DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AND ATHCHÓIRIÚ

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM

Dé Céadaoin, 19 Nollaig 2012

Wednesday, 19 December 2012

The Joint Committee met at 3 p.m.

MEMBERS PRESENT:

Deputy Richard Boyd Barrett,	Senator Paul Coghlan.
Deputy Michael Creed,	
Deputy Pearse Doherty,	
Deputy Simon Harris,	
Deputy Joe Higgins,	
Deputy Heather Humphreys,	
Deputy Kevin Humphreys,	
Deputy Peter Mathews,	
Deputy Mary Lou McDonald,	
Deputy Michael McGrath,	
Deputy Dara Murphy,	
Deputy Kieran O'Donnell,	
Deputy Aodhán Ó Ríordáin,	
Deputy Arthur Spring,	
Deputy Brian Stanley,	
Deputy Billy Timmins,	

In attendance: Senator Martin Conway..

DEPUTY CIARÁN LYNCH IN THE CHAIR.

The joint committee met in private session until 3.10 p.m.

Role and Contribution of Public Interest Directors in Financial Institutions: Discussion with Permanent TSB

Chairman: The meeting is in public session. The item before us is the role and contribution of public interest directors in financial institutions. I welcome Ms Margaret Hayes and Mr. Ray MacSharry, public interest directors in Permanent TSB. The format of the meeting is that the public interest directors will make some opening remarks, which will be followed by a question and answer session. As the meeting is being broadcast by UPC on channel 207, I remind members to switch off their mobile telephones.

I wish to advise the witnesses that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are to give to this committee. If they are directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or persons or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I acknowledge the presence of Mr. Ray Gordon and Mr. Ciaran Long from Permanent TSB in the Public Gallery. I invite Ms Hayes and Mr. MacSharry to make their opening statements.

Mr. Ray MacSharry: I thank the Chairman, Deputies and Senators. Both of us will make short introductory remarks and then we will answer any questions the Deputies, Senators and the Chairman may have.

In December 2008, I acceded to a request from the then Minister for Finance, Deputy Brian Lenihan, to put my name on a panel from which he directed that certain Irish financial institutions would each select two individuals to become non-executive directors. Each of the relevant institutions was participating in the Credit Institutions (Financial Support) Scheme and the appointments were made under section 32 of the 2008 Act. In my case, I became a director of what was then called Irish Life & Permanent Group Holdings plc and which today is Permanent TSB Group Holdings plc, the holding company for Permanent TSB bank.

At the time of these appointments it was very clear that the banking and financial infrastructure of this country was in grave crisis and there was a complete absence of trust in the management and leadership of the various banking institutions in the State. In that context I viewed my responsibilities on my appointment as being twofold: first, to represent, in so far as I could, the wider public interest in the deliberations of the board during this crisis; and, second, to help challenge the culture which had so clearly taken over the boardrooms of our financial institutions. At the same time I and my colleagues in similar positions with other institutions acknowledge that while the circumstances of our appointments may have been unusual, we share the same legal and fiduciary responsibilities as the other directors of those institutions.

Ultimately, we can only seek to influence, as opposed to dictate, the policy of the boards on which we sit.

In the case of Irish Life & Permanent Group Holdings plc, the focus between the end of 2008 and the spring of 2011 was on trying to advise on and help shape the response of the company to the crisis. There were many reasons that this was desirable, including the fact that we were conscious of the already difficult challenges facing the Exchequer at the time. In March 2011 it became clear that it was not going to be possible to secure this. At the end of month new requirements for capital for all banks, including Permanent TSB, were set down by the Central Bank and these meant that the bank would be required to take €4 billion in additional capital from the Exchequer, becoming effectively nationalised in the process, as there was no possibility of raising the money from other sources.

Following that the bank was the subject of a number of direction orders from the Minister which directed the institution, among other things, to facilitate the sale of the life and pensions business of Irish Life by the group to the Minister for Finance for €1.3 billion as part of that recapitalisation exercise. The Minister intends to sell that business on to the private sector and I believe he will recoup that amount in full at that time.

In the year to date our objective has been to try to secure the return of Permanent TSB bank to financial stability and strength. This has been and continues to be a very difficult challenge. Unfortunately, like many other banks in Ireland and elsewhere, Permanent TSB made a series of unwise decisions late in the last decade. Together those decisions brought the bank to the brink of collapse and it will require enormous effort, sacrifice and pain to restore it to health. However, I believe we are making progress in this regard. In March the bank secured the support of the troika for a restructuring plan to be submitted to the European authorities and that plan has now been submitted. While we await the formal response of the authorities to that plan, the bank is already making substantial progress on its implementation. In recent months in particular, the bank has addressed the problem of its outlier status in respect of the standard variable rate which it charges its residential mortgage customers and that rate has now been brought into line with the market. The bank has invested in a state-of-the-art arrears management service which is already enabling us to work much more constructively with customers to help them manage their mortgage repayments.

Significantly, and correctly I should say, there has been a fundamental overhaul of the group board over the last number of years to the extent that no current director of the group was a director at the time of the introduction of the bank guarantee in 2008. In the same vein, there has been a fundamental overhaul of the senior management team at the bank. Key posts have now been filled with candidates who never worked in the Irish banking sector before, including the new chief executive officer, the new financial officer, the new chief operations officer and the new head of strategy and planning. I do not believe there is any financial institution in the country where there has been such significant change and renewal at senior management and board level after the crisis hit.

