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Joint Committee of Inquiry into the Banking Crisis

Clarification Statement of

Kevin Cardiff

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JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

**SUPPLEMENTAL WRITTEN STATEMENT OF KEVIN CARDIFF IN RESPONSE TO QUESTIONS POSED
BY THE JOINT COMMITTEE BY LETTER DATED 28TH AUGUST 2015**

By letter dated 28th August 2015, the Joint Committee of Inquiry into the Banking Crisis (the "Joint Committee") requested a written response from me to twelve questions which address three main topics: a 2008 Department of Finance scoping paper, the evidence given by Mr. Brendan McDonagh of the NTMA on 9th July 2015, and the meeting of 29th September 2008 at which the Government made the bank guarantee decision. Below I have set out the Joint Inquiry's specific questions in bold and my answers to each underneath, with relevant additional contextual information where necessary.

In 2008, the Department of Finance produced a confidential paper titled "Financial Stability Issues - Scoping Paper".

- Q1. Who, to your knowledge, was the originator of this paper?**
- Q2. Who had overall ownership of the production of this paper?**
- Q3. Please list the individuals/divisions/organisations that contributed to the paper?**
- Q4. Who retained the responsibility for signing off on the final version of the paper?**
- Q5. Please outline the route by which this paper was brought to the attention of the Minister for Finance at that time Mr. Brian Cowen - e.g. approval by the DSG, etc.?**

These detailed questions in relation to the scoping paper might be better answered by other former officials who might recall the details better than I. To the best of my recollection it was originated in and produced in the Department of Finance by the officials I have mentioned before as those who were doing the preparatory work for potential difficulties in the banking system - Mr Beausang, at Assistant Secretary level, Mr Manley et al.

Other than the above, I do not have these details now, and in view of the inquiry's request that these questions not be communicated to anyone, it is difficult to obtain all of them. However, I have no reason to doubt that it was the team headed by Mr Manley who compiled the paper and they were at that time in regular contact with the relevant people in the Central Bank and Financial Regulator and possibly also with the office of the Attorney General - I would be surprised if any others were involved at this point. The NTMA were consulted at one point on the paper or some iteration of it, but I do not know that they contributed to its drafting. I think not.

The paper was a part of an ongoing preparatory process – in that sense I do not think it required ‘signing off’ as a final policy position: as events developed and information became available the position of the Department might be amended to reflect the new information or circumstances. Moreover, policy would clearly be influenced not just by this paper but also by the views of the Central Bank and the Financial Regulator and others.

It would not have required the approval of the DSG for this paper to be put to the Minister at the time. As I recall it, he was being briefed in general terms on the ongoing preparations, and so I do not recall if this paper specifically was put to him. Other colleagues might recall more exactly. With the passage of time and the increasing likelihood of disruption of the banking system there were extensive and specific discussions of intervention options with the Minister of the day – in view of the development of events, discussions with Minister Lenihan were much more specific than those with Minister Cowen some time before. However, I must stress that this is based on my recollection only.

While giving evidence to the Joint Committee on 9th July 2015, Mr. Brendan McDonagh of the NTMA stated that, in DSG meetings leading up to the financial crisis, he was surprised and concerned at the apparent lack of information held by the Financial Regulator in respect of the Banks.

Q6. What steps, if any, did the Department of Finance take to address these concerns?

It would be useful if the question would refer to the specific points made by Mr McDonagh, so as to allow me to respond in a specific way. I presume the question is intended to refer to the following point made by Mr McDonagh in his opening statement to the Joint Committee:

“From mid-September 2008, when my colleagues, Mr. Corrigan, Mr. Whelan and I were requested to attend meetings which the Department of Finance had scheduled with the Central Bank and the Financial Regulator, it was obvious to me and also, I believe, to my colleagues, that there was a dearth of information or analysis available in terms of real insight as to the financial state of the domestic banks and building societies.”

As I think I have already made clear in evidence, when the NTMA and the Department noted the specific information deficit in dealing first with Irish Nationwide but also other banks from early September 2008, we strongly suggested that outside expertise be brought in, leading to the commissioning of

Goldman Sachs and PWC to do further work on behalf of the Financial Regulator. The NTMA and Department of Finance commissioned, in effect jointly, Merrill Lynch as advisors around the same time – my evidence describes this sequence of events, including a 'false start' with another set of advisors, in detail. I refer the Joint Committee to pages 35 – 36 of my written statement and to pages 14 – 18 of Appendix II thereof.

Mr. McDonagh also suggested that both Anglo and INBS, in his opinion, were likely to have been insolvent on the night of the guarantee.

