on the Advisory Forum from the Department of Enterprise, Trade and Employment which has policy responsibility for consumer issues and the Financial Regulator which had a statutory consumer protection mandate.

f) What topic or content was foremost in working of this forum and what position / policies did they advocate?

f.1 In order to provide some context for the response to this question, the first meeting of the Advisory Forum took place in November 2007 and the formal launch of the Forum took place in January 2008. This was subsequent to the onset of the international liquidity crunch and the run on Northern Rock in the UK. As discussed in my written statement (dated 27/05) intensive work was underway in the Department in relation to financial stability crisis planning by the same small team in the Department of Finance which was working as the project team on the consolidation project.

f.2 As illustrated by the relevant papers, in the period from November 2007 to end-September 2008 when it ceased meeting, the work of the Forum essentially related to the technical preparatory phase of the legislative project plan. This was aimed at developing an Outline Scheme of a Bill to Consolidate Legislation on Financial Services Regulation. In doing so the intention was to demonstrate that the proposed cross-sectoral legislative model set out in *The Way Forward* Document was practical and feasible and could act as the basis for the development of a General Scheme of a Bill for approval by the Minister / Government in due course.

2. The Committee has received contradictory evidence on the development of the decision to issue a full guarantee. Alan Gray said in testimony that “the guarantee was not thought up on the night of 29 September, but arose from extensive analysis by the Department of Finance, Central Bank and regulator” (page 91 testimony). However, Kevin Cardiff’s evidence was that “in the Department of Finance work was continuing with staff in the Attorney General’s office on legislation to nationalise a bank” (KCA001 – 56) And Brendan McDonagh stated in evidence that when he first received an indication that a guarantee would be issued on the 26 September that it “almost came out of nowhere” (page 85 testimony)

In order to address the specific questions - on which the Committee has requested a Voluntary Statement from me – as fully as possible I wish to advise the Committee as follows:-

2.1 As set out at section 15 of my written statement to the Committee dated 27 May published on the Banking Inquiry’s website, I had lead responsibility in the Department of

Finance for the preparation of draft emergency legislation to ensure that the Minister for Finance had appropriate legal powers to respond to a financial stability crisis. In specific terms, the legislation on which work commenced in consultation with the Office of the Attorney General in November 2007 was developed to allow the Minister nationalise a distressed bank.

2.2 In section 17 of my written statement to the Committee I described how from early-September 2008 onwards, the increasingly systemic nature of the financial crisis led to the development of the draft emergency legislation to nationalise a building society and also to provide for other legislative interventions that might be agreed by Government. These included providing financial support to banks, including guarantees and lending facilities through the establishment of the proposed Secured Lending Scheme (SLS), and facilitating any market solutions that may be available through the modification of competition law.

2.3 On the basis of a review of my email records from that period, I believe that the introduction of a power to provide a State guarantee to credit institutions as part of the resolution options included in the Bill was first advised to Office of the Attorney General for inclusion in the emergency nationalisation legislation at a meeting on 24 September 2008. According to my email records this meeting was also attended by the NTMA's senior legal advisor (who I understood reported to Mr McDonagh in advising the Department, on behalf of the NTMA, on the emergency legislation). At the meeting the Department advised of the requirement to provide a power in the emergency legislation to allow the Minister, in circumstances that a credit institution was taken into public ownership, to provide State guarantees and/or funding to other domestically-owned institutions.

2.4 The assessment underpinning the proposed inclusion of these provisions was that the powers provided under the proposed Protection (i.e. nationalisation) Bill while considered critical to resolving serious financial stability issues should be supplemented with further powers to support the financial sector on a system-wide basis. If the protection powers were invoked, a very significant adverse impact on international investor and depositor confidence was expected. It was considered very important therefore, that the Minister have a suite of powers available to him including in relation to providing guarantees to domestic credit institutions whose funding and financial position might be significantly adversely affected by the 'protection' (i.e. nationalisation) of other institutions.