The bank has also seen a very significant reduction in the numbers employed - down to 1,800 from some 2,400 a few years ago - as it adjusts its cost base to reflect its smaller scale. It has undertaken a series of liability management exercises in which it bought back debt in the market at a very significant discount, benefiting the position of the bank and ultimately the Irish taxpayer by approximately €1.2 billion to date. We are about to oversee the return of Permanent TSB to the lending market in the new year when we will unveil significant lending targets for the bank in each of its key product lines for 2013.

I believe we are now demonstrating that there is real benefit for this economy in preserving Permanent TSB bank as a competitive force, that doing so presents the best way of managing the investment which the Exchequer has made in the bank and that the bank is capable of restoring itself to stability and resuming its place in the country's financial infrastructure.

Ms Margaret Hayes: I thank the Chairman and members for the invitation to attend this meeting. I hope we can be of help to the committee in answering questions. Like Mr. MacSharry, I joined the board of what was then Irish Life & Permanent Group Holdings plc in December 2008 following a request by the Minster for Finance to join the panel to which Mr. MacSharry referred. Mr. MacSharry has already outlined the circumstances surrounding our respective nominations and the expectation of the role we would play.

As is also clear from his opening address, the company has undergone significant structural change in the period since then. Today, the company has changed its name and is called Permanent TSB Group Holdings plc - the holding company for Permanent TSB. The changes that have taken place within the company have undoubtedly been extensive in nature and were directed and driven by the board in response to the ongoing changes in the circumstances in which the company found itself and which it had to address. In addition to those changing circumstances, Mr. MacSharry has spoken about the sense of crisis and the loss of confidence in the banking sector that was pervasive in 2008. However, simply making that statement does not do justice to just how extraordinary the crisis was and how real was the threat to the country's financial system. I have no doubt that at that time we were at a point where the very fabric of our banking infrastructure was in peril, and not just the continued survival of Permanent TSB itself.

In the period since our appointment we have focused on trying, first, to ensure the survival and future viability of the bank in the face of unprecedented stress both in funding markets, and in the speed and extent of credit deterioration and the pressures that were put on capital held by the bank. We have tried to avoid having to take capital from external sources into the company. We are now trying to support the stabilisation of Permanent TSB and its restoration to a position of significance in the banking world and the economy. Mr. MacSharry and I are both satisfied that the bank has, since 2009, succeeded in building up a management team with the skill set and capability to meet the challenges facing the bank in the future, and the ability to realise the full potential of the bank as a real competitive force in the Irish retail bank market.

A root and branch analysis of policy and strategy has been completed and the resulting restructuring plan, after presentation to the Government and the troika, has been submitted to the EU. In the interim, work has already started on implementation of the plan with the full and enthusiastic commitment of all bank staff. We have also worked with our fellow directors to try to ensure that the bank understands the wider context in which it operates and the responsibilities it now has to act in the interests of the wider community. That is particularly relevant when it comes to issues such as interest rates, arrears management and assisting individuals and households to achieve their financial plans. Those are the kinds of areas where the wider community has a keen interest in the policies adopted by individual banks.

In that regard, I believe Permanent TSB has made significant progress in recent months not least, as Mr. MacSharry has said, by reducing unilaterally its standard variable rate, SVR, for mortgages and by establishing a professional arrears management unit to support its work with customers in arrears. The next step is to complete the work, now well advanced, on delivering attractive new banking products to the Irish consumer, which meet his or her requirements and also help deliver some much needed stimulus to the economy. The challenge for all on the board, and in management, is how to strike the correct balance between, on the one hand, pro-

tecting the money the taxpayer has invested in the bank and, on the other, acting appropriately in respect of its customers, and particularly its customers in arrears. That is a very difficult balance to strike, but I can assure the committee that throughout my time on the board, no issue has generated more discussion and reflection than this and I expect this will continue to be the case for as long as the State remains a significant investor in the bank. I too thank committee members for their attention and time.

Chairman: I thank Ms Hayes. Before we commence the questions I ask members to ensure they are concise in their questions and I also ask witnesses to be concise in their replies. We have a packed committee this afternoon. I propose that the first round of questions will involve a 12 minute engagement that will then reduce to eight and five, accordingly.

Both directors were appointed in 2008 by the then Minister for Finance, the late Brian Lenihan.

Ms Margaret Hayes: Yes.

Chairman: What fees has each of the directors received since their appointment as public interest directors?

Mr. Ray MacSharry: Could I go first?

Chairman: Yes.

Mr. Ray MacSharry: In 2008 my fees were €2,000. In 2009, they were €69,000. In each of the years 2010, 2011 and 2012 they were €56,000. We introduced a 25% reduction on the fees that were in operation a few months after we joined the board.

Ms Margaret Hayes: The total fees received by me both in respect of my participation in the board of the company and in the audit committee for both the holding group and the bank are as follows. In 2008, I received €2,000. In 2009, I received €77,000. In 2010, 2011 and 2012 I received €64,000, reflecting the reduction to which Mr. MacSharry referred.

Chairman: Okay. Since his appointment in December 2008 I understand Mr. MacSharry has attended approximately 30 board meetings and his payment is approximately €290,000. Since Ms Hayes was appointed in December 2008 she has attended approximately 30 board meetings as well and she has been paid approximately €210,000.

