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**Comhchoiste um Airgeadas, Caiteachas
Poiblí agus Athchóiriú, agus an Taoiseach**

An Tuarascáil ar Bhaincéireacht, 2022

Eanáir 2022

**Joint Committee on Finance Public
Expenditure and Reform and Taoiseach**

Report on Banking 2022

January 2023

Members of the Joint Committee

Deputies



Mick Barry (SOL-PBP) Cork North-Central



Pearse Doherty (SF) Donegal



Bernard Durkan (FG) Kildare North



Mairéad Farrell (SF) Galway West



Steven Matthews (GP) Wicklow



John McGuinness (FF) Carlow-Kilkenny



Jim O'Callaghan (FF) Dublin Bay South



Neale Richmond (FG) Dublin Rathdown



Peadar Tóibín (Aontú) Meath West

Senators



Maria Byrne (FG)



Pat Casey (FF)



Aidan Davitt (FF)



Alice-Mary Higgins (IND)



Marie Sherlock (LAB)

Cathaoirleach's foreword



The language of this report is necessarily formal, and perhaps does not adequately express the views of the members of the committee, or mine. Descriptions like “customers”, “consumers” and “stakeholders” serve to muffle the heartbeats and, often, heartbreaks of the many who have been promised by bankers and other professionals, including politicians, that “we will look after you”, a promise that is everywhere advertised...without a health warning.

Banking advertising never avers that “our responsibility to our shareholders” takes precedent over duty of care to clients and society. But, when push comes to shove, the pursuit of profit often eclipses responsibility to individuals, families and businesses, which leads to distressing outcomes, not least lack of respect for pillars of our economy and society, including politics.

The financial collapse was caused by greed. German and French banks, looking for better returns on their money, bought Irish bonds knowing the risk. Irish banks, inadequately controlled by the Central Bank, lent the money they received carelessly, ignoring risk. When the collapse happened, the EU bullied Ireland into fully compensating French and German banks, which they were not entitled to, and we should not have agreed to.

The result was Irish people were left with tens of billions of debts and a banking sector willing to do to those it had sold care to whatever was necessary to look after itself: considerable numbers of our citizens learned then what “we will look after you” was worth in the jaws of untrammelled capitalism, with vulture funds making fortunes out of panic selling and the divesting of responsibility by banks.

This report is not about money; it's about how much a government will allow its people to be mistreated by powerful institutions and the central and very responsible role bankers, including our Central Bank, and other professionals in our society have.

Self-interest has to be contained in a healthy democracy and it has to be understood, in Donne's immortal words, that we are each “a part of the main”. The health of that

“main” depends a great deal on the behaviour and values of our professional classes, particularly those who promise care, which includes politicians. Government should have powerful tools and sanctions available to it when greed threatens our society.

Our citizens were and are justifiably outraged by the breach of trust revealed by the events of the last decade, the flagrant disregard for duty of care and the experience of meeting or being telephoned by young Irish men and woman paid to bully threaten and harass their own, at all hours of the day and night, in the name of trusted institutions that had brought the nation to its knees and destroyed families and businesses, often throwing humanity, compassion and due process out the window in a desperate attempt to save themselves at any cost.

I accept that we have moved on, but how far?

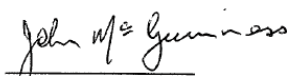
Many of those now in authority in the banks and other institutions are new and hopefully more aware of the necessity for cultural change that ensures that islands of rapacious self-interest cease to exist in our country. I hope that their duty of care to the people they invite to trust them and the important and responsible role they play in society is front and centre in their thinking now.

Leaders in banks, government and the Central Bank can demonstrate their commitment to better service by cleaning up the remnants of the mortgage scandal without further delay; addressing the lack of competition in the market and the absence of face to face local banking that many individuals and businesses are demanding by empowering credit unions, controlled by regulations appropriate to the service they are providing, which the Central Bank should be asked to prepare immediately, and, finally, the government should ensure that banking legislation is rigorously applied.

The first duty of government is to keep its people safe. Making sure that all those who promise care deliver on that promise and are heavily penalised if they do not would be a significant step in the right direction.

Finally, I would like to thank the members of the Committee for the work they have done in preparing this report and those few, brave enough to come before us, at considerable risk to their private lives and professional careers, to cast light on dark

corners that otherwise would not have been revealed. I wish to thank Jonathan Sugarman, whose evidence was compelling and convincing, for doing a service to our state that has never been acknowledged - duty of care and protection of whistleblowers counts for very little when the messenger bearing uncomfortable truths has to be shot.

A handwritten signature in black ink, reading "John McGuinness", written over a horizontal line.

John McGuinness T.D.
Cathaoirleach

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Recommendations of the Joint Committee

Recommendations and Conclusions

The Withdrawal of Ulster Bank and KBC

1. The Joint Committee recommends that the Central Bank report regularly to the Committee on the progress of the five banks in managing the withdrawal process and their adherence to the expectations of the Central Bank in protecting consumers.
2. The Joint Committee recommends that, following the closure of Ulster Bank and KBC, the Central Bank undertakes an analysis and review of the closure processes of both banks and the processes of the remaining banks in assisting customers to migrate their accounts.
3. The Joint Committee recommends that Ulster Bank and KBC, as part of its withdrawal process, publish ongoing reports detailing the number of customers that have been notified of their closure, the number of customers who have switched accounts and the number of customers who have yet to be contacted.
4. The Joint Committee believes that vulnerable customers should be provided additional supports and time to assist them in switching accounts and recommends that all banking institutions remain cognisant of this requirement.
5. The Joint Committee recommends that Ulster Bank and KBC report regularly to the Committee on its progress in assisting vulnerable customers manage their accounts during the withdrawal process.
6. The Joint Committee are of the opinion that the paper-based model used in the switching code was not an appropriate process given the large number of customers who were required to switch code.
7. The Joint Committee recommends that the Central Bank reform the switching code with payment service providers required to put in place automated and

electronic methods and channels of communications, both between themselves and Direct Debit Originators

8. The Joint Committee recommends that the remaining banks consider the recommendations by the Financial Services Union regarding staff concerns and report regularly on the current staffing position to address the undertaking of the new customer accounts.
9. The Joint Committee also notes the negative impact that uncertainty and precarity has had on staff in the banking sector and believe appropriate measures should be taken to address these issues
10. The Joint Committee believes that Credit Unions have potential to be more active in the provision of financial services and welcomes that legislation is to be introduced to further support the sector.

Vulnerability of Traditional Banking Services

11. The Joint Committee welcomes the decision by AIB to reverse its plan to close cash services in several branches and welcomes its commitment that such services will remain in the near future.
12. The Joint Committee is cognisant that technological developments have had a significant impact in reducing the use of traditional banking services such as ATMs and physical branches. However, the Joint Committee believes that such services remain vital to significant cohorts of society, including rural and urban communities, and that the removal of such services would be detrimental to the economic and societal wellbeing of such communities.
13. The Joint Committee believes that further examination on the provision of financial services to communities, businesses and householders is required and awaits the Department of Finances “Future of Banking” report which is due in late 2022.
14. The Joint Committee is of the view that the availability of physical bank branches providing cash services are a vital component of communities, businesses and households and believes that the provision of such facilities should be appropriately available to all communities.

15. Further to recommendation 13 and in light of concerns regarding digital literacy in Ireland, the Joint Committee recommends that accessibility audits of banking services in the State are carried out and that, in particular, accessibility issues for those with low levels of digital skills are identified, monitored and mitigated against.
16. The Joint Committee recommends that legislation be introduced to provide that retail banks be required to provide cash withdrawal and deposit facilities for personal and business customers within specified geographic baselines. This could be determined with regard to a bank's customer distribution, market share and geographic coverage. Responsibility could be delegated to the Central Bank to review the coverage of current cash access and submit proposals regarding appropriate geographic baselines, with scope for periodic review in line with changing circumstances. Responsibility for monitoring and enforcing compliance with these requirements could also be delegated to the Central Bank.

Interest Rates

17. The Joint Committee has concerns that the expected increases in interest rates are likely to bring further pressures to households and businesses if passed on to customers. The Committee recommends that banks consider the impact of any decision on its customers especially given the current cost-of-living and inflationary pressures.

Bank Remuneration Policy

18. Further to recommendation 8, the Joint Committee is of the opinion that the removal of the cap on pay and bonuses in the banking sector is inappropriate and that such a policy change could be damaging to public confidence in the regulation of the sector and will not address longstanding customer issues.
19. The Joint Committee recommends that the current restrictions on banking remuneration remain in place, including the €500,000 cap on an employee's annual pay.

Tracker Mortgage Examination

20. The Joint Committee has significant concerns at the culture within lenders as reflected in both the tracker mortgage scandal and the subsequent response by banks, even following evidence of the significant damage to customers. The Committee, having raised in 2021 concerns about the banks decision to calculate compensation for affected customers on the basis of simple interest rather than the more appropriate compound interest, welcome the recent fines in respect of this practice which the Central Bank has now applied to AIB and Bank of Ireland. Continued regulatory vigilance and cultural reform is necessary to ensure that those affected face no further damage or difficulty in respect of this issue.

Executive Summary

The banking sector remains a key topic of interest to the Joint Committee as developments within the industry have significant impact upon Irish businesses, households, and the economy at large. This report considers several developments within the banking sector which were examined by the Committee in 2022.

One of the most significant developments in 2022 were the announcements that Ulster Bank and KBC would withdraw from the Irish market. This is examined in Section 2 of this report. In February 2021, the Joint Committee published its Interim Report on Banking in advance of the decision by Ulster Bank and set out its concerns regarding the negative impact of the withdrawal on staff, customers and competition in the market. Since the publication of the Interim Report, KBC Bank has also announced its intention to withdraw from the Irish market, which has elevated concerns. The Interim Report further noted that the Joint Committee wished to urgently meet with representatives of Ulster Bank to discuss its concerns, the impact of its decision and work to be undertaken to mitigate this impact.

Since the publication of the Interim Report, the Joint Committee has met with representatives of both KBC and Ulster Bank and their engagement is welcomed, however the Committee remains concerned by the impact of the imminent withdrawal of the banks from the market.

In its consideration of this impact, the Committee engaged with a variety of stakeholders including officials from the Central Bank of Ireland, representatives of Electric Ireland and representatives of the Financial Services Union (FSU). Additionally, the Committee invited a selection of direct debit originators (DDOs) to provide written submissions on the impact of the withdrawal of the two banks on their organisations and their customers.

Section 3 of the report examines the threat to traditional banks services such as in-branch banking and ATM services. The Committee heard evidence regarding the decline in the use of in-branch banking and the increase in digital banking. The Covid-

19 pandemic appears to have accelerated these developments. In July 2022, Allied Irish Bank (AIB) reversed a decision to close many cash services, including ATMS, in several branches across the country following a substantial public response. The Joint Committee welcomes AIB's reversal of this decision, however it is aware that the provision of such services from all banks remains an ongoing topic of concern. During its examination of this topic the Committee engaged with the Minister for Finance and representatives of AIB, Bank of Ireland and Permanent TSB.

Section 4 of the report addresses issues relating to mortgages including a discussion on the Irish mortgage market and particularly challenges to consumers in the market such as high interest rates, consumer inertia and concentration in the sector.

Section 5 of the report examines the recent interest rate increases by the European Central Bank (ECB) and further expected increases in late 2022. Such actions by the ECB are intended to mitigate inflationary increases, which present significant risks to the economy. However, the Joint Committee has concerns that if such increases are passed onto consumers by increasing borrowing rates, it will bring further pressure to individuals and businesses during the ongoing cost-of-living crisis.

Section 6 of the report addresses the bank remuneration policy, noting that public trust in banking remains to be restored and recommends that the current restrictions on banking remuneration remain in place.

Sections 7 and 8 summarise the ongoing issues regarding the Tracker Mortgage Scandal and Tied Agents. Both topics have been addressed by the Committee on several occasions over a number of years. 2022 saw further high-profile actions taken by the Central Bank. The Joint Committee will continue to monitor these developments.

Section 8 of the report summarises the Committee's observations in relation to its following informal discussions with the Central Bank of Ireland in January 2021. The discussion centred on the Committee's previous consideration on whistle blowers and on evidence provided to the Committee from Mr, Jonathan Sugarman, a topic that was

initial examined by the Committee of the 32nd Dáil¹. This section sets out the Committee's conclusions of engagement with the Central Bank.

The report offers twenty recommendations and observations in total. The recommendations that relate to Ulster Bank and KBC are intended to ensure that their withdrawal is done so in a manner which mitigates the impact on customers and businesses and that the banks' duty of care to customers hold is protected and adhered to. Recommendations in relation to the provision of traditional banking services such as ATMs and in-branch banking are intended to ensure that communities are provided with such services. However, the Joint Committee notes that the development of digital banking presents a number of new challenges to ensuring this provision and that future examination is further required.

As noted, the report provides details on the Joint Committee's scrutiny on banking issues in 2022 so far. Many of these topics will continue to evolve and, as such, the Joint Committee will continue to monitor these developments and is likely to provide further scrutiny in 2023.

¹ [Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach debate - Thursday, 13 Apr 2017 \(oireachtas.ie\)](#)

1. Introduction

The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach ('the Committee') considers emerging banking issues as part of its remit under the Department of Finance.

This report considers several topics related to banking which are detailed below:

Section 2: Examination of the withdrawal of Ulster Bank and KBC from the Irish market.

This section considers the impact of the withdrawal on consumers, staff and competition. The section provides details of the evidence provided to the committee in relation to these three headings and makes recommendations which are intended to ensure transparency in the withdrawal process and safeguard customers impacted by the process.

Section 3: Vulnerability of traditional banking services.

This section identifies current developments in the sector where digital banking services are becoming more dominant and the provision of traditional services, such as in-branch banking and ATMs are decreasing.

Section 4: Mortgages

Section 4 of the report addresses issues relating to mortgages including a discussion on Irish mortgage market and particularly challenges to consumers in the market such as high interest rates, consumer inertia and concentration in the sector.

