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

## **Clarification Statement of**

**Brian Cowen**

**Strictly Private & Confidential**

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- "(a) with the prior consent in writing of the committee,
- (b) to the extent necessary for the purposes of an application to the Court, or in any proceedings of the Part 2 inquiry, or
- (c) to his or her legal practitioner."<sup>1</sup>

Serious sanctions apply for breach of this section. In particular, your attention is drawn to section 41(4) of the Act, which makes breach of section 37(1) a criminal offence.

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

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

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

The rationale for establishing the Advisory Forum on Financial Legislation was based on a recommendation made in the McDowell Report.

The need to modernise Irish financial legislation arose as the laws on it had developed over 20 years in a fragmented and sometimes uncoordinated way.

The Department's proposal for an advisory group to facilitate stakeholder input into the process of consolidating the financial services legislation mirrored the successful approach pioneered by the Company Law Review Group in relation to company law. This was the rationale for setting up the Advisory Forum.

The decision was made by the Government after considering a Memo to Government in November 2006. The expert advisory forum was to advise and assist the Department in the preparation of draft Heads of the Consolidation Bill and to simplify the legal framework for financial services regulation that could be achieved as part of that consolidation process.

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

As Minister for Finance, I appointed the Chair of the Advisory Forum, Mr Padraig O'Riordain, in April 2007 on the basis of a recommendation made to me by the Department. Other members were appointed on the basis of various recommendations made by the stakeholders involved.

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

All were represented as part of the forum.

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

The Memo submitted to Government seeking approval for the establishment of the Advisory Forum stated that while industry and consumer input was of considerable benefit in advising the development of the proposed legislation, it would of course be important for the Department to take final control on the content of the proposed legislation.

Both the Department of Finance and the Financial Regulator, given their respective responsibilities, participated on all of the expert technical sub groups set up under the forum.

Those who attended the forum itself comprised amongst others, representatives from the Department of Finance, Central Bank, Financial Regulator and the office of the Attorney General. There was in addition a specific project team comprising a Principal Officer, Assistant Principal Officer and an Administrative Officer assigned to the legislative consolidation project.

The Forum set up technical sub groups. Through these working groups they got agreement on working methods and drafting templates. A tracking database was developed and populated with approximately 5,000 legislative provisions.

An initial agreement on an overall consolidated legislative structure and steering and drafting groups was reached. The membership of the steering and drafting groups comprised industry, legal and public service sectoral expertise. My understanding is that these working groups were set up by the Chair based on expressions of interest from relevant groups from the Forum.

The Forum's stated objective was to make a report to the Minister for Finance on the general policy approach to be adopted for the preparation of a General Scheme of a Bill consolidating the legal provisions regarding financial services regulation.

All of the work was technical in nature at that point and there was little if any interaction with the Minister's office during this phase of work. The plan was to produce a progress report for the Minister for Finance in the spring of 2009.

From September 2008 onwards the banking crisis dictated all activity in the Department.

In a Memo for Government dated March 2009 relating to the reform of Institutional Structures for Financial Regulation, the Government agreed to defer the reporting of the Advisory Forum on financial regulation.

The decision to defer the work was taken in light of a more pressing priority in preparing and implementing significant changes to the financial regulatory structure, to commit resources for that purpose and of the high likelihood of changes in the regulation of financial services in the near future at EU level for example, that could not be anticipated by the Forum.

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

In terms of representations from other groups, it should be noted that the membership included the National Consumer Agency, the Consumer Association of Ireland, the Small Firms Association and the Society of St Vincent DePaul.

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

The first meeting of the Advisory Forum took place in November 2007 which was after the run on Northern Rock in the UK. The liquidity crunch meant that the small team that was working on the consolidation project were put working on the higher priority project which was financial stability crisis planning.

In the period November 2007 to September 2008, when it ceased meeting, the work of the Forum essentially related to the technical preparatory phase of the legislative project plan. They were developing an Outline Scheme of a Consolidation Bill with further work to be developed in preparation of a more General Scheme of a Bill in due course.