Ms Margaret Hayes: I should also add that those fees cover the audit committee participation. For the record, the number of meetings comes to 78 in all.

Mr. Ray MacSharry: I have attended 85 meetings in the same period. Those were the scheduled meetings. There were a number of other meetings that were not scheduled but took place.

Chairman: Since their appointment were the witnesses given any specific instructions or terms of reference on reporting or carrying out their tasks as public interest directors? Did the Minister, the Department of Finance or the Central Bank issue them with any terms of reference, instructions or reporting mechanisms?

Mr. Ray MacSharry: There were no instructions. We were quickly informed by both the Department of Finance, Irish Life & Permanent and the legal services that we had similar responsibilities to other directors and that we were all working under the same rules, company

law and that the institutions were our responsibility. We did not have any formal direction from the Minister. We did have some discussions with both Ministers and some officials, but that was of a general nature.

Chairman: Was it the same situation with Ms Hayes?

Ms Margaret Hayes: Yes. I can confirm that we never received any directions other than the clarity as to our legal position which was set out *ab initio* both by the advisers to the Minister for Finance and by the legal adviser to the company.

Chairman: Since they were appointed in December 2008, have they on any occasion either formally or informally reported their activities as public interest directors to either the Minister for Finance, the Central Bank or the Department of Finance?

Mr. Ray MacSharry: Since 2009 the Central Bank has been attending meetings on and off. We met some officials from the Department. I met the current Minister once and Mr. Moran a couple of times. I also met Ms Nolan and prior to that Mr. Cardiff. We did have general discussions, in the first instance about the banks since the preference shares were taken in 2008. There were not any in Irish Life & Permanent.

Chairman: Could I call the meeting to order?

Mr. Ray MacSharry: There was no certainty as to what would happen in the future for Irish Life & Permanent at the time. Therefore, we had a number of discussions with departmental people as to what exactly they might expect we would do.

Chairman: What I am asking Mr. MacSharry is - I am trying to model this before other questioners come in - about his role. The bank would certainly have been meeting with the Central Bank and other agencies. In Mr. MacSharry's specific capacity as a public interest director - I am putting the same question to Ms Hayes - has he reported to the Minister for Finance, the Department of Finance or the Central Bank?

Mr. Ray MacSharry: No, we have not. The reporting lines have been, as is normal in all of the quoted companies and public companies, and now with the Minister for Finance, through the chairman and chief executive with the Department, the Minister and some officials, and also with personnel in the regulatory office and the Central Bank.

Chairman: In terms of being general directors.

Mr. Ray MacSharry: This is the recognised communications system. They do not have any of the directors going, other than the chairman and the chief executive.

Chairman: When Mr. Richard Boucher of the Bank of Ireland appeared before this committee a couple of months ago, a question was put to him as to what distinguished a public interest director from any other director on the board. Mr. Boucher's response was that they are not elected. That is the only difference. Under company law, every director of the bank has the same obligation, which is to serve the bank.

The public listening in here this afternoon want to know what public interest directors have been doing in terms of their needs, whether they are small and medium enterprises or distressed mortgage holders. I will now direct my questions to that area. Have there been occasions when Mr. MacSharry - this applies to Ms Hayes as well - could present particular situations or instances where, in his view, he has acted as a public interest director in carrying out his task?

Can he give us examples of that?

Mr. Ray MacSharry: As I explained in my opening remarks, my role as a public interest director is that we were there as non-executive directors.

Chairman: I have the terms of a non-executive director here in front of me.

Mr. Ray MacSharry: I know, and I will answer the Chairman's question. First of all, the Chairman quoted some other bank in saying that there was a difference between the public interest directors-----

Chairman: I am saying that there is no difference. According to Mr. Richie Boucher there is no difference-----

Mr. Ray MacSharry: Only that they were not elected.

Chairman: -----in company law between them.

Mr. Ray MacSharry: We were elected to the board of Irish Life & Permanent at the annual general meetings in 2009, 2010, 2011 and 2012 by the shareholders.

Chairman: Under company law there is no difference in terms of your duty of care, as I understand it. I can read into the record what the role of a non-executive director is for Mr. MacSharry. In terms of being a standard director, however, as I understand it-----

Mr. Ray MacSharry: All directors are subject to the requirements under, or of, company law.

Chairman: Therefore, in that instance your master is the bank, not the public interest, because of company law.

Mr. Ray MacSharry: We serve the board and its institution.

Chairman: In this case, the shareholder.

Mr. Ray MacSharry: In the first instance, it was a board. We were talking about Irish Life & Permanent before recapitalisation, just to have it correct.

Chairman: Has there been an occasion during Mr. MacSharry's period when a vote was taken on the board where he, as a public interest director, had a particular position - whether it was to do with mortgage interest rates, and this morning we have seen a bank announcing an adjustment to its credit card rate - and pushed a public interest issue that has resulted in a vote?

Mr. Ray MacSharry: At all times, one takes into account the stakeholders generally. The stakeholders are the shareholders, the customers and the public at large, especially in the last couple of years since the bank has been recapitalised and is 99.2% owned by the Government and the people. Therefore, on every single debate it would be my intention to ensure that I was reflecting the views of the public.

Chairman: Were those views every pushed to a vote?