Section 5: Interest Rates

This section addresses the recent interest rate increases by the European Central Bank, the expected increases in late 2022 and the potential impact on consumers, at a time when inflationary and increased cost-of-living pressures are already substantial.

Section 6: Banking Remuneration Policy

Section 6 of the report addresses the bank remuneration policy, and considers the matter in the context of restoring public trust in the industry and accountability in retail banks.

Section 7: Tracking Mortgage Scandal

This section provides an update to a topic that was assessed previously by the Committee.

Section 8: Tied Agents

This section also provides an update to this topic which was examined by the Committee previously.

Section 9: Whistle-blowers

This section provides an update to a topic that was examined by the Committee of the 33rd Dáil and the 32nd Dáil.

1.1 Meetings Held

The Joint Committee held public engagements with several stakeholders to discuss banking issues between March and September 2022.

Date	Witness
30 March 2022	Engagement with Central Bank of Ireland
18 May 2022	Engagement with Ulster Bank and KBC
18 May 2022	Engagement with AIB, Bank of Ireland, PTSB and the Banking and Payments Federation of Ireland (BPFi)

25 May 2022 Engagement with Financial Services Union (FSU) and Electric Ireland

14 September 2022 Engagement with AIB, BOI and PTSB

21 September 2022 Engagement with Minister for Finance

19 October 2022 Engagement with Ulster Bank and KBC

Witnesses, opening statements and transcripts are detailed in **Appendix 1:**

Meetings and Stakeholders.

1.2 Submissions received

In addition to the evidence provided in its public engagements with stakeholders, the Committee also received evidence from stakeholder submissions in relation to the following topics

Direct Debit Originators

The Joint Committee issued a questionnaire to the top twenty Direct Debit Originators (DDOs). DDO's are authorised to enable businesses and organisations to collect payments directly from accounts.

The questions set in the request were intended to understand how the withdrawal of Ulster Bank and KBC from the Irish banking market would affect customers with Ulster Bank and KBC in making direct payments and receipts. Details of the questionnaire and the responses received are detailed in:

[Appendix 2: DDO submissions in relation to the withdrawal of Ulster Bank and KBC](#)

Staffing

The Joint Committee wrote to the five largest banks: Allied Irish Bank (AIB), Bank of Ireland (BOI), KBC, Permanent TSB and Ulster Bank and requested information on staffing arrangements to assist in the migration of customer accounts from Ulster Bank and KBC. Details of the responses are listed in **Appendix 3: Stakeholder Submissions on Staffing**

ATM Services

The Committee also invited the five main banks (AIB, BOI, KBC, PTSB and Ulster Bank) to provide information regarding the decreases in the provision of ATM services,

Further details of the submissions are listed in **Appendix 4: Stakeholder Submissions Received in relation to ATM**

It should be noted that all evidence received was specific to the date of issuing and many of these details have since progressed.

2. The Withdrawal of Ulster Bank and KBC from the Irish Banking Market

“The exit of Ulster Bank and KBC is the biggest logistical event to occur in the sector since the introduction of the euro.” John O’Connell, Financial Services Union²

Interim Report of the Joint Committee 2021

In 2021, the Joint Committee became aware that NatWest were undertaking a review of its Ulster Bank operations in Ireland.

The Joint Committee published an Interim Report on Banking in February 2021 in response to NatWest’s imminent decision on the future of Ulster Bank to *“indicate its concerns and with a view of seeking a Dáil debate in the near future on the matter.”*³

At the time of the report, the Joint Committee had yet to engage with representatives of Ulster Bank and the Interim Report noted the Joint Committee’s *“disappointment that a meeting had not taken place”*.

The Interim Report further noted the Joint Committee’s concern that any such withdrawal would impact negatively on *“staff, customers, banking services, and competition in the market”*.

On the 19 February 2022, Ulster Bank publicly confirmed that it would undertake a phased withdrawal from Ireland. In April 2022, KBC also publicly announced it would be ceasing activities in Ireland and undertaking a similar withdrawal process.

In its meeting with the Joint Committee in May 2022, the Committee heard that Ulster Bank had up to 985,000 active and inactive accounts and that KBC had up to 130,000 total current account. As such, the withdrawal of the two banks from the Irish market will impact over 1 million accounts.

² JCFPERT Transcript, 25 May 2022, https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2022-05-25/3/

³https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2021/2021-02-16_interim-report-on-banking-ulster-bank_en.pdf

Central Bank Response

The Central Bank of Ireland (CBI) stated in their submission to the Joint Committee that they are primarily concerned with ensuring that customers of the two withdrawing banks are protected throughout the migration process, and that the integrity of the financial system is protected. The Central Bank had requested to meet with the five main banks to consider their plans, operations and capacity to protect consumer interests through this process.⁴

In its submission to the Joint Committee, the Central Bank of Ireland outlined their expectations of the five main retail banks on foot of the departure of Ulster Bank and KBC from the market. These expectations are as follows.⁵

- (i) Consumer-focused culture: demonstrate a consumer-focused culture, ensuring fair treatment of customers and ensuring that customers understand what the changes mean for them.
- (ii) Communications: communicate clearly, effectively, and in a timely manner ensuring transparency and effective disclosure to enable customers to make informed decisions that best suit their needs now and in the future.
- (iii) Vulnerable consumers: specifically consider the impact of decisions on vulnerable customers and provide the assistance necessary to reasonably mitigate those impacts and retain access to basic financial services.
- (iv) Errors and complaints: remediate and rectify without delay, to ensure that customers are treated fairly and are put back in the position they would have been in had it not occurred. The originator of the product/service must take responsibility for any complaints and errors caused by/related to the originator that may arise after the transfer/sale/withdrawal (unless clearly assigned to a purchaser as part of a contractual agreement agreed between the parties).
- (v) Mortgage loan transactions: undertake a formal consumer impact analysis in the context of decisions regarding sales, securitisations, purchases and transfers of residential mortgage loans.

⁴ Central Bank of Ireland Submission, 29 April 2022, available here

⁵ Central Bank of Ireland Submission, 29 April 2022, available here

- (vi) Borrowers in financial distress: ensure borrowers in financial distress are treated fairly, sympathetically and positively.
- (vii) Monitoring of Management Information: monitor customer, operational and staff management information against benchmarks, and take timely and appropriate action where any risks are identified

The Joint Committee endorses these expectations and believes that customers impacted by the withdrawal of Ulster Bank and KBC should be treated in a fair and transparent manner throughout the process.

Recommendations 1 and 2

1. The Joint Committee recommends that the Central Bank report regularly to the Committee on the progress of the five banks in managing the withdrawal process and their adherence to the expectations of the Central Bank in protecting consumers.
2. The Joint Committee recommends that, following the closure of Ulster Bank and KBC, the Central Bank undertakes an analysis and review of the closure processes of both banks and the processes of the remaining banks in assisting customers to migrate their accounts.

2.1 Impact on Customers and Services

At the time of the meeting, the Central Bank emphasised that banks have a duty of care to consumers, and Ulster Bank and KBC's duties remain until such customers are with another bank. Officials from the Central Bank noted that a significant effort on the part of both departing banks and remaining banks was required, and, at the time of the meeting, the institutions were *“not yet where they need to be on this specific aspect of their migration plans, which is the onboarding and migration of customers with current accounts and deposit accounts.”*⁶

Representatives of Ulster Bank who met with the Joint Committee in May 2022, informed that they had issued 120,000 letters to customers advising them to switch accounts, with 20,000 letters per week to be sent out until September.

Representatives of Ulster Bank noted that customers who receive letters in September would still be afforded six-months' notice to act. However, the Committee raised concerns that, based on this projection, some customers may not receive notice by the end of September.

Representatives of Ulster Bank also noted that it had engaged with the rest of the banking industry, the direct debit originators, and other important stakeholders such as groups representing older customers including the Money Advice and Budgeting Services (MABS) and the Department of Social Protection. The representatives of Ulster Bank also reiterated its commitment to keep branches open during this process.

Ulster Bank provided an updated to the Committee in August 2022, noting that it intended to write to approximately 75,000 personal credit card holders in September 2022, providing them with six-months' notice to choose an alternative provider and if required to move their recurring transactions, pay outstanding balances and close their credit card accounts. Ulster Bank confirmed that its credit cards would no longer work from March 2023.

The Committee received correspondence from Ulster Bank on the 4 October which noted that 64% of customers who had received their first formal notification in April/ May had either closed or would down their current account or left it approaching

⁶ Mr Kincaid, Central Bank of Ireland, 30th March 2022, available [here](#)

inactive/ dormant. It further added that Ulster Bank was continuously reaching out to the remaining 36% customers and that the majority of these are reporting that they have opened new accounts and are in the process of moving their payments to their new account. The correspondence further confirmed that over 75% of Ulster Bank personal current account customers in receipt of social protection payments had already taken action on their accounts. Ulster Bank also confirmed a one-month extension to the closure of accounts so that customers can access one-off additional social protection payments outlined in Budget 2023.

At the meeting of the 19 October 2022, representatives of Ulster Bank noted that its primary metric for evaluating its closure process was the number of accounts closed. However, the representatives added that they now believed that a more appropriate metric was the degree to which a customer is reliant on the account and that some customers may never come back to close their Ulster Bank account. The representatives stated that:

“Of our personal current account customers who received their first formal notification in April and May, 71% have either closed or materially wound down the level of activity in their current account or left it inactive and dormant, and that percentage is increasing every day. Since our submission last Friday, 80% of our first set of customers have either closed or are inactive on their accounts”.

Members of the Committee raised concerns on what was considered as an ‘active account’. Representatives replied that it defined it as those with a nil balance or with between one and five transactions in a 30-day period. Members also raised concerns that such accounts may include direct debits, e.g., an electricity bill. Representatives replied that it would only close an account if a deadline to close the account is met, and that they are of the opinion that the account is not a reliant on the account. However, the representatives also explained that if the customer was to inform them that this was not the case it would not be frozen, and that Ulster Bank was attempting to reach out to such customers.

Representatives of KBC emphasised its commitment to *“minimise the greatest extent possible the inconvenience caused to (our) customers”*. The representatives further

detailed that, in relation to its current account migration process, it expected to conclude in approximately 14 months, prior to its departure from Ireland.

In the meeting of the 19 October 2022, representatives of KBC told the Committee that in May it estimated that 52,000 customers may need to open a new account or move to a new provider and that in October, it estimated that 39,000 customer would now need to.

Recommendation 3

3. The Committee recommends that Ulster Bank and KBC, as part of its withdrawal process, publish ongoing reports detailing the number of customers that have been notified of their closure, the number of customers who have switched accounts and the number of customers who have yet to be contacted.

2.1.1 Vulnerable Customers

Representatives of KBC noted that, at the time of the meeting⁷, 52,000 customers would be required to open new accounts with another provider. The representatives explained that 97% of those customers were digitally active which would support the migration process.

The representatives also highlighted that approximately 100 customers were categorised as vulnerable and such customers would be provided with a bespoke engagement strategy. This engagement would include a more intensive outreach and one-to-one support and provided additional support to complete actions or close accounts if required.

⁷ [Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach debate - Wednesday, 18 May 2022 \(oireachtas.ie\)](#)

Representatives of Ulster Bank noted that it had reached out to over 30,000 vulnerable and older customers who may also require additional time and that, at the time of the meeting, 12,000 letters had been issued.

Representatives of AIB, Bank of Ireland and Permanent TSB all acknowledged that they were aware that additional support is required to assist vulnerable customers through the change process and that the availability of such support remains of high priority.

Recommendations 4 & 5

4. The Committee believes that vulnerable customers should be provided additional supports and time to assist them in switching accounts and recommends that all banking institutions remain cognisant of this requirement.
5. The Committee recommends that Ulster Bank and KBC report regularly to the Committee on its progress in assisting vulnerable customers manage their accounts during the withdrawal process.

2.1.2 Switching Codes

In their presentation to the Joint Committee, Electric Ireland explained that customers who wish to change their bank details with a direct debit originator (DDO) have two options; they may directly provide their new bank details to the DDO or utilise the code of conduct of the Central Bank of Ireland on the switching of current accounts with credit institutions, which is generally known as the switching code.⁸

The CBI's switching code requires that customers' current bank, which in this case is either KBC or Ulster Bank, would write to the existing direct debit originators and notify them of the customers' new bank account details. The system in place for this notification was exclusively paper based. The CBI's switching was designed for

⁸ JCFPERT, 18 May 2022, available [here](#)

individual bank account switchers under normal business-as-usual switching volumes. In the view and experience of Electric Ireland⁹, the code was not designed for bulk account switching, resulting from the exit of banks from the Irish market. An example of the volume required was given, in an average year Electric Ireland receives and processes about 2,000 direct debit amendment forms. The number of Electric Ireland residential or commercial SME customers paying by direct debit through Ulster Bank and KBC Bank, at the time of the meeting, was almost 65,000. The Central Bank estimated that the total among of retail accounts to move between April 2022 and April 2023 was 900,000.¹⁰

Full details on the operation of the switching code of conduct are available [here](#) from the Central Bank of Ireland. In July 2022, the Central Bank reinforced consumer protection expectations of regulated financial organisations providing direct debit services. The Central Bank noted that “

Firms who also operate as Direct Debit Originators must now take all necessary action to ensure they can support their customers switching bank accounts in a smooth and timely manner” and that “this should recognise that some customers may experience unexpected issues with their direct debit payments, and they should not suffer any cost or penalty as a result of issues outside of their control.”

The Competition and Consumer Protection Commission (CCPC) have outlined full guidelines on the switching code and the process that consumers should go through when utilising this code.¹¹

In its meeting with the Minister of Finance (21 September), the Minister confirmed that the Banking and Payments Federation (BPF) was engaging directly with utility providers on this matter.