Q7. Did you offer either of these observations by Brendan McDonagh (regarding the apparent lack of information, and his opinion on the solvency of Anglo and INBS) during the discussions on the night of the guarantee, and if so what was the reaction from those in attendance?

It appears to me that this question evidences a misunderstanding by the Joint Committee of the evidence given by Mr. McDonagh..

In this question, the Joint Committee appears to take a retrospective view expressed by Mr McDonagh in 2015 and asks whether I presented it to the meeting concerned in 2008. In responding to the Committee's question in relation to solvency, Mr McDonagh said *"And I suppose if you profile forward we know now and we know for a long time that these institutions required €34 billion of capital."* So Mr McDonagh is looking back at a sequence of events and what it implies to him now about the institutions concerned. I could not have known at the time and presented this retrospective view, and it is not appropriate to imply that I could do so.

To be clear: Mr. McDonagh did not tell me, to the best of my recollection, in September 2008 that he was of the view that Anglo or INBS was insolvent in the sense that, at the time, the assets of these banks were accounted for at values less than their liabilities. I note that Mr McDonagh, though pressed, was himself appropriately very careful in the use of the word 'insolvent' in evidence to the Inquiry. The term has a number of definitions with different implications.

Mr McDonagh does say that the banks concerned were running out of cash, and they might have been regarded as insolvent from this point of view – this lack of cash was well known on the night in question and was made even clearer by the figures presented that night as already in evidence. All present knew this without my having to give it as Mr McDonagh's opinion.

In this regard, my recollection of my own evidence to the Committee is that I said that

- I gave my understanding of the NTMA's views to the meeting that night, including that Anglo should be nationalised – I can add that I may have used the phrase 'its business model is broken' or something close to that, since that phrase had been used in preparatory discussions, including I think in the presence of the Minister or Taoiseach
- that I arranged that NTMA staff would be present and available
- that the Taoiseach, Ministers and others had the opportunity to speak to the NTMA – and vice-versa – in the preceding days and to exchange views with them, with Goldman Sachs, with Merrill Lynch and others.

I doubt that I used the word 'insolvent' on the night in an unqualified way to describe my or anyone else's views, for the simple reason that, having multiple definitions, the unqualified and undefined use of this word would only have confused any discussion.

It cannot be said that the meeting took place in ignorance of the fact that there was a range of views among officials and advisors, or a range of possible outcomes of the decision taken. It would be inappropriate and incorrect therefore to assume or imply that the only information or opportunity for discussion available to the decision makers was the information or opportunity presented to them that evening. However, although there was in fact extensive discussion that evening, there was a lot of ground to cover, so I do not remember having the opportunity to do an extensive recap of all the potential outcomes and all the viewpoints.

For example, I am sure that on the night of the guarantee the discussion – including points I made myself – focused more on Anglo than on Nationwide, the former being the bigger problem. I think my evidence has also made clear that there was a more optimistic presentation of the circumstances from the Financial Regulator who noted the capital position of the banks and their solvency position at that moment in a positive way – but even then, they did not suggest that there was no potential for negative outcomes – as is clear from the manuscript notes I took and of which the Inquiry has a copy.

In preparing this supplemental written statement, I have looked at the evidence of the NTMA officials and I think it is appropriate to note at this juncture that there has been a certain amount of discussion of the NTMA's 'refusal' to provide funds to banks without ministerial approval. Based on the evidence given, this appears to have been based on a non-specific concern about banks in general, worldwide, arising from a cautious approach from Mr McDonagh, which it is said led Dr Somers to not wish to place a deposit with these banks without ministerial direction. It is to Mr McDonagh's great credit that he was being careful about where monies were placed, and is entirely consistent with his contribution to the

public interest during the crisis. However, my recollection - it is now some years ago - is that Dr Somers' concerns were expressed to the Department/Minister in different terms - that he was concerned about his vires - his legal power to make deposits without the Minister's direction, where the deposit made was not directly in relation to a debt management operation.

I recall no specific information from the NTMA - at the time this deposit programme started - giving reasons why the Irish banks should be a feature of particular concern, beyond the very real concerns about the banking system generally and the impacts that could have in Ireland - and were already having in US and the UK. Had Dr Somers had such specific information, I imagine he would have shared it directly with the Minister or with my immediate boss, Mr Doyle. He would have been unlikely to call me direct on the matter. Indeed, if he had any specific information or specific doubts it would have been amazing if he did not so share it. It will be recalled that the Minister had already written to him in December 2007 asking for his help with issues in relation to the stresses on the banking sector, so it was not the case that Dr Somers would have been regarded as having no role or standing - on the contrary anything he had to say would be closely noted.

