

## Opening statement to the Joint Committee on Rural and Community Development

### The Need for a Law Regulating Abandoned Safety Deposits in Banks

**Jim Connolly**

6 March 2019

Thank you for the opportunity to address the Committee about this issue – one, in my view, that has the potential to change history.

Today I am asking you to support an amendment to the Dormant Deposit Act to place an obligation on banks to give back property that is being held in safekeeping on behalf of deceased Irish citizens.

Safekeeping is an issue that I first became aware of in the 1990s when I worked in the Bank of Ireland group and I should start by readjusting your perception of what safekeeping is.

If you're anything like me, when you think of the term safekeeping, you're immediately drawn to the image of a vault with rows of safety deposit boxes, each requiring two keys to open.

That's not how it worked. If the year was 1907 and you had an item that you wanted to lodge for safekeeping, you would package the item and give it to the bank manager. It's important to note that the bank manager did not know what was in the package. He would simply note the deposit in the safekeeping register, give you a receipt and place your envelope, package, box or whatever in the safe alongside all of the other items.

That's what took me by surprise when I landed in the safe in Bank of Ireland in Rathmines in 1993 and started to question what all the envelopes and parcels and boxes were. You could tell by the shape of some what was in the package – paintings for example – but you have no idea what is in the majority.

Bank of Ireland Rathmines opened its doors in 1907 and the bank is still holding hundreds of items from that time on. When I pointed out to the manager that it's entirely likely that the original customer is now dead, his reaction was simple. *My job is to keep it safe, and it's safe.*

And therein lies much of the opportunity with safekeeping. At their height, Bank of Ireland and AIB had over 700 bank branches between them and every single one of those had a vault and every single vault has items held for safekeeping. Every city, town

and borough throughout Ireland has potential beneficiaries of this property living in their communities.

But it's not only specific citizens who will benefit from a change in policy in this area.

The historic and cultural richness of this property cannot be underestimated.

Banks in Ireland have provided safekeeping services ever since they have operated as banks and much of the property they now hold is up to 200 years old. When you pause to consider that any item that was deposited for safekeeping was of sufficiently significant monetary or sentimental value to warrant the protection afforded by a bank, we must assume that this property now represents a vast reservoir of our own culture and heritage today.

You are probably keen to understand what types of property are held in vaults and I can give you a firsthand account based on my own experience. I have seen paintings that are so large they are held in pallets. I have seen single envelopes inscribed with the words "to be opened on my death" – which could contain someone's last will and testament, or a deed, or a confession, or a share certificate – who knows? I have seen currency, antiques, weapons and war memorabilia. Even Charlie McCreevy speculated in the original debates on the Dormant Deposit legislation that banks could be holding the proceeds of bank robberies in their own safes.

We must not lose sight of the fact that the majority of this property is unknown. The knowledge I possess comes from a small number of items that were opened in extremely concessionary circumstances or a result of damage to the container itself.

Moving on, the question turns to who owns this property now?

The legal position is explicit – the property remains part of the Estate of the original deposit maker.

For those items that are supported by clear records there is undoubtedly a huge effort involved in locating current beneficiaries, and I will comment later as to how the effort can be curtailed.

However in many cases, and especially for older deposits, the banks records are at best vague or at worst non-existent. Legal advice would suggest that, where there is no clear evidence of ownership outside of the item it is appropriate to open the item to see if ownership can be established from the contents.

If it is not possible to establish ownership after this exercise, then the property would vest in the State under various statutory instruments, most notably the National Monuments Act and the Succession Acts.

But this all remains irrelevant as, today, there is no active appetite from the banking fraternity to address or engage with this issue, which is understandable given some of the legal exposures that this whole issue presents for banks.

The elephant in the room in relation to this property rests in the fact that numerous Estates have been settled after receiving erroneous confirmation from banks regarding the accounts they held. On the death of a client, it is routine practice for their legal representatives to establish the asset base, and in a banking context this would take the form of a request for detail of that clients bank accounts. In many cases the bank may not have captured the item in safekeeping. For a bank now to reunite an item with the beneficiaries of such an Estate gives rise to issues around underpayments of capital acquisitions tax, penalties and interest. It also raises questions of proper succession given that we are in the realms of property being passed through numerous generations and numerous Estates.

Despite the legal complexities my own legal research has led me to form a view that there is no, and never has been, any legal impediment preventing banks from dealing with this property voluntarily, and it is clear that there needs to be some form of legal impetus compelling banks to act. My robust view is that most appropriate instrument to use is the Dormant Deposit Act. However careful consideration needs to be given to the manner in which the legal obligations are introduced. I would tentatively suggest that any amendment should aim to satisfy the following three criteria:

1. We need to acknowledge that, although the banks own this problem they did not intentionally create it and, as such some form of amnesty needs to be granted insulating them from action arising from their non-engagement.
2. The legal complexities are likely to be considerably more onerous for property deposited after the creation of the Irish State and as such I would propose that the dormancy period of 15 years set out in the current act be extended to 100 years in any amendment pertaining to this property.
3. Undoubtedly many of these deposits will transpire to hold currency and other monetary chattels (gold bullion, Krugerrand, etc) which is capable of being converted to currency and ultimately given back should a claim ever be made. We also need to be cognisant that much of this property will be of cultural and historic value and cannot be disposed of. The amendment should empower the State to take possession of these items.

It is worth mentioning that although this property is largely safe we are already at risk of losing some as there is evidence that Danske Bank has already moved up to 2,000 items of safekeeping out of the Irish State, potentially beyond the reach of any domestic legislation.

I would like to leave you with a description of one item.

This item, a chest, is held in the vault in bank of Ireland College Green. It sits on a shelf alongside thousands of other items. The chest is slightly smaller than the rectangular coal bucket that most of us would have had at home. It has a domed roof. It has a large cast iron lock which secures a length of metal chain that wraps all sides of chest. Rope is woven through the links of the chain, intermittingly knotted. There is candle wax on the knots. This item was deposited for safekeeping in 1872, and nobody knows what it contains. Let your mind wander. You will find it hard to convince me that the contents won't add to or perhaps change our history.

This isn't Pandora's box. This is our heritage, boxed off.

Thank you.