⁹ JCFPERT, 18 May 2022, available [here](#)

¹⁰ Central Bank letter to CEOs of Direct Debit Originators, 27 April 2022, available [here](#)

¹¹ [Switching your bank account - CCPC](#)

Recommendations 6 & 7

6. The Joint Committee are of the opinion that the paper-based model used in the switching code was not an appropriate process given the large number of customers who were required to switch code.
7. The Joint Committee recommends that the Central Bank reform the switching code with payment service providers required to put in place automated and electronic methods and channels of communications, both between themselves and Direct Debit Originators

The Joint Committee also wrote to twenty DDO's inviting them to make a submission with regard to:

- issues that have arisen for organisations in the context of the withdrawal of both Ulster Bank and KBC banks from the market
- the impact on customers
- the actions undertaken

DDO's noted the need to assign dedicated staff to manage the migration of customers and also highlighted the extensive impact of the two banks' withdrawal on customers.

The Department of Social Protection noted that, at the time of the submission, approximately 186,000 social welfare customers were required to move their accounts to another financial institution in order to continue to receive social welfare payments. In addition, approximately 2,000 customers, who are on repayment plans with the Department, are also required to change financial institutions in order to continue to make repayments to the Departments. Similarly, VHI Group noted that approximately 10% of its customer's health policies are linked with either Ulster bank or VHI.

The Office of the Revenue Commissioners noted that in 2021, 770,334 payments totalling €9 billion were collected from taxpayers using Ulster bank accounts, which represent 10% of the tax collection in 2021 and a total of 67,645 payments totalling €72 million were collected from taxpayers via KBC accounts.

2.1.3 Mortgage Accounts

The Committee was informed by Ulster Bank that it had entered into agreement to sell its €6bn performing tracker and linked mortgage portfolio to AIB and completion of the sale is expected to occur in Q2 of 2023. This portfolio comprises 47,000 customers.

On 29 April 2022, Ulster Bank informed the Committee that the Competition and Consumer Protection Commission (CCPC) had approved an agreement for the sale of its portfolio of performing commercial lending to AIB.

At this meeting, the Committee heard that Bank of Ireland is due to purchase the entire performing mortgage book from KBC. Representatives of BOI confirmed that KBC customers will remain on the same interest rates as they had with KBC¹².

Representatives also told the Committee that the NatWest Group had also entered into discussions with AIB for the sale of Ulster Bank's performing tracker (and linked) mortgage portfolio.

The Committee were also informed that effective from 31 July 2022, Irish Life Finance Services Ltd would making ongoing advice services available to policy holders.

2.2 Impact on Staff

In June 2022, the Committee were informed by Ulster Bank that the total current staff complement, including temporary/ contract/ agent staff and full-time staff on 31 March 2022 was 2,480. This reflects 610 staff working in branches.

In their appearance before the Joint Committee, the Financial Services Union expressed serious concern about staffing numbers as recent reports and indications had pointed to long waiting times for customers and staff shortages in branches and call centres.¹³

The FSU felt that their concerns were ignored by the major banks and as such, the exit of two main retail banks would overload an already creaking system unless proper,

¹² 21 September 2022

¹³ JCFPERT Transcript, 25 May 2022, available [here](#)

detailed planning was undertaken and implemented prior to the exiting banks taking the decision to set timelines for customers to move.¹⁴ The FSU noted its concern for the health and safety of staff after both independent surveys and Irish Banking Culture Board reports stated that staff resilience is waning and that the stress of managing frustrated customers is mounting.

Recommendations from the FSU in order to alleviate some of these staff concerns include:

- a task force to be convened by the regulator to co-ordinate the agreed implementation plan
- a transparent process where stakeholders can see how many accounts have been closed and switched on a weekly basis
- a detailed plan in respect of staff recruitment
- the setting up of a dedicated desk in each branch to deal with customers looking to switch accounts or open new accounts due to the exit of both banks
- banks to publish training plans and statistics for new staff and for upskilling existing staff
- a reversal of the opening hours curtailment for all bank call centres
- a stop to any plans for banks to move to cashless branches over the next two years
- a comprehensive communication plan for customers

While some of these recommendations may be past due at this stage in the withdrawal of the banks, in light of the volume of bank accounts and account holders moving to the three remaining banks, it is unclear whether the staff complement is in place to meet this new demand.

Representatives of Ulster Bank told the Joint Committee that it had agreed with Allied Irish Bank (AIB) and Permanent TSB (PTSB) to protect hundreds of jobs, with 282 moving to AIB and 450 moving to PTSB.

¹⁴ JCFPERT Transcript, 25 May 2022, available [here](#)

Recommendation 8 and 9

8. The Joint Committee recommends that the remaining banks consider the recommendations by the Financial Services Union regarding staff concerns and report regularly on the current staffing position to address the undertaking of the new customer accounts.
9. The Joint Committee also notes the negative impact that uncertainty and precarity has had on staff in the banking sector and believes appropriate measures should be taken to address these issues

2.3 Impact on Competition

The removal of Ulster Bank and KBC from the Irish banking sector will bring significant changes to the industry, specifically in terms of competition within the market. In its engagement with the Central Bank, the Joint Committee heard that the sector is currently undergoing significant changes to its environment. Officials from the Central Bank acknowledged that the development was a “*seismic shift in terms of the retail market*”. The Committee notes that, in the aftermath of Ulster Bank and KBC’s exit, three of the current five largest banks will remain and, as such, there will be a significant reduction in competition which has potential to disadvantage customers.

However, officials from the Central Bank identified that the current banking environment is in a rapid state of flux with technology a key factor in this change, resulting in many new entrants and business models. Officials from CBI explained that this change has potential to bring “*fundamental disruption in the value chain of traditional financial services firms and sectors*” and has already impacted retail banking, payment and e-money firms and emerging areas such as crypto. Officials from the Central Bank provided the example of the number of authorised payment firms, which in the last four years has dramatically increased, from four authorised firms to approximately 40, with 30 more in the approval pipeline. In addition, approximately 10% of new mortgage lending is offered by non-bank lenders and 20% on the Small / Medium Enterprises (SME) lending side. However, as acknowledged

by the officials, this increase did not account for the lost capacity in the Irish market that is currently serviced by Ulster Bank and KBC.

The Governor of the Central Bank also noted that the impact of new technologies has allowed for the provision of financial services from non-traditional banking and that new ways of accessing finance and the entry of new participants presented both a challenge and an opportunity for incumbents. Technological innovation in the financial sector has brought both benefits to consumers, the economy and society in general, however the Governor warned that while innovation is welcome, *“not all innovations are good, and not all good innovations are done well.”* The Governor explained that the Central Bank is responsible to get the balance right and ensure consumers and the economy benefit from such changes and are protected.

The Joint Committee asked officials from the Central Bank whether credit unions could have a greater role in providing additional financial services in the aftermath of Ulster Bank’s and KBC’s exit from the market.

Officials responded that changes had been introduced to increase the capacity of Credit Unions to compete and participate in the market, but they had not yet seen evidence to suggest that potential has been reached or that its current rules and regulations had prevented greater participation.

Officials from the Central Bank clarified that while these are areas of interest to the Central Bank, it does not have a mandated role in promoting competition. When questioned on whether it should have such a role, officials replied that this was not a decision for the Central Bank, but it could take on such a role if mandated. However, officials further explained that other authorities were currently mandated in this role, that there was not a strong case to assign such a mandate to the Central Bank and added that it may be more appropriate to ensure those authorities had power to promote competition, allowing the Central Bank to focus on ensuring the financial system is stable and working well.

The Minister for Finance told the Committee that the credit union sector had the potential to play a more significant role in the provision of financial services to households and businesses and that the Department of Finance had conducted a

policy review of the sector and is developing legislation to support credit unions further.¹⁵

Recommendation 10

10. The Joint Committee believes that Credit Unions have potential to be more active in the provision of financial services and welcomes that announcement that legislation is to be introduced to further support the sector.

3. Vulnerability of Traditional Banking Services

As noted in section 2.3, the banking sector is undergoing rapid and significant changes which have been largely brought on by technological advancements. Such changes impact more heavily upon traditional banks who provide traditional banking services, such as in-branches cash services and ATMs. Representatives of the FSU noted that the Covid-19 pandemic had accelerated changes to the retail banking sector with a reduction in staff numbers, opening hours and the removal of ATMs from rural communities.

3.1 ATMs

When meeting with the Committee in May 2022, representatives of Ulster Bank explained that, as part of its phased withdrawal from Ireland, it initially planned to close with its branches and offices. However, it has since been agreed that, as part of a proposed agreement, PTSB will acquire 25 Ulster Bank branches and the ATMs associated with them.

The Committee wrote to the five main banks¹⁶ and invited them to submit a briefing on the rationale of removing such services, information on measures taken to mitigate the impact of the removal and any other information in consideration of the matter (see *Appendix 3*).

¹⁵ 21 September 2022

¹⁶ Bank of Ireland, AIB, Permanent TSB, KBC and Ulster Bank

The Committee also held a series of public meetings on potential banking changes and the provision of services in September 2022. This following an initial AIB announcement in July 2022, that planned to withdraw cash services in many of its branches throughout the country.

AIB subsequently reversed its decision following considerable public reaction to the proposed changes. In its meeting with the Committee in September 2022, AIB noted that its original decision was *“based on a genuine effort to future-proof the viability of the branch network”* and to ensure that they could keep *“170 branches open nationwide while ensuring that (our) customers could continue to access cash services in their communities through (our) expanded partnership with An Post.”*

AIB further noted that Covid-19 had accelerated the decline of cash usage and bank visitation and increased the use of digital banking services. Representatives supported this statement by explaining that there was a 35.3% reduction in the number of customer transactions between 2019 and 2022, with transaction volume falling from 9.9 million to a forecasted 5.8m this year.

However, representatives of AIB also acknowledged that they had *“under-appreciated the huge value that customers continue to attach to the presence of a fully-services local branch”* and assured members that it would not be carrying out its initial plan.

In submissions received by the Committee, representatives of AIB and BOI both noted that the increase in digital banking was a significant factor in the reduction of ATM transactions. Representatives of both banks also noted that it had entered partnerships with An Post to increase its cash services.

The Committee is cognisant that the changing landscape of the banking sector places difficulty for traditional banks to provide traditional cash services. It also recognises the decline in the use of such features.

However, while acknowledging that fewer customers are using such services, the provision of these facilities remains vital to those remaining customers, including vulnerable and elderly customers and those in rural and small communities. This need was illustrated in the public response to the initial announcement to close banking services in many branches and the subsequent reversal of the decision. While such

groups may not make up the majority of the customer base, it is vital that such groups have access to such services.

The Joint Committee welcomes Mr Hunt's commitment that, while he remains as CEO with AIB, the bank would continue to provide customers with the services they want, in a way they want.

The Committee believes that banks of a certain size and customer base should have a geographical requirement placed on them which includes cash services.

Recommendations 11, 12 and 13

11. The Joint Committee welcomes the decision by AIB to reverse its plan to close cash services in several branches and also welcomes its commitment that services will remain in the near future.
12. The Joint Committee is cognisant that technological developments have had a significant impact in reducing the use of traditional banking services such as ATMs and physical branches. However, the Joint Committee believes that such services remain vital to significant cohorts of society, including rural and urban communities, and that the removal of such services would be detrimental to the economic and societal wellbeing of such communities.
13. The Joint Committee believes that further examination on the provision of financial services to communities, businesses and householders is required and awaits the Department of Finances "Future of Banking" report which is due in late 2022.

3.2 In-Branch Banking

Bank branches are an integral characteristic of traditional banking. However, representatives of the AIB, Bank of Ireland and PTSB all acknowledged that digital banking is becoming increasingly popular method of banking. For example, representatives of BOI confirmed that its mobile banking application remains the most

popular way for customer to manage their banking, with 1.4 million customers using the application.

However, the rise in digital banking appears to correlate with the decrease in the provision of bank branches. Bank of Ireland closed 88 branches since 2021 and representatives of BOI explained that “*the decision was not taken lightly*” and that they “*had seen a significant decline in in-branch transactions and a significant increase in digital transactions*”.

Representatives of BOI also told the Committee had it currently runs 169 bank branches and that between 2022 and 2023, they intend to invest €13 million in upgrades and improvements. When questioned by the Joint Committee on whether BOI would commit to not closing any branches between now and the end of the decade, representatives replied that it could not give a commitment to dates but that the matter had been examined in 2021 and that it believed that at present, its network today is the correct size for its customers for the foreseeable future. This includes access to cash services and that if customers require access to cash, it will provide that service.

Representatives of BOI also told the Committee that, through its partnership with An Post it had significantly expanded access to local services including cash services which were now available at more than 900 post office locations across Ireland. Representatives further clarified that over 90% of its branch transactions can be handled through the post office network and this partnership has resulted in over 830,000 Bank of Ireland transactions at post offices since September 2021.

AIB currently have 170 bank branches. As noted earlier, representatives confirmed it had reversed its initial decision to remove cash services from any branches and that it would not be closing any branches in the foreseeable future.

Permanent TSB currently runs 75 branches, but it will absorb a further 25 branches currently run by Ulster Bank. as part of a recent agreement. This will involve running branches in new locations and combining some branches with branches it already has in the area.

At its meeting on the 14 September 2022, members of the Joint Committee noted that, while there has been a decrease in in-branch banking, it is concerned that excessive weighting has been given to statistics gathered over the period during the Covid-19 pandemic.

Recent commentary from the Central Bank, in its Economic Letter on ATM Cash Withdrawals, noted that both the value and volume of ATM withdrawals underwent a “structural downward shift at the outset of the Covid-19 pandemic”. However, ATM cash withdrawals remain steady subsequently by value and volume. The analysis also reported that both the number and value of ATM withdrawals fell during periods of stricter Covid-19 public health restrictions and increased when restrictions were less stringent.¹⁷

Members of the Joint Committee also highlighted that up to 40% of Irish people have poor digital skills, with a large percentage of this cohort among older persons. The increased provision of digital banking to the detriment of bank branches and the availability of cash services, further isolates such groups.

Recommendation 14, 15 and 16

14. The Joint Committee is of the view that the availability of physical bank branches providing cash services are a vital component of communities, businesses and households and believes that the provision of such facilities should be appropriately available to all communities.