Mr. Ray MacSharry: No.

Chairman: Okay.

Mr. Ray MacSharry: In fact, most decisions would be taken by consensus.

Chairman: In your case, Ms Hayes?

Ms Margaret Hayes: I can say that opinions were expressed and they went into delivering the consensual decision, which is the model we try to use on the board - developing a single unified decision.

Chairman: Public interest directors were appointed under section 4 of the Credit Institutions Act, which states that the directors - in the case of public directors - have a duty which takes priority over other duties of the directors. That means that public interest directors have a specific role. When the former Minister for Finance, the late Brian Lenihan, appointed you, he was quoted in one newspaper as saying that he was appointing some "thick-skinned" people. The public perception would have been that you were in there battling for the public. Since 2008, we have learnt a lot more about the banks and how badly they were constructed. One of the terms of reference in that legislation is to facilitate the availability of credit in the economy of the State. What have both Mr. MacSharry and Ms Hayes been doing to facilitate that legislative requirement? More specifically, what have both public interest directors been doing to prepare the bank with regard to the forthcoming personal insolvency legislation and ensure that the bank is engaging progressively with customers and people who are significantly in debt and in very distressed situations?

Mr. Ray MacSharry: There are a few questions there. The Chairman is talking about facilitating customers with loans. One does that to the best of one's ability and to the availability of funds. That has been a serious problem in the banking system. That is why one cannot just borrow money on the markets. Some 40% of our business is served through the deposits, 25% through the ECB and 25% through long-term lending. That money is there and it is being loaned out on a regular basis. I am not an executive of the company; I am a non-executive. We ensure that money is looked after responsibly and appropriately.

Chairman: I will put some final questions because I am running out of time myself. How many business loans were taken out or applied for by Permanent TSB last year? How many were granted and how many refused? How many mortgages does the bank have on its loan book? What percentage of those have been distressed for a period of more than three months?

Ms Margaret Hayes: As the Chairman is aware, the bank is primarily in the mortgage business. Our lending this year came to around €70 million plus.

Chairman: We will just focus on mortgages because I will be out of time shortly.

Ms Margaret Hayes: The Chairman asked about distressed mortgages. The bank currently has around 174,000 mortgages. At the moment, around 20% of what we would call the residential book is in some form of arrears. Over one third of the other big chunk of mortgages, which is residential investment properties, is also in some form of arrears.

Deputy Michael McGrath: Mr. MacSharry and Ms Hayes are both very welcome. Is there anything at all that differentiates what the public interest directors do compared to the other directors of the company? Is there anything that differentiates their role as public interest directors, or is it literally a title in name only?

Mr. Ray MacSharry: The Deputy would clearly want to ask the other directors about that. There have been many occasions, however, when we would do our utmost to reflect the public

interest. There is no doubt that other directors, generally speaking, would do the same. As Ms Hayes has said, there are occasions where we put our point very strongly. We cannot dictate and we have to end up having a consensus view in relation to any policy matter. Generally speaking, non-executive company directors are there to formulate policy, have it implemented and control it as it is being implemented. That is our role. It does not differ from other non-executive directors on the board.

Deputy Michael McGrath: My sense is that the appointment of public interest directors was a good idea. Citizens would expect, however, that such directors would be more visible and be seen to be openly defending the public interest. Mr. MacSharry hit the core point in his opening remarks - that he has the same legal and fiduciary responsibilities as the other directors. That is the position under company law. While it was a good idea to have people appointed under the umbrella of being in the public interest, it is a flaw that a proper structure was not put on that. Some channel should have been put in place so that public interest directors could express their views, thus distinguishing themselves from the other directors. That is the key issue. It has emerged from the Chairman's questions that there is no distinguishable channel of communication between the directors, the Department or the Minister as opposed to the chairman or chief executive officer of the company. That is the fundamental flaw as I see it.

Mr. Ray MacSharry: The Deputy is absolutely correct. The 2010 Act probably saw little of that. For all directors now under this Act, the public interest overrides everything else in company law. That is a good thing.

Deputy Michael McGrath: After having been on the board for four years, does Mr. MacSharry have any suggestions on how the role of a public interest director can be uniquely defined or improved? There must be some action that could set a public interest director's position apart from that of the other directors. The State has put billions of euro into Permanent TSB and the other banks. Accordingly, people expect the public interest directors to protect the interests of consumers and citizens. While the directors have legal responsibilities to the company under company law, there must be a distinction between what the public interest director does from what the other directors do. People do not see that. Accordingly, the public interest directors have been called before the committee to explain what is different between the two roles. I am still not clear on the difference.

Mr. Ray MacSharry: I share that concern because we do not have the opportunity to speak publicly about board meetings. The system is there and company law governs that system. If the law were to be changed to enable public interest directors to carry out certain functions, we would be glad to do whatever we would be asked to do under the law. I understand and appreciate fully what the Deputy said about the public not being in a position to know what any of the directors are doing other than when the chairman takes that responsibility at the annual general meeting or when communications with the Minister or the shareholders are done by the chairman and the chief executive officer over the Central Bank, the European Central Bank or the troika.

Deputy Michael McGrath: Has Mr. MacSharry had any meetings or dialogue with the Minister directly or the Department over the past 12 months? Is there any formal communication channel that is unique to the role of public interest director?