A potential exception to the point on specific information is in relation to Anglo Irish bank, where we were aware that a lesser credit limit of €40 million had been set by the NTMA. I checked at one point, as you might expect, as to whether NTMA had specific reasons for concerns about Anglo - as opposed to non-specific worries based on the generally negative view of the Anglo management in the rest of the Irish financial community. I was told not. Nonetheless, the Minister decided - probably on my advice, I do not now recall - that if the NTMA did not wish to expand the deposit to Anglo it would be asked simply to maintain the existing deposit.

Unlike the Agency, which could take an agency specific perspective, the Minister was constrained to act in the overall public interest, which included being concerned about the banking system on which the economy was dependent. As Dr Somers said in his testimony: "My attitude was that's not our problem. You know, we all look after what we're obliged to look after". He was looking after his job, as he saw it, but a Minister has a much broader job. It is hardly surprising therefore if the Minister's decisions were based on a broader range of considerations, especially if as I suspect, the head of the NTMA was not advising him of specific concerns about individual banks.

Representatives from both AIB and BOI sought a meeting with Government on 29 September 2008 to discuss the deteriorating system in Banking.

- Q8. Who (Government official) agreed and facilitated the meeting of the banks in the afternoon of Sept 29th 2008 and are there minutes of this meeting?**
- Q9. Can you outline the exact attendance pattern by these banks? Did they remain in Government buildings for the full duration of the Crisis meeting?**
- Q10. Describe how the attendees of the Crisis meeting i.e. Governor of the CB, AG, Taoiseach, Minister and other officials were contacted to attend the meeting?**
- Q11. Why were the representatives of the other 4 financial institutions not in attendance? Was this by design? Did the bank representatives in attendance offer opinions in this regard?**
- Q12. Can you confirm whether, to your knowledge, any in depth examination of the banks was contemplated or discussed by the Department of Finance, Central Bank, Financial Regulator or Domestic Standing Group at any time prior to September 2008? If so, why was it decided not to proceed with such an exercise?**

I am not sure that I can add anything to the evidence that I have already given to the Joint Committee in respect of the bank guarantee decision. I am taking Q8 to refer to the arrangement of the meeting with the banks on the night of the 29th, as opposed to any meeting on that afternoon. To be clear, I am not aware of any meeting between senior Government representatives and banks on the afternoon of the 29th.

I do not know which official facilitated the meeting with the banks that evening, but the normal course would be that if a request came in to the Taoiseach's office, his office would confer with the Taoiseach (possibly after consulting other officials also) and the Taoiseach would say yes or no to the meeting. For a meeting of this importance, and given that there was to be a closely related set of discussions with various State institutions that evening, I would imagine that the Secretary General to the Government was involved at some point in the process.

As regards minutes, apart from any document which might have been prepared as a minute of the Government meeting or by the Attorney General, and therefore subject to privilege of one sort or another, I have already provided a transcript and given evidence in relation to manuscript notes taken by myself, but which do not represent 'minutes'.

As regards the attendance pattern of the banks, based on what I have heard since - I would not have known in advance -the banks were told to come in at 9 or 9.30 p.m.. They were given a room in which to wait. They were then asked to attend the Taoiseach and some of the others who had been with the Taoiseach - I describe this in my evidence already given. Then they left, presumably back to the same room as before. They were called back, as is clear from my notes, sometime before 1 a.m. and there was a discussion at that point. There may also have been some other contacts with them outside the room - for example, the Attorney General mentions something in his evidence and I know that Eugene McCague received from them a document (listing the bank subsidiaries that would be covered by the guarantee, already discussed in my evidence) which was not presented immediately, so presumably was received separately. I do not know at what time the banks left the building but it was certainly late.

As regards how people were contacted, I do not know how others were contacted regarding the meeting that evening - I was told by my boss at the time, David Doyle, to attend at 6 p.m. So far as I recall, I was made aware of the prospective meeting with the banks only after I arrived at the Department of the Taoiseach.

As to why only two banks were present, I imagine this was simply because they were the two banks which sought the meeting. It was most unlikely that those two banks would invite Anglo or Nationwide, since they were planning, it became clear, to advocate their nationalisation or other radical action in regard to them. Moreover, AIB and Bank of Ireland did not like to meet Anglo, which they regarded with distaste. On one later occasion when I arranged a meeting involving Anglo, AIB and Bank of Ireland, senior executives from the latter two refused, until pressed, to attend a meeting involving Anglo. So from both these perspectives it would have been surprising if these two banks would have asked for the involvement of other institutions in their meeting with Government officials that evening.

I do not recall a suggestion of an external study of the type carried out by PWC until September 2008. Of course, the Central Bank and Financial Regulator were engaged in various examinations of the banks including inspections, stress tests and the like.