15. Further to recommendation 13 and in light of concerns regarding digital literacy in Ireland, the Joint Committee recommends that accessibility audits of banking services in the State are carried out and that, in particular, accessibility issues for those with low levels of digital skills are identified, monitored and mitigated against.

¹⁷ [Vol 2022, No.6, ATM Cash Withdrawals Before, During and After the Covid-19 Pandemic \(Cronin and McInerney\) \(centralbank.ie\) https://www.centralbank.ie/docs/default-source/publications/economic-letters/atm-cash-withdrawals-before-during-after-covid-19-pandemic.pdf?sfvrsn=bf02951d_5](https://www.centralbank.ie/docs/default-source/publications/economic-letters/atm-cash-withdrawals-before-during-after-covid-19-pandemic.pdf?sfvrsn=bf02951d_5)

16. The Joint Committee recommends that legislation be introduced to provide that retail banks be required to provide cash withdrawal and deposit facilities for personal and business customers within specified geographic baselines. This could be determined with regard to a bank's customer distribution, market share and geographic coverage. Responsibility could be delegated to the Central Bank to review the coverage of current cash access and submit proposals regarding appropriate geographic baselines, with scope for periodic review in line with changing circumstances. Responsibility for monitoring and enforcing compliance with these requirements could also be delegated to the Central Bank

The Committee also notes that the fall in non-traditional banking and the increase in electronic banking has led to higher risk in online and electronic fraud such as phishing scams. While this matter was not dealt with directly in 2022, the Joint Committee has included this topic in its work programme for 2023, with part of the examination to address the role of banks in responding to this risk.

4. Mortgages

According to the Central Bank, a total of 42,980 mortgage loans with a value of €10.8 billion were originated across 8 lending institutions in 2021, with 809,859 mortgage accounts with an outstanding balance of €112.1 billion.¹⁸

Despite the size of the mortgage market having declined over the past decade, housing demand remains strong, with the higher interest rate environment likely to benefit retail banks, improving their profitability given their greater dependence on net interest income relative to their European peers.¹⁹

Conversely, 54 percent of outstanding mortgage balances, which are on a variable type mortgage, are likely to see an increase in interest costs as a result of rate

¹⁸ Central Bank of Ireland, 'New Mortgage Lending Data 2021', [Data on New Mortgage Lending | Central Bank of Ireland | Central Bank of Ireland](#)

¹⁹ Central Bank of Ireland, 'Financial Stability Review 2022:1', [Financial Stability Review 2022: I \(centralbank.ie\)](#)

increases, with those on those on fixed rate mortgages facing higher interest costs than would otherwise be the case as the fixation period ends.

The Irish mortgage market continues to be dominated by the retail banks, with the market to be evermore concentrated with the withdrawal of Ulster Bank and KBC Ireland, with the proposed loan transactions between the withdrawing banks and Permanent TSB and AIB.

Non-bank lenders are playing a growing role in the Irish mortgage market, increasing their market share of new lending from 3 percent in 2018 to 13 percent in 2021. As has been noted elsewhere, “*non-bank lending is currently concentrated in the buy-to-let and refinance segments of the market, when compared to lending by retail banks*”, with the average interest rates they offer now lower than retail banks.²⁰

Credit unions are also playing a growing role in the Irish mortgage market, with a significant increase in their mortgage loan book in recent years. However, an urgent review is needed of the regulatory restrictions imposed on credit unions to ensure funds held by credit unions can be utilised to provide greater competition in the mortgage market and support home buyers.²¹

In the Irish market, lenders distinguish their products on the basis of factors such as price, (including features such as cashback), the range of fixed rate and loan-to value products offered and new products such as green mortgages.

The Central Bank recently commented that today’s mortgage market displays “*a high reliance on inertia to enable sizeable differences in interest rates to persist between new customers and existing ones*”, with banks determining that it is profitable to charge new customers mortgage interest rates of between 2.25 and 3 percent but persist in charging existing customers in the region of 4.5 percent²².

²⁰ Central Bank of Ireland, ‘Non-bank mortgage lending in Ireland: recent developments and macroprudential considerations’, Financial Stability Note, Vol. 2022 No. 3, 26 May 2022, [No.3 Non-bank mortgage lending in Ireland: recent developments and macroprudential considerations \(Gaffney, Hennessy and McCann\) \(centralbank.ie\)](#)

²¹ ILCU, ‘Strict lending rules limit credit unions to just 3% of the mortgage market’, 10 March 2022, [Imagine More - Monster Loans - The Irish League of Credit Unions](#)

²² Central Bank of Ireland, ‘Retail Banking – delivering for consumers?’, 12 November 2019, [Retail Banking – delivering for consumers? - Deputy Governor Ed Sibley \(centralbank.ie\)](#)

It has been observed how, in other markets, firms exploit consumer inertia, using complex pricing models, to charge existing customers higher prices than new customers, to both increase market share and increase income and profit margins. Big data can be used by firms, including banks, to more accurately predict consumer behaviour and inertia, allowing for differential pricing across different customer groups.

Such practices have in recent times been subjected to review and regulation to ensure fair pricing and better outcomes for consumers, such as in the insurance market through the recent ban of the loyalty penalty, the use and extent of similar pricing practices have not been subject to investigation, despite the potential harm posed to consumers and barriers to greater competition that it may cause.

The Central Bank should review differential pricing practices in the mortgage market, with recommendations to, if necessary, regulate their use to ensure good value for consumers.

In addition, the Central Bank should require 'high impact' lenders to produce annual reports reviewing their delivery of fair value and good outcomes for mortgage customers.

Switching in the mortgage market not only provides financial benefits to consumers, but can put downward pressure on prices by promoting competition between existing banks and attracting new entrants who can increase market share by attracting switching customers.

However, recent research has found persistently low levels of mortgage switching in the mortgage market, despite estimates that three in every five eligible mortgages stand to save over €1,000 within the first year, and more than €10,000 over the remaining term of their mortgage, if they switch.²³

In the second half of 2019 only 2.9 percent of mortgages switched provider.

²³ Central Bank of Ireland, 'Room to Improve: A review of switching activity in the Irish mortgage market', Economic Letter, Vol. 2020 No. 12, 29 October 2020, [Room to improve: A review of switching activity in the Irish mortgage market \(centralbank.ie\)](https://www.centralbank.ie/~/media/centralbank/~/media/Publications/Economic%20Letters/2020%20No%2012%20Room%20to%20improve%20A%20review%20of%20switching%20activity%20in%20the%20Irish%20mortgage%20market.pdf)

Research found a number of factors that discourage switching – including a lack of knowledge on the costs and benefits, financial literacy and the perceived complexity of the process.

In order to encourage switching in the mortgage market, the Central Bank introduced a number of measures to make it easier, As a result of these measures, lenders must:

- Tell you about cheaper mortgage options 60 days before you come out of a fixed rate mortgage.
- Tell you if you can switch to a cheaper mortgage based on how much equity is in your home
- Clearly explain the costs and benefits of any mortgage incentives such as cashback offers
- Give you all the information you need to switch, including telling you how long it will take.

Despite the introduction of these measures, it is clear they have been unsuccessful in driving higher levels of mortgage switching.

Measures that should be considered in order to address customer inertia and promote mortgage switching include:

- An annual reminder from lenders to their customers of the option and benefits of switching;
- Require lenders to inform customers of cheaper mortgage options and offer an appointment to consider switching option 90 days before the fixed rate period ends;
- Require lenders to guarantee or commit that an application for a mortgage switch will be completed within a specified period of time;
- A public information campaign, led by a suitable State agency, to promote the benefits of switching;
- Expanding the services of MABS or the CCPC to include advice and guidance to consumers on the switching process.

The mortgage market poses challenges to consumers – with high interest rates, consumer inertia and concentration in the sector undermining competition. A multi-

pronged approach is required to ensure that lenders deliver fair value and good outcomes for consumers.

The Code of Conduct on Mortgage Arrears (CCMA) was put in place to ensure that lenders have fair and transparent processes in place to deal with borrowers in or facing mortgage arrears.

The Central Bank recently “*identified the inadequate use of existing tools to deliver sustainable restructures*”.²⁴ Furthermore, it was noted that across many firms, borrowers in long-term arrears were being offered short-term or shallow restructures that failed to solve underlying affordability issues that were likely to be less successful or sustainable.²⁵

Reference has been made elsewhere to the relationship between Loss Given Default and the timeliness and sustainability of loan restructuring, with the Central Bank previously raising concerns regarding the quality and timeliness of banks’ responses.

Recent research has found that lenders have too often failed to use the tools under the Mortgage Arrears Resolution Process (MARF) of the CCMA to put in place sustainable and affordable alternative repayment arrangements, and that “*a substantial percentage of the borrowers currently in arrears who are deemed to be co-operating by their lender... have not been offered a restructure by the lender*”.²⁶

As has been previously discussed, there is evidence that insufficient use has been made of the waterfall of alternative repayment arrangements under MARF, despite this being a requirement under the CCMA. Consideration must be given to ensuring this requirement is followed by ensuring the CCMA and MARF have full legal effect.

Furthermore, it has been noted that a declaration on the part of a lender that a borrower is not co-operating immediately removes a borrower from the protections provided by MARF. In this context, consideration should be given to reviewing the

²⁴ Central Bank of Ireland, Press Release, 13 July 2021, “[More action is needed by lenders to resolve long-term mortgage arrears, to support distressed borrowers and improve the functioning of the mortgage market for all](#)” - Deputy Governor Ed Sibley ([centralbank.ie](#))

²⁵ Central Bank of Ireland, Speech, 13 July 2021, [A long shadow – The need for continued focus on resolving long term mortgage arrears - Deputy Governor Ed Sibley \(centralbank.ie\)](#)

²⁶ FLAC, ‘From Pillar to Post – Paper Two: Ten Years and Counting, Conclusions from a Decade of Attempting to Resolve Family Home Mortgage Arrears in Ireland’, August 2021, [FLAC Pillar to Post Paper 2](#)

CCMA to address possible imbalances in a lenders' declaration of non-cooperation and the supervision of that process.

In addition, firms' data-sharing requirements and the reporting by the Central Bank should be enhanced by the more frequent and granular publication of restructures, including a breakdown of restructure types across the range of arrears categories.

The CCMA and MARP can play a constructive role in delivering long-term and sustainable solutions to arrears, thereby improving the quality and timeliness of loan restructuring and its consequent impact on the capital requirements associated with the loans in question.

Sufficient capital is a crucial pillar in ensuring the stability and robustness of the banking system, with any reforms or changes in this area requiring careful consideration.

5. Interest Rates

On the 8 September 2022, the European Central Bank (ECB) raised its three key ECB interest rates by 75 basis points or 0.75%. This follows a previous ECB increase of 50 basis-points or 0.5% in July 2022, which was first interest rate hike in a decade.

As explained by representatives of AIB, the rate increases are in response to the significant increase in reported price inflation across the world and are designed to encourage saving and discourage borrowing as a means of reducing inflation pressures, adding that that "banks are an essential part of the monetary policy transmission system".

The increase in interest rates will impact upon the cost of borrowing money and such rates are likely to affect individuals (e.g., with mortgage payments) and businesses. As cost-of-living expenses increase due to inflation (e.g. increasing energy prices, cost of food etc), further rises in the rate of repayment are likely to add additional pressures to households and businesses.

The Committee welcomed the decisions of AIB and PTSB to absorb the July increases and not to pass the increased rates onto customers. However, at the meeting of the

14 September, representatives of AIB, BOI and PTSB could not confirm any decision upon the September increase or future increase.

Representatives of AIB also referenced recent comments by the President of the European Commission which indicated a further two to five more increases to interest rates in the near future and that such increases are expected between October and December.

Members of the Joint Committee noted that if such rates were passed onto variable-rate holders, the banks would increase its net interest income and be in a stronger financial position. Given the high levels of profit so far in 2022, the Joint Committee believes that banks should consider whether it can avoid passing such increases onto customers.

Recommendation 17

17. The Committee has concerns that the expected increases in interest rates are likely to bring further pressures to households and businesses if they are passed on by banks. The Committee recommends that banks consider the impact of any decision especially given the current cost-of-living and inflationary pressures.

6. Bank Remuneration Policy

Following the banking crisis and the agreements entered into between the State and banking sector, restrictions were imposed on the pay and rewards of employees in banks that received a State bailout.

These restrictions include:

- 1) a cap of €500,000 on an employee's annual salary;
- 2) a ban on variable pay and bonuses;
- 3) a ban on associated benefits;
- 4) an excess bank remuneration charge of 45% on any bonus payment in excess

of €20,000 paid to an employee of a recapitalised bank.

These restrictions were rightly imposed in recognition of the focus placed by bankers on increasing their own pay rather than the interests of consumers and the stability of the financial system.

This was and continues to remain entirely appropriate, further justified by recent failings in domestic retail banks and their failure to put the interests of consumers first.

The Committee is of the view that low and middle-income staff in the retail banking sector are deserving of increases in their pay, and notes that it is currently permissible for retail banks to award bonuses and variable pay to low and middle-income staff in the sector with the consent of the Minister.

The issue of bankers' pay and remuneration is inextricably linked to restoring public confidence in the culture and accountability of the retail banks.

AIB was fined €83.3 million in June 2022 by the Central Bank of Ireland for a series of significant and long-running failures in the treatment of its tracker mortgage customers, including regulatory breaches as recently as March 2022, which had devastating consequences for its customers and led to the loss of 13 family homes.

Bank of Ireland was fined €100.5 million in September 2022 by the Central Bank of Ireland for a series of significant and long-running failures in the treatment of its tracker mortgage customers, including regulatory breaches as recently as June 2022, which had devastating consequences for its customers and led to the loss of 25 family homes.

Permanent TSB was fined €21 million in May 2019 by the Central Bank of Ireland for a series of significant and long-running failures in the treatment of its tracker mortgage customers, including regulatory breaches as recently as October 2018, which had devastating consequences for its customers and led to the loss of 12 family homes.