Mr. Ray MacSharry: There are no formal or regular meetings.

Deputy Michael McGrath: That deals with the core issue and is a policy matter that will

have to be taken up.

Mr. MacSharry referred in his opening statement to the liability management exercises that have saved the bank approximately €1.2 billion. Junior bondholders who suffered losses because of such an exercise in IBRC, Irish Bank Resolution Corporation, have taken a successful case in the UK. It has been appealed by IBRC and will be taken in the new year. Is there any threat coming down the tracks to Permanent TSB by bondholders who have suffered similar losses?

Mr. Ray MacSharry: No, not that I am aware of but there is an ongoing case by shareholders regarding the direction orders made by the Minister for the sale of Irish Life which is *sub judice*.

Deputy Michael McGrath: What is Mr. MacSharry's vision for the bank? A restructuring is in place and there is the core business of providing mortgage lending. It is important that this business would be retained and developed, as well as providing more competition in the banking sector. Obviously, the bank is downsizing, has lost many staff and the directors are dealing with past mistakes. How does Mr. MacSharry see the bank developing in the future?

Mr. Ray MacSharry: The only way it can develop is through the structure we have proposed of a good bank, an asset management unit and special other units such as CHL Mortgages in the UK and Springboard Mortgages. We believe great progress has been made since we concentrated on this asset management unit. There is no doubt that there is also an improvement in relationships with customers. The good bank can then survive and become a competitive force. We only have two banks. Things will improve again. It is important to put on the record that while there are many arrears and that it is a worrying and challenging time for banks and institutions to survive as well as for the customers in arrears, the fact of the matter is that up to 80% of residential mortgage holders are paying their mortgages. In these cases there are no arrears and they are performing loans. This must be remembered. We speak about differential treatment between one borrower and another. It must be remembered up to 80% are paying their loans, honouring their commitments, paying their debts.

Deputy Michael McGrath: What role does the board of directors have in dealing with mortgage arrears? How regularly does the board deal with this issue? What reports does it receive as to how the bank is dealing with mortgage arrears? Permanent TSB's arrears rate is higher than the average which is a concern as this is a core element of the bank's business. There is a frustration among borrowers that the situation is not being dealt with. The personal insolvency regime will be up and running in the next several months. Hopefully, this will incentivise the banks to deal with cases that have to be clearly dealt with. What level of involvement do the public interest directors have at board level in dealing with mortgage arrears?

Ms Margaret Hayes: The bank has a new chief executive and management team in place. Mr. Jeremy Masding became chief executive officer in February and, since he took up office, his main priority from the board is to work out a strategy for dealing with our arrears issues. Using the MARS, the mortgage arrears resolution strategy, process which was developed for the whole banking sector by the Central Bank, we are developing several processes in the bank to improve management information, frequency of management, segmentation of the loan book as well as the whole menu of treatments which have come out of the MARS which in our case will number 14.

Since February, we have ratcheted up the degree of reportage. Accordingly, at this point

we are getting quite detailed reports at board level every single month not just a progress on the flow of arrears, but on what is happening to stop arrears. We are now beginning to roll out individual treatments across the full back and front loan books.

Deputy Michael McGrath: The directors touched on the interest rate issue in their opening statements. It is to be welcomed that the standard variable rate being charged has come down. The bank was once a significant outlier in this regard and was charging customers way in excess of what the other banks were charging. I feel very sorry for customers on a variable rate paying 4% to 4.5% when someone on a tracker is only paying 1.5% or 1.75%. That makes an enormous difference to the monthly repayment. Where is it going for variable rate customers over the next 12 months? The link between European Central Bank rates and variable rates has long since been broken. The bank is obviously making decisions based on the cost of funding. Mr. MacSharry outlined the blended funding structure the bank has in place. Where will that go for those mortgage holders who are being charged well in excess of 4% for a variable mortgage?

Ms Margaret Hayes: When Mr. Masding, the bank's chief executive officer, was before the committee, he went into some detail about the individual criteria used to determine the rate. He mentioned not just the blended cost, but operational expenditure, contributions to impairments and meeting the cost of impairments. We are working assiduously on the operation expenditure side. Any reductions in this area will ultimately go towards giving the bank greater scope around interest rate reductions. Hopefully, there will be ongoing improvements in the funding position and, as sovereign yields decrease and begin to affect yields on bank debt, the market will open up. As we work on operational expenditure and seek to obtain the most efficient funding through the market and any other source that is open to us, we will continue to work on arrears. We hope that by investing more and by working intensively through the MARS process towards mortgage resolutions, we will generate more scope financially to consider reductions in rates.

Deputy Michael McGrath: Is it realistic that people are looking at reductions as opposed to increases?

Ms Margaret Hayes: It depends on all of the factors I set out. I am confident about operational expenditure and we may also make inroads on impairments and improving the position with regard to arrears. Those are the areas over which we have most control. Sourcing broader funding and the cost thereof is something we will have to manage.

Chairman: Deputy O'Donnell and Senator Coghlan will share time and have 12 minutes.