2.5 My email records show that at 15.15 on 24 September I forwarded Mr McDonagh a copy of an email issued by me to the Central Bank on 24 September at 15.04 which included a copy of the 'draft Head' the Department was proposing to include in the emergency legislation for the specific eventuality discussed above. Mr McDonagh responded to me at 15.24 on a separate issue referenced in my email making no comment on the proposed draft Head intended to enable a State guarantee to be provided to domestic credit institutions. In addition, the NTMA's senior legal advisor emailed me at 15.47 (cc'ing Mr McDonagh) a reply to my email of 15.15. A copy of the relevant email thread is attached to this statement.

2.6 As set out in para. 17.9 of my written statement to the Committee on 26 September the Secretary General of the Department directed me to request an analysis from the NTMA

as to the implications for the State's sovereign rating of the provision of State guarantees or substantial funding to domestic credit institutions. This gave rise to the email from me to Mr McDonagh on at 13.26 on 26 September referred to in Mr McDonagh's evidence.

2.7 I have no direct knowledge of the discussions at the meeting of the Board of the CBFSAI on 25 September referred to in Mr Gray's evidence nor as set out in para. 17.10 of my written statement did I attend the high-level meetings of 24¹ September or 26 September. I have, however, reviewed the summary notes for these meetings published by the Public Accounts Committee. These make clear (alongside the presentation prepared by Merrill Lynch for the 26 September meeting) that a broad range of resolution options remained under consideration at that time.

2.8 The note of the meeting of 24 September states that:-

"Various intervention possibilities were discussed: 'Ordinary' liquidity support, SLS-type scheme, guarantees, nationalisation, bad-bank approach"

The note concludes by saying that:-

"It was agreed that work should continue on the intervention possibilities outlined, and on preparing the relevant legislation"

2.9 Following up on the discussion on the 24 September the Merrill Lynch presentation discussed on the 26 September provided an assessment of all the main resolution options. This work culminated in the final Memorandum prepared by Merrill Lynch, in consultation with the NTMA, dated 28 September.

2.10 Please see below my response to the specific questions in respect of which the Committee has requested a voluntary statement from me. These responses should be read taking account of the foregoing.

a) When did you first become aware that a system wide guarantee was being considered as the main option?

In the course of the first phase of the meeting in the Department of Taoiseach on 29 September 2008 (at which as set out in my written statement to the Committee I was present) at which time the Governor of the Central Bank and Chairman of the Financial Regulator recommended to the Minister for Finance and Taoiseach that a blanket guarantee should be provided to all of the domestically owned credit institutions.

b) Where is the evidence of the "extensive analysis" behind this decision and can you supply it?

I am not aware of the basis to Mr Gray's statement advised to me by the Committee that "extensive analysis" had been carried out on the provision of a blanket guarantee. The only specific assessment of this option which I am aware of from September 2008 is that contained

¹ I reference this meeting in my written statement - in line with the date of the meeting as reported in the documents published by PAC - as having taken place on 25 September. I now understand from the Banking Inquiry Unit in the Department of Finance that the date of the meeting was 24 September.

in the Memorandum prepared by Merrill Lynch which as set out in my evidence was contributed to by Mr McDonagh prior to finalisation.

c) When do you believe a system wide guarantee became the preferred option?

As I advised the Committee in my evidence on 25 June, my assessment is that the blanket guarantee became the 'preferred option' when the Chair of the Financial Regulator which had statutory responsibility for the prudential supervision of credit institutions and the Governor of the Central Bank who had statutory responsibility for financial stability recommended the provision of a blanket guarantee to the domestic credit institutions to the Minister for Finance and Taoiseach at the commencement of the meeting in the Department of the Taoiseach on 29 September 2008. In this regard, the legislation implementing the Government Decision made on 29/30 September to introduce the Bank Guarantee (i.e. the Credit Institutions Financial Support Act, 2008) was drafted and published on 30 September.

d) Is there evidence to show that a full guarantee was under consideration to the same level of detail as a potential nationalisation of a bank? Can you provide this evidence?

In terms of my role and responsibilities leading the team responsible for the preparation of the draft emergency legislation as set out above, I am not aware of any such evidence.

William Beausang

23 October 2015