The 2022 Public Trust in Banking Survey demonstrates that there remains extremely low trust in the sector:

- Only 19 percent of people agree that the retail banking sector takes accountability for poor behaviour and mistakes made,
- Only 20 percent of people agree that the retail banking sector puts customer needs first when making decisions,
- Only 21 percent of people agree that the retail banking sector cares about customers in vulnerable positions,
- Only 22 percent of people agree that the retail banking sector has leadership with acts with integrity,
- Only 22 percent of people agree that the retail banking sector acts to prevent or address any issues that could have a negative impact on their customers,
- Only 23 percent of people agree that the retail banking sector respects the needs and culture of local communities where they operate,
- Only 27 percent of people agree that the retail banking sector deals with customer issues, problems and complaints in an efficient and timely way.

Public trust in the retail banks has not been restored as a result of the demonstrable and significant harm that they have inflicted on their customers as recently as this year. There is no evidence whatsoever to suggest that the culture within the retail banking sector has changed.

The taxpayer bailed out AIB, Bank of Ireland and Permanent TSB at a combined financial cost of €32.1 billion and at an incalculable social cost. Public trust in the retail banks has not been restored while there is no evidence to suggest that the culture within the retail banking sector has changed.

There are therefore no grounds whatsoever to relax or remove the banking pay restrictions, including the cap of €500,000 on individual annual aggregate remuneration, ban on bonuses and super tax on bonuses above €20,000.

The Government intend to remove the cap of €500,000 on individual annual aggregate remuneration and ban on bonuses despite the demonstrable and significant harm that retail banks have inflicted on their customers as recently as this year and without any evidence of cultural change within the sector.

Recommendation 18 and 19

18. Further to recommendation 8, the Joint Committee is of the opinion that the removal of the cap on pay and bonuses in the banking sector is inappropriate and that such a policy change could be damaging to public confidence in the regulation of the sector and will not address longstanding customer issues.
19. The Joint Committee recommends that the current restrictions on banking remuneration remain in place, including the €500,000 cap on an employee's annual pay.

7. Tracker Mortgage Scandal

In 2015, the Central Bank of Ireland began an industry-wide review of tracker mortgage accounts. The review was initiated due to banks unfairly denying customer tracker mortgages, resulting in customers being overcharged incorrectly high rates. The Tracker Mortgage Examination (TME) investigated whether lenders had met their contractual obligations to customers and also examined the transparency of their communications with customers in relation to tracker-related issues. Lenders examined by the TME included all lenders who sold tracker mortgages in the past, including those no longer selling mortgages. The Central Bank published its Final Report in 2019.²⁷ At the time of the report, lenders had, so far, paid out €683 million in redress and compensation to customers. The report noted:

“the unacceptable damage that misconduct can cause to consumers up to and including the loss of their homes and properties in some cases”.

Each of the five remaining banks in Ireland have been reprimanded and fined by the Central Bank. AIB were reprimanded and fined €83 million and EBS, a subsidiary of AIB, €13.5m for a series of significant and long-running failings in the treatment of its

²⁷ [€683 million paid to affected customers – Final Report of Central Bank Tracker Mortgage Examination](#)

tracker mortgage customers holding 10,015 mortgage accounts between August 2004 and March 2022. This fine is in addition to previous fines of €125 million.²⁸

In September 2022, the CBI reprimanded and fined Bank of Ireland €143.6 million (which was reduced by 30% to €100.5 million in accordance with the settlement discount scheme provided for in Central Bank's ASP). This is the largest fine imposed to date by the Central Bank and is in addition to more than €186.4 million already paid out by Bank of Ireland to impacted customers identified prior to and as part of the Central Bank's TME. The Joint Committee notes the comment of the Central Bank:

Our investigation exposed a culture in Bank of Ireland which, when faced with a choice, prioritised its own interests with little to no regard for the impacts on its customers. There were a series of missed opportunities during which Bank of Ireland could have done the right thing by its tracker mortgage customers. Despite these opportunities, Bank of Ireland repeatedly interpreted unclear contractual terms in its own favour and against the customer, which continued the harm and loss caused to customers over many years.

The matter has been followed closely by the Joint Committee. The Joint Committee heard evidence from individuals impacted by the tracker mortgage scandal in June 2021²⁹ and is aware that there are ongoing individual cases that have not yet been addressed appropriately. It is also aware of the financial and emotional damage upon customers who were wrongly affected.

The Joint Committee has previously raised the issue of accountability for the banking sector and has cited behaviours in the tracker mortgage investigation. In its meeting with the Minister for Finance³⁰, the Committee heard that the Government would enhance the Central Bank's existing powers through provisions to be introduced in the Central Bank (Individual Accountability Framework) Bill 2022. The Bill is intended to address senior executive accountability and to improve the culture of the financial

²⁸ [Allied Irish Banks p.l.c. reprimanded and fined €83,300,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customers](#)

²⁹ [Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach debate - Wednesday, 16 Jun 2021 \(oireachtas.ie\)](#)

³⁰ [main.pdf \(oireachtas.ie\)](#)

sector. The Bill is being examined by the Select Committee in the November and December 2022.

Recommendation 20

20. The Joint Committee has significant concerns at the culture within lenders as reflected in both the tracker mortgage scandal and the subsequent response by banks, even following evidence of the significant damage to customers. The Committee, having raised in 2021 concerns about the banks decision to calculate compensation for affected customers on the basis of simple interest rather than the more appropriate compound interest, welcome the recent fines in respect of this practice which the Central Bank has now applied to AIB and Bank of Ireland. Continued regulatory vigilance and cultural reform is necessary to ensure that those affected face no further damage or difficulty in respect of this issue.

8. Tied Agents

The Joint Committee has monitored in the ongoing difficulties experienced by EBS Tied Agents. Witnesses representing the Tied Agents appeared before the Committee in 2018 (Committee of the 32nd Dáil), with consideration given to the matter in December 2020, and most recently, in June 2021. In the meeting of the 16 June 2021, the Committee heard personal evidence from individuals who have been impacted by the ongoing issue.³¹

At its meeting on the 14 September, representatives of AIB confirmed to the Committee that it wished to deal with the matter in an open and transparent manner and that it had agreed on a process of mediation which it hopes will progress quickly.

³¹ [Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach debate - Wednesday, 16 Jun 2021 \(oireachtas.ie\)](https://www.oireachtas.ie/en/joint-committee-on-finance-public-expenditure-and-reform/taoiseach-debate-wednesday-16-jun-2021)

As the matter is currently undergoing this process, the Joint Committee has no further comment, however, it is hopeful that such matters are progressed in an appropriate manner.

9. Whistleblowers – Engagement with the Central Bank

As noted previously, the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach, and Reform of the 32nd Dáil and the 33rd Dáil have examined the topic of whistleblowers, particularly in the context of issues raised by Mr Jonathan Sugarman who attend the Committee on 13 April 2017.

The Committee also met informally with officials from the Central Bank during this time. Appendix 5 of this report provides details of the minutes of these meetings and subsequent correspondence with the Governor of the time. The Joint Committee thanks the Central Bank for its agreement in publishing these items.

In January 2021, members of the Committee on Finance, Public Expenditure and Reform, and Taoiseach attended an informal meeting with the Governor of the Central Bank to discuss issues raised by Mr Jonathan Sugarman at a previous Committee meeting³². The members of the Committee who attended were:

- John McGuinness (TD) (Cathaoirleach);
- Bernard Durkan TD;
- Pearse Doherty TD.

The Committee makes the following observations:

- i. The Governor respects the role of whistleblowers and will make this clear to the finance sector.
- ii. Given the historical nature of the Jonathan Sugarman case, the Governor felt that looking back, the Central Bank handed the complaint in an appropriate manner

³²

https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2017-04-13/debate/mul@/main.pdf

- iii. Notwithstanding, the above, the Committee members are of the opinion that Banca d'Italia should have handled the number of complaints made by Mr Jonathan Sugarman to the Central Bank, in a far more open and transparent manner and should have pro-actively involved the Central Bank and Mr Jonathan Sugarman in the investigation, offering him the full support of Banca D'Italia in the actions that he was taking that were in accordance with his legal obligations and those of the Bank
- iv. Mr Jonathan Sugarman resigned from his position with the Bank and has not worked in the financial sector since, which in itself should raise concerns for the Central Bank. No doubt this well-known fact had a chilling effect on those working in the financial sector in Ireland.
- v. Mr Sugarman received no support from the State as he prosecuted his complaint and attempted to protect this good name. He certainly deserved to be acknowledged by the State for doing the right thing.
- vi. For the future, the Committee members recommend that the Central Bank be empowered to name and shame offending financial institutions to include the details of the offence, the personnel involved, and the sanction applied by the Central Bank.
- vii. The Committee members are of the opinion that the financial services sector should publish a mandatory protocol to be followed by all of its members relative to the protection of whistle-blowers.
- viii. The Committee wishes to thank Mr Sugarman for coming forward to highlight the wrongdoing in the bank and expresses great regret at the price he paid for doing the right thing.
- ix. The Governor asked if Mr Sugarman had considered making a protected disclosure.

As noted, the Committee believes that these matters remain of great importance and significance. The Committee will continue to follow developments and may provide further scrutiny in 2023.

10. Conclusion

The banking sector is undergoing significant changes and 2022 is an exemplar to this change. The imminent withdrawal of two significant banks from the Irish market will bring considerable impact to customers, staff and business.

The impact of technology and the increase in digital banking can bring many benefits to the banking sector however, as noted by the Central Bank, not all change is beneficial and not all change is done well. The decrease in traditional banking services, such as in-branch banking and the provision of ATMs remains a concern for the Joint Committee.

The current inflationary pressures are bringing many difficulties to households and businesses. It is likely that the ECB will bring further interest rate increases in order to dampen inflationary pressures however it is noted that, if such increases are passed onto customer, it will bring further difficulties to many cohorts of society.

The Tracker Mortgage Scandal and the ongoing Tied Agents mediation process will remain areas of interest to the Committee. While the Joint Committee will allow due process to be undertaken it remains concerned regarding the culture that allowed for such instances to occur.

The topic of whistleblowers remains of high interest to the Committee. The evidence provided in this report provides an update to this matter which has been ongoing for some time.

The Joint Committee will continue to examine developments in the Banking sector in 2023. The Joint Committee notes that the recent publication by the Department of Finance regarding the Retail Banking sector.

Appendix 1: Meetings and Stakeholders

Date & Transcript	Meeting	Stakeholders	Opening Statements
30 March 2022 Transcript available here	Engagement with the Governor of the Central Bank of Ireland	Mr. Gabriel Makhlouf, Governor Ms Sharon Donnery, Deputy Governor	CBOI: Available here
	Engagement with the Central Bank of Ireland on Banking, Insurance and Credit Union Issues	Gerry Cross, Director, Financial Regulation – Policy & Risk	CBOI: Available here
18 May 2022 Transcript available here	Engagement with Ulster Bank and KBC Bank.	Ulster Bank: Jane Howard, Elizabeth Arnett, Olaf Fitzsimmons KBC: Frank Jansen, Barry D'Arcy, Darragh Lennon	Ulster Bank available here KBC available here
	Engagement with Permanent TSB, Bank of Ireland, AIB Bank and the Banking and Payments Federation of Ireland	BPFI: Brian Hayes PTSB: Eamon Crowley, Patrick Farrell AIB: Jim O'Keeffe, Brian Nugent BOI: Gavin Kelly, Martin McKenna	BPFI available here PTSB available here AIB available here BOI available here
25 May 2022 Transcript available here	Withdrawal from Irish Banking Market (Resumed): Engagement	FSU: John O'Connell EI: John Dwane, Customer Operation Manager	FSU Available here

	with Financial Services Union and Electric Ireland	Colm Ó Raghallaigh, Payments Manager	Electric Ireland available here
14 September Transcript available here	Banking Issues: With representatives of AIB, BOI and PTSB	AIB BOI PTSB	AIB available here BOI available here PTSB available here
21 September Transcript available here	Banking issues With the Minister for Finance		Minister's statement available here
19 October Transcript available here	Withdrawal from Irish Banking Market	Ulster Bank KBC	Ulster Bank KCB

Appendix 2: DDO submissions in relation to the withdrawal of Ulster Bank and KBC

In examining the withdrawal of Ulster Bank and KBC from the Irish Banking sector, the Committee wrote to twenty Direct Debit Originators and invited them to issue submissions in relation to:

- issues that have arisen for your organisation in the context of the withdrawal of both banks from the market
- the impact on your customers as a result of the withdrawal of both banks from the market
- the actions your organisation has taken and will continue to take to mitigate any difficulties arising for your customers arising from the withdrawal of both banks and the need to source alternative banking services, and
- any further information that you believe would be of assistance to the Joint Committee in its consideration of this matter.

The following DDO responded. These are available to view here

- Allianz
- Aviva
- Royal London
- Sky Ireland
- Department of Social Protection
- Telecommunications Ireland
- HSBC
- VHI Group
- Commission for Communications Regulation
- Irish Life Group
- Vodafone Ireland
- FBD Insurance
- AXA Insurance
- Office of the Revenue Commissioners
- Zurich
- Commission of Regulation of Utilities

Appendix 3: Stakeholder Submissions on Staffing

The Joint Committee wrote to the five largest banks (AIB, BOI, KBC, PTSB and Ulster Bank) and requested information on the following points.

- The total current staff complement, including temporary/contract/agency staff and full-time staff from 1 January 2021 to date
- The current staff complement in branches and in call centres, including temporary/contract/agency staff and full-time staff from 1 January 2021 to date
- The rate of recruitment versus the rate of attrition regarding the number of staff being made redundant or leaving the bank
- Details of the number of temporary/contract/agency roles converted to permanent/full-time positions
- Details of the number of new positions created to deal with the large number of new accounts that may arise as a result of the exit of Ulster Bank and KBC
- Details of any redundancy programmes completed and-or ongoing from 1 January 2021 to date, and
- Any other information regarding staffing numbers that would be of assistance to the Joint Committee in its ongoing consideration of this matter

The Joint Committee received a response from each bank, and these are available on through the link here.