Senator Paul Coghlan: I only need a minute as I must attend in the Seanad. The core issues have been raised by the Chairman and Deputy Michael McGrath and answered by Mr. MacSharry and Ms Hayes, who I welcome to the joint committee and thank for their outline submissions. All directors are equally bound by company law and corporate governance requirements. Both witnesses explained themselves as non-executive directors as opposed to public interest directors. They explained that they rule by consensus and it could be said their loyalty is to the board. They have been captured by the prevailing culture of the institution. There is no difference between one director and another. There is no distinguishing requirement. Perhaps there is a flaw. Everyone has asserted they are new appointments since the downfall. I do not mean this disrespectfully but a large segment of the public sees the public interest directors as being about as useful as paps on a bull. That is the situation, being honest. I hand over to Deputy O'Donnell.

Chairman: Do you have question?

Senator Paul Coghlan: I do not. The Chairman and Deputy Michael McGrath put the questions I had in mind.

Chairman: Thank you.

Senator Paul Coghlan: I did not mean any disrespect to the witnesses who are good people. My point is that there is no difference among the different types of director. The institution would be run just as well with two fewer directors. There was a flaw in the appointments. We do not need the public interest directors.

Mr. Ray MacSharry: Senator Coghlan is correct that there is no difference between one director and another, but there can be a great deal of difference in their opinions, approach to policy or attempts to obtain consensus. We can and do represent the public interest in that context. There were no ways of getting through it.

Chairman: Can Mr. MacSharry cite a specific instance where the public interest directors forced or encouraged a consensus?

Mr. Ray MacSharry: I would not say we forced decisions. I said in my opening remarks that we are the only two directors who have survived from 2008. There has also been a complete change in management.

Chairman: I will ask the question again. Can Mr. MacSharry cite a specific motion, proposal or concept put forward at Permanent TSB which came from the public interest directors and was implemented by vote or overwhelming consensus?

Mr. Ray MacSharry: We have been very much to the fore-----

Chairman: Be specific.

Mr. Ray MacSharry: I can give you 1,000 specifics.

Chairman: Just give me one.

Mr. Ray MacSharry: It is all to do with arrears. We have been consistent in ensuring that there would be proper contact with those people who are in arrears or about to go into arrears and that has led to the establishment of the asset management unit which employs 300 staff. There were 1,000 specific instances involved in that process.

Deputy Kieran O'Donnell: I welcome the witnesses. The public is looking at the public interest directors and noting that €2 million has been spent on them to date in the covered institutions. Nearly €400,000 has been spent on their fees. The public is asking if it is getting value for money. They are not aware of what exactly the public interest directors do and they want to know. I looked through the legislation. The 2008 Act provided for the appointment of public interest directors and persons to observe all meetings. Mr. MacSharry is correct that the 2010 Act provides for the public interest in section 48. Section 48(3) provides that the Minister may make and publish guidelines on the duty imposed on a public interest director and a director may rely on any such guideline to demonstrate his or her compliance with such duty. Mr. MacSharry is a former Minister for Finance and EU Commissioner. Ms Hayes is very familiar to us as a former Secretary General. They are experienced. Were they surprised that guidelines were not issued to public interest directors following the enactment of the 2010 Act?

Mr. Ray MacSharry: No, and nobody ever complained to us that we were not doing what we were supposed to as non-executive directors. Remember, we are non-executive directors.

Deputy Kieran O'Donnell: Ms Hayes and Mr. MacSharry were appointed under the 2008 Act as public interest directors to promote the public interest. They have a specific purpose which is to protect the public interest. The other non-executive directors have a different role. At the time of their appointment in 2008, Permanent TSB had yet to receive any taxpayers' money directly although it was covered by the State guarantee. The circumstances were different. The public interest directors have been in place for four years. How can I tell taxpayers that they are getting value for money from the appointment of public interest directors in general and more specifically from the €390,000 in salaries which has been paid to the directors?

Mr. Ray MacSharry: All directors get the same salaries we do. There is no difference between them and all directors are subject to the requirements of company law. When and if the Oireachtas changes company law, the directors will be guided by whatever it then provides. Currently, all the requirements of company law must be observed by all directors, including public interest directors. I repeat all directors get the same salary.

Deputy Peter Mathews: They receive fees.

Mr. Ray MacSharry: Whatever you like to call it.

Deputy Peter Mathews: It is fees, correctly.

Mr. Ray MacSharry: The word "salaries" was used in the question so I answered using the same word.

Deputy Peter Mathews: Salaries are for executive directors.

Mr. Ray MacSharry: Deputy Mathews is correct.

Deputy Kieran O'Donnell: Mr. MacSharry sits on the board's remuneration committee and Ms Hayes on the audit committee. Does the remuneration committee set directors' fees?

Mr. Ray MacSharry: The board sets them.

Deputy Kieran O'Donnell: What role does the remuneration committee have?

Mr. Ray MacSharry: The remuneration committee makes recommendations to the board on all salaries, in particular executive salaries, and non-executive directors' fees.

Deputy Kieran O'Donnell: Since Mr. MacSharry was appointed to the remuneration committee in 2008, 61 people in Permanent TSB have been paid in excess of €100,000. Were any bonuses approved by the remuneration committee in that period?

Mr. Ray MacSharry: I proposed at the board meeting rather than to the remuneration committee that the fees of non-executive directors be cut by 25%, which they were. Some were reluctant to do it but it was done. I am now chairman of the remuneration committee but since I joined as an ordinary member in 2008, no increment, bonus or salary increase has been paid to any staff member. We have lost 400 staff in that time under voluntary severance. The last payment made to staff in Permanent TSB was 2.5% of a previous arrangement paid in 2008, before we joined, under the instructions of the Labour Relations Commission. In fairness to the board, it did not want to pay it but was made to pay. In our time nothing was paid - no bonuses

or increments. The only action was a 25% reduction in non-executive fees.