**2. Whilst giving evidence to the Joint Committee on 16 July 2015, Mr Bertie Ahern was asked about his recollection of a meeting between Mr Ahern and Mr Brian Cowen at Mr Ahern's home in March 2008, upon Mr Cowen's return from a Ministerial engagement in Asia. During questioning about what was discussed, Mr Ahern stated that he has "no recollection whatever that he (Mr Cowen) spoke to me about the contracts for difference".**

**Please comment on this and clarify your recollection of events, and why exactly you went directly to see Mr. Bertie Ahern?**

I have noted that there is a view that I went to see An Taoiseach on the same day I arrived back from my trip to Asia. This is not the case. The day after I returned, I was back at my desk in the Department.

In the normal course of events, I would meet An Taoiseach from time to time, as his Tánaiste and Minister for Finance, to discuss political matters generally with him.

An Taoiseach was not at Government Buildings that day and was working from his home. I rang him and arranged to go to see him in the early afternoon.

During our discussion, I mentioned what had happened on my trip to Asia. It is my recollection that I mentioned the fact that I had had a phone conversation with the Chairman of Anglo Irish Bank who was concerned about recent developments in the bank and what had come to their attention regarding Mr Quinn taking a shareholding in the bank.

I told An Taoiseach that I had spoken to the Central Bank Governor and that the Governor had arranged to meet with the Chairman of Anglo Irish Bank regarding any financial stability issues that might arise and that if there were regulatory issues, the Financial Regulator would also have to be involved in dealing with the issues that had arisen.

### **3. What were the analyses, considerations and rationales that you used to evaluate and decide upon the transitional arrangements which further extended some property tax incentives beyond 2006?**

Two independent reviews were carried out in 2005, and published in February 2006 alongside Budget 2006.

Goodbody Economic Consultants were retained in April 2005 to undertake a detailed review of the area-based tax incentive schemes: the Urban Renewal Scheme (URS), Rural Renewal Scheme (RRS), Town Renewal Scheme (TRS) and Living-Over-the-Shop Scheme (LOTS).

Indecon economic consultants were retained in April 2005 to undertake a detailed review of various sectoral property-based tax incentive schemes.

Following analysis of the reviews received from these consultants, it was recommended that the following property-based tax incentive schemes, which were closed to new projects but included applicable construction activity up to July 2006, should be allowed to expire, subject to an extended phasing-out period for existing pipeline projects out to 2008:

- the Area-based Renewal Schemes (Urban, Town and Rural Renewal);
- Several of the sectoral incentive schemes, namely reliefs for hotels, holiday cottages, student accommodation, third-level buildings, multi-storey car-parks, developments associated with park-and-ride facilities.

This was consequently announced in Budget 2006.

Several of the tax incentive schemes were closed to new projects and qualifying construction expenditure had to be completed before July 2006. However, both Indecon and Goodbody reports expressed concern that a rush to complete projects before the deadline could lead to overheating in the construction sector, with potential negative consequences for the economy. At the time, €4bn had been invested under the various schemes by end-2004, and a further €6bn was due to be invested in 2005 and 2006. Therefore the consultants recommended that the deadline be extended, to facilitate the completion of 'pipeline' projects in an orderly manner.

Following analysis of the proposals put forward by the consultants, and discussion of the reports at the Tax Strategy Group, it was considered that an intermediate approach would be appropriate.

The transitional arrangements, whereby the schemes were to be wound down in an orderly manner, were deemed necessary to avoid a significant economic risk relating to the construction sector. The proposed transitional arrangements applied only in respect of the closed category of existing 'pipeline' projects which had met eligibility conditions dating from 2003 and 2004.

In addition to meeting these pre-existing conditions, the transitional arrangements were subject to a further condition whereby at least 15% of the total construction-related expenditure must be completed by end-December 2006. In the light of issues arising in the pre-notification discussions with the European Commission, further conditions were subsequently provided for: principally (i) certification of the 15% condition by the local authority; (ii) certification of the estimated level of expenditure outstanding as of 31 December 2006 – with this certified level functioning as a hard cap or ceiling on the level of expenditure qualifying for tax relief post December 2006; and (iii) a requirement to have a binding written contract in place by 31 July 2006, under which construction expenditure was incurred.

All of these conditions were provided for explicitly in the 2006 Finance Act.