- Ulster Bank
- KBC
- Bank of Ireland
- AIB
- Permanent TSB

Appendix 4: Stakeholder Submissions Received in relation to ATM

The Committee wrote to five banks in relation to queries relating the provision of ATM's in the context of the withdrawal of Ulster Bank and KBC.

The responses received are listed below and available at this link.

- Ulster Bank
- KBC
- Bank of Ireland
- AIB
- Permanent TSB

Appendix 5: Minutes and correspondence with Central Bank 2017 & 2021

5.1 Meeting Note as recorded by the Central Bank, January 2021

Name of Meeting	Meeting with certain members of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach
Central Bank of Ireland Attendees	Governor Gabriel Makhlouf, Mícheál O’Keeffe
External Attendees	Deputy Pearse Doherty T.D., Deputy Bernard Durkan T.D. and Deputy John McGuinness T.D. Muireann O’Neill
Purpose of Meeting	At the request of the Deputies
Date	26/01/2021
Location	Virtual

Details of Meeting:

The meeting began with pleasantries discussing the changing impact of the pandemic on both the work of politics and the work of the Central Bank.

Deputy McGuinness opened the meeting noting the purpose was to seek a resolution to the issues raised by Jonathan Sugarman. In the initial exchange, he emphasised Mr Sugarman had done the right thing by law, but paid a high price. He outlined the sequence of actions that occurred in the case since 2007, raising a number of queries such as the definition of an inspection, the meaning of supervisory action, whether the complaint was reported to Banca d’Italia, whether it was still open to Mr Sugarman to lodge a complaint under the Protected Disclosure Act, whether it was a criminal matter, why further action was not taken, and why a fine was not issued. He stressed Mr Sugarman was a risk manager who took his job seriously.

Governor Makhlouf responded noting that he personally had spent a lot of time going through a lot of the available material to get a good a sense of the issue. He explained how the Central Bank responds to breaches when they are made, with the responses ranging from relatively minor to very significant. He noted that in 2007, the breach happened on 13 August, and by 14 August it had been rectified. He explained on-site inspections, supervisory actions, as well as the framework for supervision of firms. He explained the range of supervisory engagement,

and how fines are levied, noting a fine was levied against that firm in subsequent years, and published on the Bank's website.

Deputy Doherty outlined that the cross-party delegation meeting with the Governor on the issues shows how seriously they take this it. He pointed out that in these cases, the breach was 20 times above the limit and the person was told not to report any more breaches. He pointed to claims by Mr Sugarman of further breaches of liquidity (in the presence of Michael Smyth a journalist and barrister). He thought this was an opportunity to acknowledge it could have been dealt with differently.

Governor Makhlouf stressed the Central Bank had never indicated Mr Sugarman had done anything wrong. As he indicated in his letter, having reviewed the available evidence, he assessed the Central Bank had taken appropriate action. He noted if such a breach were reported today, it would certainly be treated as seriously. However, he had seen no evidence that in this case, the judgements made were wrong. Disclosure of such breaches is the correct course of action.

Deputy McGuinness noted Mr Sugarman had suffered a lot. He thought this was damaging to whistleblowing more broadly, and whistle-blowers need to be encouraged to come forward. Mr Sugarman believes he was not a whistle-blower but a risk manager who did his job. Deputy McGuinness agreed with Deputy Doherty that some public recognition would be appropriate.

Deputy Durkan said he had not been a member of the committee then, but a member of the DIRT inquiry, and one of his questions was what was learned? And to what have those learnings been put? He thought unless the issues were statute barred, something should be done to address them.

Governor Makhlouf stressed that the Central Bank had not done anything to Mr Sugarman. Rather having received information about the breach, the Central Bank had reviewed that information and acted upon it appropriately. There appeared to be different issues between Mr Sugarman and his employer, which would not be appropriate for the Central Bank to get involved in. He noted that were this to happen again today, he would hope that a protected disclosure would not be necessary and the entity would report it. He agreed with the Deputies on the importance of protected disclosures. He explained from his experience the protected disclosure framework was working, although he was always open to hear different views from people. He explained that the Central Bank publishes the number of protected disclosures in its Annual Report. He agreed to reflect on speaking publicly about the importance of protected disclosures.

Deputy Doherty felt further contact should have been made with Mr Sugarman, notes should have been shared, beyond simply acknowledging the breach. He encouraged the Governor to go beyond comments on protected disclosures.

Governor Makhlouf explained how the Central Bank today was very different to that in 2007. He outlined how in the future, the Senior Executive Accountability Regime would ensure clearer responsibility and accountability by placing obligations on firms and senior individuals. He explained as Governor, if he saw evidence that left him uncomfortable, he would call it out. But in this case, he had not.

Deputy McGuinness closed the meeting, noting they welcomed the exchange and stressing the importance of the protected disclosure regime.

5.2 Meeting Minutes as documented by the Central Bank of Ireland, January 2021

Private meeting held between Members of the of Finance, Reform & Expenditure, Taoiseach Committee and the Governor of the Central Bank of Ireland to discuss matters in relation to Mr. Jonathan Sugarman and the Central Banks handling of his concerns/Protected Disclosures.

Date: 26th January 2021

Time: 3.00pm

Meeting via zoom

In attendance:

Governor of Central Bank (IRL) Gabriel Makhlouf.

Chair of Finance, Reform & Expenditure, Taoiseach Committee: Deputy John McGuinness.

Member of Finance, Reform & Expenditure, Taoiseach Committee: Deputy Pearse Doherty.

Member of Finance, Reform & Expenditure, Taoiseach Committee: Deputy Bernard Durkin.

Also in attendance: Micheal O’Keeffe and Muireann A.O’Neill

Matters arising from the meeting:

Documentation referred to in meeting:

Reference was made to the letters sent to the committee on the 10th January 2018, Minutes of the meeting 15th November 2017 (meeting with previous Governor Philip Lane Central Bank and Mr. Sugarman was present) and Governors letter on the 2nd November 2020

The members acknowledged receipt of a letter from the Governor which was circulated to them prior to this meeting.

Discussion and responses around events:

What is a supervisory action? The 2007 complaint, the breach Mr. Sugarman reported was €4.5 billion.

Is the route of Protected Disclosure still open to him regarding this? A breach is a breach so why did the Central Bank not deal with his complaint at the time. The organisation in question said they were 40% over the limit. Mr. Sugarman was told not to report any further matters to Central Bank.

The facts of the case were revisited, and the serious breaches highlighted. It was mentioned that the matter was reported to the Gardai as at the time it was a criminal matter as it involved €4.5 billion.

The Governor informed members that he took this matter very seriously, he watched the hearings of Mr Sugarman in Finance committee meeting, he carried out his background research, went through all of the material and looked into this matter before the meeting, read his predecessors findings and concurred with him.

It was acknowledged that these events happened more than 13 years ago. When there are breaches the Central Bank will respond and they will take action.

In 2007 the breach was reported on 13th August and the 14th August it was put right, Central Bank did visit the premises and address the issues appropriately.

It was mentioned that supervisory action means they told a firm to do something, (to change some process etc) Central Bank have taken action and also work with ECB to ensure the banks are compliant. They did review what happened back in 2007.

Protected Disclosure

It was stated the Protected Disclosure route is still open to Mr. Sugarman if he wishes to use it.

If Mr. Sugarman still has evidence to give the Central Bank he can do so, it was stated he we have treated his concerns appropriately.

If he has new evidence, he is welcome to present it and have it dealt with accordingly. There was a discussion as to what Mr. Sugarman expected to see as a result of his complaint. The Governor stated that he is bound by strict confidentiality rules and there is a limit to what they can say. He felt his predecessor dealt with his facts appropriately.

It was stated that Mr. Sugarman took his job very seriously.

Central Bank said they did look at the facts and did not treat it differently to other cases.

It was highlighted that a few years later the firm involved was fined and made public. On the Central Bank's website, the firm in question was fined and sanctioned and made public.

Governor confirmed that they did at the time visit the premises of the organisation. He said he believed at the time regarding Mr Sugarman that they did treat his concerns appropriately.

Handling of matters by the Central Bank at the time

Pearse Doherty felt that this matter was not dealt with back 13 years. It was never actually accepted; it was moral suasion that was used. It was 20 times above the legal limit. It was never acknowledged by the Central Bank that this was the wrong approach taken. It was a serious breach and the person that came forward was told "not report any further breaches to the Central Bank".

It was said that Mario Draghi, President of European Central Bank made it clear when he was before the Oireachtas Chair of the Finance committee, he said there was no reporting to the parent bank Banc d'Italia, despite claims that were made in the past in the Dail to the Minister who worked from the assurances he may have got at the time from the Central Bank. An important question was posed is the Central Bank had they satisfied that there was no other breaches during that period?

It was looked at during the Bank Inquiry but these documents were not available at the time. Mr. Sugarman was right to report his concerns which he did and he should be vindicated publicly.

The Governor said that Central Bank never said Jonathan Sugarman ever did anything wrong, however John McGuinness said "it was then stated that the bank never said that he did the right thing". All they have said is that they took appropriate action at the time to deal with the complaints that he made.

The response from the government was that the CB inspectors and the supervisors were reasonable in the circumstances and again it was looked at in 2010 and their actions were recommended.

The Governor made another point that they cannot question relevant people because they are no longer there to get the absolute facts all he can do now is read what is on paper. He also said he has taken this seriously and he is not trying to cover up mistakes he believes they

must be fair to Jonathan Sugarman, the employees at the time and the situation as he sees it now.

Effect on Mr. Sugarman's life as a result of reporting

It's a long time ago however Mr. Sugarman experienced public exposure, he did his job, reported the wrong, he was not included in the investigation. This breach reported was not only 20 times over but it was 40 over the legal limit.

A question was posed, if the same situation was analysed now. What would the CB do differently?

Mr. Sugarman followed the law, assisted the Central Bank and blew the whistle Mr. Sugarman's life has been destroyed since then.

What was learned from this situation? Has anything changed?

A public officer doing his/her job as they saw fit should not be penalised or ostracised in any way.

The Governor said that the Central Bank has not done anything to Mr. Sugarman, they have not attacked him or fined him. They received the information about the breach in August and they reviewed them. There are a serious of actions that have affected Mr Sugarman but as far as he can see they are about Mr Sugarman and his employer and not the Central Bank that has directly impacted him at the time.

It was asked of the Governor: If this was to occur again would the outcomes be the same? He replied, "they would look at the facts and review".

Governor said Central Bank treat Protected Disclosures very carefully.

It was reiterated again how Mr Sugarman suffered for doing the right thing. He had an obligation to report and he did but in doing so he paid the greatest price he had to resign. He assisted the Central Bank and followed the law. It was also stated that if a whistle blower looked at how Mr. Sugarman was treated, he/she would be discouraged from becoming a whistleblower themselves.

Mr. Sugarman had stated in a previous meeting that "I am a risk manager, I am not a whistle blower", he reported to the Central Bank and he paid the price". "He wanted it to be said he did something right" "They won't touch him because of his honesty", "He should get positive recognition instead he lost his job- this was never addressed."

Reporting breaches in the Central Bank today

Another question was posed to the Governor, if it happened today would the Central Bank do anything differently and the reply was “they would look at the facts and have a similar conclusion”.

Today the Governor would expect a letter from the firm and certainly not a protected disclosure. He feels that today that Protected Disclosures are working in the Central Bank. An example of a significant Protected Disclosure that was recently given to them and are protected very carefully.

Final outcomes:

Closing comments by members

A senior risk manager was never contacted again after reporting, only an acknowledgement, it is seen as very poor practice.

We haven't got to the bottom of that there was a number of breaches in 2010 and the notes of those meetings were never shared with Mr. Sugarman.

The Central Bank have admitted failures, Anglo is the example here.

Issue as to why he was told not to report again, Central Bank is a regulator and their job is to protect the good guys.

Governors closing comments

Final comments made to the Governor was that it was felt by Jonathan Sugarman that he was not shown respect, he had lost his job and even though he complied with legalisation. The response was the Central Bank did listen to Jonathan Sugarman.

Governor said he will consider talking publicly in favour of Protected Disclosures. He feels uncomfortable about speaking about Mr Sugarman publicly for all the reasons he has said.

It was felt that the Central Bank did not show him respect for doing his job. But the Central Bank said it felt he was shown respect in the two meetings he met with the Central Bank. They did want to meet him.

The Governor said he would reflect on publicly standing up for whistle blowers.

He felt actions today from the firm may have been the same, this would not shock him today and if he saw actions in 2007 he would have called it out.

The Governor closed by saying he would reflect on all matters discussed today. The future of the Central Bank will be very different going forward.

He also said “if he saw matters that would concern him back in 2007 he would call it out

It was finally mentioned to stand up for whistle blowers and speak up positively for whistleblowers

The meeting adjourned at 3.50pm.

5.3 Correspondence from Central Bank 10 January 2018

JC Finance, Public Expenditure and Reform, and Taoiseach

Correspondence Item 2018/528



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Philip Lane *Governor*

T +353 1 224 6001 F +353 1 671 5550

Bosca OP 559, Sráid Wapping Nua, Cé an Phoirt Thuaidh,
Baile Átha Cliath 1, Éire.

*Po Box No. 339, New Wapping Street, North Wall Quay,
Dublin 1, Ireland.*

www.centralbank.ie

Mr John McGuinness TD
Chairman
Joint Committee on Finance
Public Expenditure and Reform, and Taoiseach
Leinster House
Dublin 2

10 January 2018

Dear Deputy McGuinness

I refer to our meeting with you and Mr Sugarman at the Central Bank of Ireland (the “Central Bank”) on 15 November 2017. The purpose of this letter is to document the key points discussed at the meeting and to provide some further information for you on some of the questions that were raised.

Unicredit Bank Ireland plc (“UCI”)

The Central Bank is bound by strict confidentiality obligations and is normally precluded from commenting on firm specific matters. There is, however, already significant relevant material in the public domain about the matters discussed at our meeting:

- i. In August 2007, the Central Bank received a letter from UCI reporting a breach of the Central Bank’s 2006 Requirements for the Management of Liquidity Risk. The letter outlined that “substantial intergroup lending on 13 August 2007” caused the breach, and that once the breach was identified, it was rectified immediately. UCI confirmed that it was in compliance with its liquidity requirements on 14 August 2007 (the following day).
- ii. In October 2007, an inspection of UCI was undertaken by the Central Bank and the Central Bank was satisfied that the breach did not suggest a wider or more systematic erosion of the overall liquidity position or financial strength of UCI.