Deputy Kieran O'Donnell: Under the 2008 Act the Minister has the right to appoint persons to observe all meetings. How many from the Department of Finance or the Central Bank have attended meetings of the board, the remuneration committee and audit committee? Our role here is to monitor the charge on the public purse. Originally €4 billion was put into the bank, €1.3 billion of which was returned through the sale, but €2.7 billion remains. Will Mr. MacSharry tell me about the people appointed to observe all meetings?

Mr. Ray MacSharry: Let me answer for the board. Members of the Central Bank attended many meetings. For months they came to every meeting. Then they did not come so often. Nobody from outside ever attended a remuneration committee meeting that I can recall. Maybe Ms Hayes can give us further information on the audit committee.

Ms Margaret Hayes: I cannot recall anybody from the Central Bank attending any meeting of the audit committee as an observer.

Deputy Kieran O'Donnell: What does an audit committee meeting do? What is its role?

Ms Margaret Hayes: There are a series of roles but, essentially, ours is to approve and recommend approval to the board of the annual financial statement.

Deputy Kieran O'Donnell: Why were the auditors changed this year?

Ms Margaret Hayes: We ran a clear tendering process which we have decided to run every three years. We invited several firms to apply and five participated. We ran an interview presentation process and after the evaluation we came up with a recommendation to the board to change the auditor.

Deputy Kieran O'Donnell: Finally, to whom do the public interest directors report? They are appointed under the 2008 Act specifically to promote the public interest.

Mr. Ray MacSharry: We have been elected by the shareholders at every annual general meeting since, which may not be the case in respect of other public interest directors.

Deputy Kieran O'Donnell: This is the kernel of the problem. The public is looking in. Many mortgage holders who are in difficulty with Permanent TSB are asking how the State can justify spending €2 million over the past four years on public interest directors when it does not know what the directors do or to whom they report. What is the difference between a public interest director and a non-executive banking director? At a minimum the public is entitled to know the answers to those questions. It is very simple, dealing with anyone in any walk of life-----

Chairman: If the Deputy wants the witnesses to respond he will have to stop talking, because he is going to run out of time.

Mr. Ray MacSharry: We are legally bound to ensure that the institution is run properly and appropriately and we do that.

Deputy Kieran O'Donnell: To whom do the public interest directors report?

Mr. Ray MacSharry: We report to the annual general meeting every year - to the shareholders.

Deputy Kieran O'Donnell: That is the board.

Mr. Ray MacSharry: We have 137,000 shareholders, even if they own only 0.8%.

Deputy Kieran O'Donnell: Is Mr. MacSharry saying that his understanding is that the public interest directors have no reporting role whatsoever?

Mr. Ray MacSharry: There is no formal arrangement. I have already said that.

Deputy Kieran O'Donnell: The public interest directors do not report to either the Central Bank or the Minister for Finance?

Ms Margaret Hayes: The circumstances and the process by which we were nominated for appointment to the board were different. That is the only difference. We have the very same responsibilities.

Chairman: Deputy O'Donnell is out of time.

Deputy Kieran O'Donnell: Do the witnesses see how the public would have difficulty with that?

Chairman: I will ask Deputy O'Donnell to leave the meeting. He is out of time.

Deputy Pearse Doherty: I will be as brief as possible. We all know there has been a great deal of reporting on the amount of money that has been injected into this institution - €4 billion since 2009 - but there has been widespread reporting of the financial cliff the bank faces early next year in respect of €2.7 billion worth of bonds that are due to mature. Can the witnesses say whether these bonds are guaranteed and whether they are secured? We know the institution is trying to dispose of assets, which it is doing at a loss because it is a fire sale to recoup money to ensure that these bonds will be paid out. I believe the second payment of this tranche of €2.7 billion is due in April. If the bank is not successful, will there be a need for an additional capital investment from the Irish taxpayer through the Minister for Finance? What is being done to ensure the burden does not fall on the taxpayer again?

Ms Margaret Hayes: The treasurer of the bank is working on a strategy to address the roll-over of funding for the elements that are due and maturing next spring. We have been advised that this is well advanced but, as the Deputy will appreciate, this is commercially sensitive and I cannot go into any more detail about it.

Deputy Pearse Doherty: I understand that. Does one of the options include the possibility of further recapitalisation by taxpayers of that bank if the strategy does not-----

Mr. Ray MacSharry: That does not arise. Our capital adequacy arrangement at the moment is 18%, which is very high. We are probably the best capitalised bank in the country. That is to take care of the problems of arrears.

We did sell Irish Life and Permanent, so taxpayers will hopefully get that back. It would be lovely if they got a little bit of profit.

Deputy Pearse Doherty: Specifically, €2.7 billion worth of bonds will mature next April.

Mr. Ray MacSharry: The normal course of events for that sort of thing is that it is rolled over or looked for in other places - I presume in the Treasury. We will deal with that. We have no information whatsoever about any difficulty. There is no suggestion whatsoever of any fur-

ther recapitalisation.