**4. In Annex 2 provided by Alan Gray, a minute of the emergency meeting of the Central Bank on 25th September references a meeting attended by the Central Bank, the Financial Regulator, the NTMA and the Department of Finance the day before and also a meeting between the Taoiseach, Minister for Finance and the Governor of the Central Bank. Kevin Cardiff's note on the 24th says "a further meeting took place" on the 24th.**

**Can you provide any relevant documentation relating to the attendance of Department of Taoiseach at this meeting or your attendance at this meeting?**

While I recall that a series of meetings took place on these days, I did not retain any documentation relating to these or others matters when I left the Department of An Taoiseach.

As I understand and recall, there were only two meetings which took place on 24<sup>th</sup> September 2008. There was no third meeting on 24<sup>th</sup> September between me, the Minister for Finance and the Governor of the Central Bank.

The two meetings that did take place happened one after the other and the same issues were discussed at both.

The first was a general meeting and was attended by me, the late Minister Lenihan and by all the relevant senior and technical officials from the Departments of An Taoiseach and Finance, Central Bank, Financial Regulator, Attorney General, NTMA, PwC, Merrill Lynch, Arthur Cox and Goldman Sachs.

The first meeting was a general round up meeting involving that wider attendance. The second meeting which I, the Minister for Finance and Attorney General attended, was at a more senior level without the technical people but did include officials from Merrill Lynch, the NTMA and possibly Goldman Sachs.

The outcome of these meetings was to prepare options for Government for the following week which were subsequently overtaken by events which materialised on Monday 29<sup>th</sup> September.

**5. Gary McGann revealed (page 42) that a portion of the meeting on "Druid's Glen Day" was held at the private home of Fintan Drury.**

**(a) Can you confirm Mr McGann's account of the meeting?**

Yes I can confirm that I called to Mr Drury's house that morning at around 10.30/11.00 a.m.

**(b) What reason was given for the meeting being held in Mr Drury's home?**

Mr Drury told me that we would gather there as it turned out Mr McGann and Mr Gray were not participating in the golf game and would be returning to work.

The meeting started at Mr Drury's home with Mr Gray giving a presentation on the economic outlook and some possible policy responses to it as he outlined in his evidence.

The presentation gave rise to an initial discussion afterwards. We agreed to continue the discussion later that evening at Druid's Glen when all could attend.

**6. Clarification to be sought on the exact nature of the role and advice of the NTMA on the night of the Guarantee:**

**(a) What information was communicated to the decision makers in the room on the night of the Guarantee regarding the view of the NTMA?**

**(b) How was this communicated**

**(c) What reaction did this information receive?**

The views of the NTMA (Mr Somers and Mr Corrigan) had been shared at meetings held in the lead up to the meeting on the evening of the guarantee.

As already stated, Mr Somers and Mr Corrigan, the top executives of the NTMA, were out of the country on that night on NTMA business in the US.

The options paper was drawn up by Merrill Lynch in close cooperation with the NTMA. That paper formed the basis of all the discussions on the night of the guarantee.

Mr Kevin Cardiff conveyed the views of the NTMA at that meeting which started at 6.30pm including the NTMA favouring a nationalisation option as part of the solution.

Mr Brendan McDonagh was asked by Mr Cardiff to be in attendance at Government Buildings in case any issues arose that would require any further technical assistance. Mr McDonagh arrived at Government Building around 9 p.m.

In the intervening two and half hours from the start of the meeting until then, we had discussed and assessed all of the options in the Merrill Lynch paper which the NTMA had worked on with Merrill Lynch.

The views of the NTMA were fully taken into account along with the Central Bank, the Financial Regulator and the Department of Finance.

I have outlined in my direct evidence the detail and the dynamics of that discussion and the rationale as to why we reached the decision we did taking all circumstances into account both at home and abroad during the course of that day and night.

**(d) When this information was received was any request or suggestion made to bring the NTMA into the room? If not, why not?**

There was no suggestion made to bring anyone else into the room. The views of all relevant State bodies were on the table and were being discussed at that stage.

We knew what the view of the NTMA was. Mr McDonagh was available to advise on any details that required his expertise in putting the decision we took into effect.

**Brian Cowen**

**22 October 2015**