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Eurosystem

- iii. Additional claims were reported in 2010 in the media and in Seanad Éireann, noting that numerous breaches took place in UCI in the months following the introduction of the Liquidity Requirements in 2007. A further inspection was carried out by an independent third party upon the instruction of the Central Bank. This firm was engaged in order to provide assurance that UCI was in compliance with relevant liquidity requirements. This investigation did not highlight any further breaches.

As regards further publicly available information in relation to UCI, the Central Bank entered into a Settlement Agreement with UCI on 13 March 2014. UCI was reprimanded and fined €315,000 in relation to four prescribed contraventions of the large exposure requirements under the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. 661/2006), and of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. 395/1992). The breaches occurred between January 2011 and December 2012 and were notified to the Central Bank by UCI. The detail of this settlement is published on the Central Bank website at <https://www.centralbank.ie/docs/default-source/news-and-media/legal-notice/settlement-agreements/unicredit-bank-ireland-plc.pdf?sfvrsn=6>

As noted, due to the strict confidentiality obligations imposed on the Central Bank at European and domestic level, save for the matters outlined above which are already in the public domain, the Central Bank is prohibited from disclosing confidential information related to regulated entities. It is important however to note that the lack of specific reference to action(s) which the Central Bank may have taken should not be taken to mean that no other supervisory action was taken. For context, we have set out details below on the Central Bank's enforcement strategy and how it may deal with suspected breaches of financial services legislation.

In relation to the Garda Commissioner's letter referenced by you at our meeting, the Central Bank is prohibited from providing any detail other than that set out above. The Central Bank is however satisfied that it has assessed and taken action as appropriate with regard to all information received (by way of report, letter, inspection or through the media) in relation to UCI. As always, any further or new information that may be provided to the Central Bank will be considered seriously and investigated thoroughly.



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Eurosistem

O-SII

There was discussion at the meeting about UCI being identified as an other systemically important institution (“O-SII”). We thought it would be useful to follow up and clarify this. O-SIIs are defined as institutions, which are systemically important to the domestic economy or to the economy of the European Union (EU). The O-SII framework has been in operation in Ireland since 2015. It determines that the Central Bank must review on an annual basis the identification of O-SIIs and the associated capital buffers for identified O-SIIs. The EBA Guidelines¹, applied by the Central Bank, establish a scoring process for assessing the systemic importance of an institution based on indicators relating to size, importance, complexity/cross-border activity and interconnectedness. Following the 2017 assessment the Central Bank publicly announced² in November 2017 that UCI continues to be one of six O-SIIs. As a result, an O-SII capital buffer will be applied to UCI from July 2019. Unlike the retail O-SIIs, UCI’s main business area is international lending and its loan portfolio comprises of credit institutions, multinational companies and sovereigns. UCI does not operate accounts for consumers and does not offer personal loans.

Banca d’Italia

It was also raised during the meeting that the issues identified as part of this case were not disclosed to Banca d’Italia. The Central Bank is precluded from commenting on any interaction with Banca d’Italia on firm specific matters. However it is important to note that frequent cooperation between supervisory authorities both at EU and at a global level is a key aspect to our supervisory engagement. Engagement is undertaken with other Competent Authorities both on a bilateral basis and as part of colleges of supervisors. These engagement activities are used as vehicles for the coordination of supervisory activities and to highlight issues within individual jurisdictions. Under EU law, colleges of supervisors must be established for EEA banks with subsidiaries or significant branches in other EEA countries.

Enforcement strategy and powers

The Central Bank operates an assertive risk based approach to supervision which is supported by a credible threat of enforcement. The Central Bank responds to suspected breaches using varied and adaptive supervisory and enforcement tools as appropriate. The Central Bank seeks to ensure that the

¹ EBA/GL/2014/10 Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs).

² <https://www.centralbank.ie/docs/default-source/financial-system/financial-stability/macprudential-policy/other-systemically-important-institutions/o-sii-announcement-november-2017.pdf?sfvrsn=4>



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use of its enforcement powers contributes to the promotion of core behaviours and standards in regulated entities and those that work in such entities. Where regulated entities and/or individuals fall short of those expected standards of behaviour, the Central Bank will take appropriate enforcement action. Such action serves to impose dissuasive and proportionate sanctions in order to achieve compliance.

The Administrative Sanctions Procedure (“ASP”) is a means by which the Central Bank investigates and sanctions prescribed contraventions by regulated entities and individuals. The ASP is governed by Part IIIC of the Central Bank Act 1942 (the “1942 Act”). Under the 1942 Act, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements (referred to as “prescribed contraventions”) by regulated firms or persons concerned in the management of such firms (“PCMs”). As outlined during our meeting, in the course of an investigation under the ASP, there is a variety of actions which the Central Bank may take depending on factors such as the nature, frequency and seriousness of the suspected breach(es). These are outlined in greater detail in the Outline of the Administrative Sanctions Procedure which is available on the Central Bank website.

If, having investigated, the Central Bank has reasonable grounds to suspect a prescribed contravention has occurred, to conclude an ASP investigation, it may decide to:

- i. Take no further action.
- ii. Take supervisory action for example issuing of directions or conditions such as risk mitigation programmes and/or conduct supervisory inspections.
- iii. Issue a Supervisory Warning. Where the Central Bank considers that the matter does not warrant an administrative sanction, but there are reasonable grounds to suspect a prescribed contravention has occurred, it may issue a Supervisory Warning calling upon the regulated entity to rectify the matter(s) identified. Supervisory Warnings are not published by the Central Bank.
- iv. Agree a settlement, the outcomes of which are published on the Central Bank’s website.
- v. Refer the case to Inquiry for determination and sanction. Following an Inquiry, or as part of a settlement, sanctions may include a (i) caution or reprimand; (ii) the imposition of a monetary penalty; and / or (iii) a direction disqualifying a person from being concerned in the management of a regulated firm.



Since 2006, the Central Bank has imposed over €61 million in monetary penalties as a result of taking 116 cases under the ASP.

Protected Disclosures

The Central Bank (Supervision and Enforcement) Act 2013 (the “2013 Act”), which was commenced on 1 August 2013, introduced new provisions in relation to the making of protected disclosures to the Central Bank regarding alleged breaches of financial services legislation. It also provided legislative protections for those making such reports. Subsequently, the Protected Disclosures Act 2014 (the “2014 Act”), which was commenced on 15 July 2014, introduced legal protection for all workers who make protected disclosures against their employer. The Central Bank is a prescribed body under the 2014 Act to receive disclosures from a worker relating to alleged breaches of financial services legislation by their employer.

In broad terms, the protections which accompany a protected disclosure are:

- i. The confidentiality of the identity of the reporting person making the protected disclosure. This is subject to certain exclusions – for example, where disclosure is necessary for the effective investigation of any matter or is required by law.
- ii. The reporting person making the protected disclosure is protected from civil liability.
- iii. The reporting person making the protected disclosure has a right of action in tort.
- iv. Where the reporting person making the protected disclosure is a worker (i.e. they are making a disclosure under the 2014 Act), their employer may not penalise or threaten penalisation for making the protected disclosure and an employer may be prosecuted for penalising a worker. In addition, workers are protected from dismissal.
- v. Workers can submit anonymous disclosures to the Central Bank and such disclosures can be treated as a protected disclosure under the 2014 Act.
- vi. Disclosures made under the 2014 Act do not constitute a criminal offence if, at the time the worker made the disclosure, it was, or they reasonably believed it was, a protected disclosure under the 2014 Act.

While both Acts create protections for those making disclosures, it should be noted that the Central Bank has no role in those protections (other than confidentiality) nor does it have a role in assessing



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whether or not a disclosure is a protected disclosure. Whether a disclosure is a “protected disclosure” is a matter of law to be assessed by a Rights Commissioner, the Labour Court or the courts.

Making a Protected Disclosure to the Central Bank

A dedicated unit, the Protected Disclosures Desk, has been established in the Central Bank to receive reports. Where a person has information and wishes to communicate by way of our protected disclosures channel, there are a number of avenues available including a confidential email address, a dedicated protected disclosure telephone line, or by post. This information can be found on the Central Bank’s website: <https://www.centralbank.ie/regulation/protected-disclosures-whistleblowing>.

Once a disclosure is received, it is considered and assessed by the relevant supervisory division. The Central Bank of Ireland’s Annual Report 2016³ notes various supervisory actions that were initiated following receipt of protected disclosure reports. These included enforcement action, on-site inspections, risk mitigation programmes issued and placing firms on a watch list.

The Central Bank considers the receipt of protected disclosures as a valuable tool to assist in our supervision of regulated firms. We treat every such disclosure seriously and examine allegations thoroughly. We value and welcome the receipt of all such information that assists us in the discharge of our statutory objectives. However, in accordance with strict statutory confidentiality obligations under Section 33AK of the 1942 Act and EU legislation, the Central Bank cannot inform persons who make protected disclosures of what action, if any, has been taken as a result of their disclosure. Doing so could breach the legal rights of a person, or firm who has allegations of wrongdoing made against them, and could compromise the investigation of a case. Where the outcome of an enforcement action is public, such as in the case of a settlement, it is the policy of the Central Bank to publish this on our website.

European Central Bank Breach Reporting Mechanism

Since 1 November 2014, a number of supervisory responsibilities and decision-making powers for banks moved to the European Central Bank (ECB), through the establishment of the Single Supervisory Mechanism (SSM). The ECB is responsible for all core supervisory responsibilities as defined in Council Regulation (EU) No. 1024/2013 (‘SSMR’). Where a person or entity wishes to report a

³ <https://www.centralbank.ie/docs/default-source/publications/annual-reports/2016-central-bank-annual-report.pdf?sfvrsn=4>



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suspected breach by a Significant Institution, or by one of its subsidiaries, they can inform the ECB directly by filling out a specific Breach Report on their website:

https://www.bankingsupervision.europa.eu/banking/breach/form/html/index_en.html.

Alternatively, they may contact the National Competent Authority (NCA), which is the Central Bank in this jurisdiction, who will then complete the Breach Report based on the information provided and submit the relevant information to the ECB.

Summary

The Central Bank has thoroughly investigated, on more than one occasion, including through the engagement of an independent third party, the issues identified by Mr Sugarman in respect of UCI. The Central Bank is satisfied that it has taken appropriate action with regard to all information received in respect of the matter (by way of report, letter, media) and through the Central Bank's own investigation.

The Central Bank has demonstrated its willingness to respond to suspected breaches by regulated firms using varied and adaptive supervisory and enforcement tools as appropriate. As outlined above, actions initiated by the Central Bank following receipt of protected disclosures include enforcement action, on-site inspections, risk mitigation programmes and placing firms on a watch list. Not all of these measures involve a public outcome.

Receipt by the Central Bank of protected disclosures is a valuable tool to assist in our supervision of regulated firms. Legislation enacted in 2013 and 2014 provides statutory protections for persons who make protected disclosures in accordance with the legislation. We treat every such disclosure seriously and examine allegations thoroughly. We value and welcome the receipt of information that assists us in the discharge of our statutory objectives and in the event that any new information is provided to the Central Bank it will be considered seriously and examined thoroughly.

Yours sincerely

5.4 Meeting Minutes as documented by the Central Bank of Ireland November 2017

Location: Central Bank Dublin

Date: 15th November 2017

Time of Meeting: 12.30pm- 2.30pm

In attendance was:
John McGuinness TD (JMCG), Governor Philip Lane (PL), Jonathan Sugarman (JS), Ronan Flynn (RF), Shauna Cunningham (SC)

JS -Speaks first and states clearly that as a risk manager the bank he worked for was 20 times over the limit in 2007. His reporting at the time represented €4-5 billion. As defined by Central Bank, 1% is a material breach. Central Bank regulations state very clearly what has to happen as soon as a breach occurs. The liquidity breaches continued to occur and increased in magnitude through-out the month that followed his report to the Central Bank. It was because of this that he found he had no choice but to resign in mid-September 2007.

PL- There was a letter given by UniCredit Bank in August 2007. The letter informed the Central Bank that UniCredit Bank (IRL) had exceeded the permissible liquidity ratio by 20 times the limit.

SC -Accepted a letter was given to Central Bank to which JS stated a significant breach. SC confirmed at this point they have the letter.

PL- Talked about the two signatures on the letter. SC stated the letter came into Central Bank and that they took action.

JS -Stated that by mid-September 2007, no action was taken by the Central Bank. The only action taken by the Central Bank was to write a letter of acknowledgment which JS received as the bank's risk manager. None the less, liquidity breaches continued to occur, but the bank's CEO instructed him not to report them to the Central Bank. Therefore, he felt he had

no choice but to hand in his immediate resignation in September 2007. He was on garden leave from UniCredit, but technically still its employee, until mid-October 2007.

SC- Stated that as the Central Bank guarantees the confidentiality of the banks it supervises, actions taken could not be discussed. She could only discuss the process.

JS -There was no immediate action by the Central bank, apart for the letter of acknowledgement he received. No enforcement actions, either public and/or private, were taken, despite the fact that he had officially reported a multi-billion breach of regulations to the Central Bank. Yet only this letter was issued by the Central Bank. He did not witness any further action by the Central Bank right until, and including the day he resigned, a month after he reported the breach to the Central Bank.

JS- Not aware to this day of any phone call made by anyone at the Central Bank to UniCredit in relation to the breach he reported in mid-August 2007. Breaches continued to occur and Irish law violations continued to occur, yet they were not reported to the Central Bank – as required by Irish law. In his meeting with the Central Bank in 2011, to which he was accompanied by Michael Smith (Barrister), Central Bank officials stated repeatedly that during their investigations they had sight of further liquidity breaches which UniCredit Bank did not report to the Central Bank in the summer of 2007.

JMCG- I know JS from the Finance Committee he is a risk manager who was aware of this breach and having reported it, he heard nothing from the Central Bank.

After that letter to the Central Bank, JS resigned. What he witnessed and his belief that nothing happened in 2007, made him report the matter the Gardai (in summer 2010).

PL - Publicly it was investigated and a second look back took place in 2010. “Viewed and not a recurring issue. What happened cannot be said publicly but said it was handled correctly.

PL - When were the other breaches after that month?

JS- An external firm based in London was hired to assist UniCredit Bank (IRL) with its liquidity calculations. This firm was already engaged to do so for Anglo-Irish bank, so it was very familiar with the new Liquidity Regulations issued by the Central Bank. In mid-September 2007, this firm rang JS at home one evening to inform him that their independent calculations show UniCredit Bank (IRL) to be exceeding the liquidity limit by a staggering 40%. The

following morning, after the bank's CEO refused to take immediate action and to notify the Central Bank, JS resigned as he said he was not going to spend 5 years in Mountjoy prison – the possible penalty stipulated by Irish law for violating liquidity requirements.

PL – Acknowledged receipt of letter stating that UniCredit Bank (IRL) was at a 20% liquidity breach as at the close of business 13th August 2010. PL then asked JS if he had notified the Central Bank of the subsequent liquidity breaches that had led to his resignation from UniCredit Bank?

JS- Stated that he was instructed by his manager, UniCredit's CEO, not to report any off the subsequent breaches to the Central Bank.

JMCG- The Central Bank was made aware. JS said UniCredit must have adequate IT systems. It warranted to notify the regulator, external auditor, Central Bank and the internal auditor in relation to 13th August 2010 issues.

PL - They did interviews.

JS- "I was there for another month after I notified you of a 20% breach – twenty times the limit as defined by the Central Bank, but you left me totally exposed and you had my contact details – yet nothing happened."

PL- We cannot discuss this and we stand over our actions as a regulator. We do acknowledge that JS' name was stated as UniCredit's contact person in the letter informing the CB of the breach.

JS - Notification in letter of breach to contact him but they did not.

JMCG - Under process there was significant breaches reported by JS and other breaches.

SC -Yes also breaches in 2011.

JS - A Central Bank official stated in front of a barrister, at his meeting with the CB in 2011, that during their investigations of UniCredit, they had sight of internal documents which showed further liquidity breaches during the summer of 2007. Breaches that were not reported to the Central Bank – as would be required by regulation.

RF - No record of that.

JS – We would not be facing this problem had the Central Bank allowed our meetings to be audio recorded.

SC - Daily set of reports are signed off by all the bank's senior management.

JMCG - JS was UniCredit Bank's Risk Manager in Ireland; so what is Central Bank processes when notified of a breach?

RF - A breach must be reported and the CEO must be contacted, CB senior manager made aware and then the enforcement division. The supervision team investigates and finally an enforcement referral document might be written.

JMCG- Are you happy all processes were followed? If a breach took place was the correct financial penalty applied?

SC- We have taken enforcement cases against 60 firms and they have been fined.

JMCG- Could you compare the status of these breaches and compare to what JS reported?

SC- We have a range of sanctions; they can be enforced to a supervisory warning or we may deal with a private warning.

JS- We know for a fact, as this was published in the Irish Independent, that regulation breaches continued to occur at UniCredit (IRL). This headline, which mentions a €315,000 sanction, raises several questions: <https://www.independent.ie/business/irish/unicredit-fined-315000-for-control-breaches-30104472.html>

- A. How come it took the CB until 2014 to sanction UniCredit for breaches that occurred in 2011 AND 2012?
- B. CB regulations are very clear about the requirement of all banks to operate adequate IT systems – this would imply 'built-in' risk-control safe-guards.
The 2014 fine was on account of credit exposures to Spain & Italy; this begs the question how could these trades have physically been entered into the system, if the system should be constantly monitoring current exposure against risk-limits?

C. This implies that risk control practices and systems had not been improved since JS resigned from UniCredit in the September of 2007. The €315k sanction just proves that 3,4,5 years since his resignation, there were still serious difficulties with the bank's IT systems and integrity of information provided to and by the management, as UniCredit Bank continued to break the law.

RF- There was a phone call made to UniCredit's CEO in August of 2007 when the 20% breach was reported.

JS - This is the first time in ten years that I have heard of this phone call to my boss, the bank's CEO. This is even more surprising since PL began this meeting by acknowledging the letter of the 20% breach and stating that JS' name was stated clearly on it as the contact person.

JMCG - Does the CB have a record of the telephone call made to UniCredit's CEO? May he see it?

RF- Several years of breaking the law you say. From our point of view, we took seriously the letter and the offer to be contacted. CEO was first point of call and the obvious point of contact.

JS- Yet the Irish Independent article clearly states that you engaged directly with [REDACTED] (JS replacement as risk manager) in relation to the 2011 & 2012 breaches.

RF- Confirms contact with risk manager.

JS- Yet he was never contacted in August 2007 and the bank continued breaking the law even after the alleged phone call to the CEO.

RF- If mediation happens the problem can be fixed.

PL- The fact, why you resigned who did you communicate with?

JS- CEO and told of the problems with bank appointed by the board.

PL -cannot supply how investigation went. Routinely IT work is what we would look at. We received a lot of Protected Disclosures.

JS- I complied with your rules. I am not a whistleblower.

JMCG- JS came in the front door of the CB.

PL- The name of the CEO was at the bottom of the letter.

SC- Sanctions are issued when a regulated body has been found to be in breach of regulation.

JMCG- Looking what happened to JS he was involved in the breach and it went beyond this. I don't question his honesty. I would take it at face value. Should someone have gone from the bank and remember this is the biggest financial disaster of our age.

SC- Process- we followed process.

JS- So why wasn't I called to explain how the bank reached a point where the liquidity beach was twenty times the limit?

PL- We were fully in line with CB regulation. Letter received by CEO and route was to go back to CEO.

JS- Regardless of whatever phone might have been made to UniCredit by the CB, it could not have been very concerning to UniCredit, as we continued to break the law.

PL- You did not directly communicate this to us.

PL- We comprehensively looked at 2007. Conclusions are confidential.

JS- What was I expected to do?

PL- We received the notice of Liquidity Regulation in August 2007. We stand over our actions at the time and the two investigations since.

JS- Process was different then. Told you we were breaking the law; letter to CB was signed by CEO. On a separate note, it is important to acknowledge that my chairman at UniCredit Bank – ██████████, was a director at the CB while these investigations took place.

PL- Repeated receipt of the notification of the breach in August 2007.

JS- I received an acknowledgement from the CB of the breach that I reported.

JMCG- Letter went to JS. Follow up did not include JS. An independent company stated the bank was 40 times over the limit. Someone should have been arrested.

JS- My professional integrity was dragged through the mud.

PL- Are you holding me responsible for that?

JS- Yes; in your capacity as the Governor of the CB that failed to act in accordance with its own laws. Furthermore, how do you explain the fact that the CB threatened to 'hand me over' to the DPP if I were to disclose any further wrongdoing at UniCredit Bank. This threat was made at my first meeting with the CB, after the CB responded to queries by the Sunday Business Post. The response invited anyone with relevant information to come forward. It was in response to that statement that I attended a meeting at the CB, accompanied by Michael Smith who then reported the threat in Village magazine.

SC- Process in Irish regulation breaches and criminal breach appropriate. DPP not the Gardai. I was not at the meeting.

JMCG - Could the CB not offer immunity?

JS- I came in good faith. I did not expect to be threatened.

SC- CB cannot give assurances regarding criminal procedures. The letter that came in was appropriate and correct. Now in terms of supervisor's sanctions and disclosures, firms should come and tell us if anything is wrong and also if any legal process takes place. For example, in 1995 AIB was sanctioned. Protected disclosures were not in place at the time.

JS- Process now is different.

PL- How do we handle

SC- When we become aware of problems- we have guidance, communications, information received and may have 3rd parties to do further work. We try to mitigate risk. If serious it can be private or public. CB sanctioned UniCredit Bank.

JS- 2 years later and not over the multi-billion breach that I reported.

PL- Assurance whole period was investigated. Perceived conflict of interest. I don't doubt your integrity. I read your book.

JS- What should I have done?

PL- Encourage people to disclose. We have a Protected Disclosure policy.

JS- Your own legislation is very clear. It states possible prison sentences of up to five years. What have you done to sanction UniCredit for the breach I reported?

PL- I cannot disclose that to you.

PL- Original letter was fully acted upon. We acted on information we had.

JS- This phone call you mention is news to me; it has never been mentioned before in relation to events at UniCredit in summer 2007.

JMCG- CEO did write. JS acknowledgement of letter and he did witness serious breach which caused him such concern.

In what he just told you are you, not concerned CB might be missing something?

That concerns me. I understand the confidential piece.

Why did he not get comfort about his concerns from the CB? It sends out an awful message.

Can you not look back on the process of CB at the time?

PL- self disclosure. Letter was correct to do so.

JS- I was entirely unaware of this phone call.

RF- depending on materiality we contact the CEO. 2007 inspection did not find breaches. We saw matters in Seanad and the media. A 3rd party then reviews this and investigates any matters.

PL- Different point. Disclosures did trigger action. We think we are aware of all.

JS- I was never notified.

PL- Other parts of UniCredit Bank. Materiality and consequences, analysis also what process to follow.

JS- During my second meeting with CB, members of your staff acknowledged sight of further liquidity at UniCredit Bank in the summer of 2007. None of these other breaches were ever reported to the CB – as required by CB regulation.

PL- Individuals must come forward.

JS- Facts not belief.

PL- We stand over the way we handle it.

JS- Why would I have resigned?

PL- Cannot comment on your own case.

SC- CEO signed it. If you get a letter from a CEO an individual referred to might have issues.

JS- Destroyed my reputation. I cannot seek redress in the absence of public sanction against UniCredit Bank.

PL- No public comment does not mean that no action was taken or that no sanctions were enforced.

JMCG- JS lives his life under a cloud. In order to rectify that sanction can anything be done now.

PL- It did not mean we did not act but did not make it public.

SC- now changes its information and disclosures. CB does believe that firms should disclose.

JMCG- Any legal framework that JS could use to give you information.

Private meeting in a legalistic way- the freedom to discuss matters. Perhaps give him legal cover because he was a Risk manager.

SC- does not.

JMCG- Can he put on record what lead him to believe in relation to CB JS saw no action. Banks are being caught out and breaking the law.

JS- I am again offering to provide CB with information pertaining to my employment at UniCredit Bank.

PL- Cannot discuss vis a vis UniCredit Bank. We investigated it twice, including when information came through the Seanad.

JS- So I will never know.

Break

JS- Deputy McGuinness is not a banker, how can we explain to him the rationale behind no public sanction over a multi-billion liquidity breach that I reported, yet you sanctioned them publicly over credit-exposure to Spain and Italy. Both the overnight guarantee and the bank bailout were necessary due to liquidity shortages, not exposure to Spain & Italy.

PL- Important (1.) range of responses (actions based on duration of breaches) (2.) Breaches and duration. Interpretation of the facts.

JS- In my official role, what should I have done? Where did I go wrong?

PL- Your actions would have been different if Protected Disclosure available. Not available to you.

Your letter was fully recognised.

JS- The fact I choose to do what I did was I premature.

PL- 2010 triggered another round of information.

JS- I had signed off further breaches. Your own staff acknowledged sight of these breaches during your investigations; unfortunately, you did not allow our meeting.

PL- I was not there. There is a gap here. We are bound by what we can legally say.

JS- Invite me to tell you what went on.

SC- We investigated, but if you have something else to tell us? Or any documents to show us?

JS- I would be arrested if I produced any documentation.

JMCG- Could you provide an arena to let him share with a more rounded view of your examination of the bank. I think I would want to know if I was the CB what this man would say.

PL- We had a very comprehensive look back.

JS- My chairman at UniCredit Bank was later made a director at the CB.

JMCG- Input and no call or input from JS. Risk manager, honest, decent and with integrity. Other breaches not to be reported?

Frightened by that culture. He performed his duties to the letter of the law. His integrity is in question. If CB didn't listen to him what else are others getting away with. He was central to your investigation. Why did you acknowledge CEO and not JS? CB did not send for this person even though he was central.

JS- you did not ask me.

PL- matter closed.

JMCG- CEO tells risk manager not to report risk. That is criminal. Before the crash this was a pillar bank. He told you something that concerned him. As Chair of the Finance Committee, I am asking you was it criminal and not investigated? It is more wrong now than before meeting.

PL- We assure investigation was fully done.

JS- Minutes were produced 6 months after our February meeting; yet in the meantime the CB pronounced the case closed.

PL- We think investigation was conclusive. Case closed.

JMCG- If I had known. He was told to withhold information, he is telling of a regularity breach. Criminal in nature. Criminality must be investigated. Myself as a TD, I am shocked.

PL- Comprehensive.

JS- Reference to DPP in last meeting.

JMCG- letter to the Garda.....it intended to deal with.....

JMCG- Completely dissatisfied to bring in JS to CB to talk to him. Obligation to report DPP/Gardai

PL- JS first time you made this obligation

SC- you are saying 20 times over the limit.

PL- I read your website.

JMCG- This meeting must notify the authorities of CB and then report to Gardai, cannot be let go.

JS- I cannot be in possession of any document belonging to my employer- that would be theft. Contract of employment cannot produce a report. Confidentiality clause.

JMCG- Breaches that went on.

SC- Documents and records with banks they have power to access these records. They go to the bank to check.

PL- Listen and absorbed by the CB.

JS- Never called me for 3 years. You were reading my website. Nothing until 2010.

PL- We stand over how this was handled.

JMCG- Someone should have stood behind him.

MEETING ADJOURNED at 2.30pm

Appendix 6: Terms of Reference

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH TERMS OF REFERENCE – STANDING ORDERS 94, 95 AND 96 (as amended) JULY 2020

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94. (1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1); and

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).

Houses of the Oireachtas

Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

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