Deputy Pearse Doherty: There will be stress tests in all institutions next year and if the bank dips into its capital it will be questionable whether it can meet the stress test criteria. Can Mr. MacSharry say that the burden of the €2.7 billion financial cliff that the bank faces next April will not in any way, shape or form be borne by Irish taxpayers?

Mr. Ray MacSharry: I have just answered that. We have plenty of capital at the moment. We have an 18% capital adequacy ratio.

Deputy Pearse Doherty: Does Mr. MacSharry believe the bank is doing enough for people in mortgage distress?

Mr. Ray MacSharry: The bank is doing a lot now. If I had been asked that question six months ago, I would have said we were not doing enough. We have set up the asset management unit this year. It is up and running. Hundreds of people are dealing with thousands of calls every day and are in contact many times with different shareholders. We have resolved the contacts and connections. We still have problems with the bank. We have set up procedures whereby in any discussion with a shareholder who is in arrears or is going into arrears, management will offer the shareholder different options.

Deputy Pearse Doherty: The option that people are looking for, given that the bank has been recapitalised to deal with the fact that these mortgages will not be paid in full, is for the banks to write off their debts, because they are in financial or mortgage distress and personal turmoil. They want the banks to write off the debts of people who simply will not at this point in time or at any time in the future be able to repay their mortgages in full. Has the bank done so thus far and does it have plans in place to write off parts of mortgages for mortgage holders?

Mr. Ray MacSharry: I share the Deputy's concern about shareholders. There is no doubt but that people are experiencing terrible difficulties. The bank is doing its utmost to communicate with every shareholder. There will be no debt forgiveness.

Deputy Pearse Doherty: Permanent TSB does not propose to write off any mortgages?

Mr. Ray MacSharry: No.

Deputy Pearse Doherty: Why then were the banks recapitalised? Mr. MacSharry is obviously aware of fact that, following the stress test, money was allocated by Irish taxpayers to the institutions to meet mortgage losses on their books. The bank has pocketed this money and intends, based on Mr. MacSharry's comments, to pursue people to the ends of the earth in respect of mortgages. Will there be no write-off of debt whatsoever?

Mr. Ray MacSharry: The bank has and continues to make provision of €2 billion to €3 billion against such debts.

Deputy Pearse Doherty: Provisions are one thing. Has the bank put in place a strategy under which it can write off individual debt?

Mr. Ray MacSharry: Under company and auditing law, that is what we are bound to do and are doing. We will not be writing off or forgiving debt. As I said earlier, almost 80% of home loans are performing well. One cannot differentiate between-----

Deputy Pearse Doherty: Mr. MacSharry's comments-----

Mr. Ray MacSharry: We will do our utmost to ensure people will be able to retain their homes and to pay only what they can afford to pay, be that by way of interest only, partial interest, split mortgage or something else.

Deputy Pearse Doherty: Is Mr. MacSharry aware that the Personal Insolvency Bill is currently being dealt with by the Oireachtas?

Mr. Ray MacSharry: Yes.

Deputy Pearse Doherty: Does he understand that the concept behind the legislation is that banks will be forced to write off a portion of debt after a specified period for people who cannot repay the full debt? That is the concept behind that legislation. The problem with the Bill is the provision therein which allows the banks to retain a veto. Everything Mr. MacSharry has said to the committee has reinforced our worst fears that the banks will continue to use their veto. Will Mr. MacSharry reiterate his assertion that there will be no write-off of debt for mortgage holders in any circumstances?

Mr. Ray MacSharry: I said there would be no debt forgiveness. We will deal with the implications of the Personal Insolvency Bill following enactment. I am stating the position as things stand under company law.

Deputy Pearse Doherty: I believe Mr. MacSharry's comments are shocking. However, I will move on.

Ms Margaret Hayes: I would like to reiterate a point I made earlier in discussion with Deputy McGrath. We have put in place a detailed mortgage resolution process which involves engagement with customers, taking them through a menu of options to see what is the most suitable in terms of allowing them to remain in their homes. We accept that at the end of the day, it probably will not be possible for everybody to remain in his or her home, while some may not want to remain in their homes. As explained by Mr. Masding, there will come a point at which a call will have to be made, using the insolvency legislation and his own judgment, as to what is in the best interest of the bank and the customer. At the end of that process there will inevitably be write-down in cases in which the customer is clearly unable to pay.

Deputy Peter Mathews: That is reality.

Ms Margaret Hayes: That is not blanket debt forgiveness, which is the distinction-----

Deputy Pearse Doherty: Nobody spoke about blanket debt forgiveness. We asked if there had been any write-downs up to now and if the bank has a policy in this regard.

Ms Margaret Hayes: I am assuring the Deputy today that there is a process in place which will be gone through fairly with customers to achieve what is in the best interests of the customer, whether that is to remain in his or her home, eventually pay the debt or start his or her life anew. That is the purpose of the insolvency legislation.

Deputy Pearse Doherty: One public interest director has told this committee there will be no debt forgiveness, but Ms Hayes is now saying that there will be debt forgiveness.

Mr. Ray MacSharry: Forgiveness and write-down are two different issues.

Deputy Pearse Doherty: My question was about write-down. I am going to move on because my time is limited. There has been much discussion in this committee about the role of

public interest directors, the appointment of which Sinn Féin believes was a token gesture and a farce. The idea was that there would be people on the boards of directors of the banks who would not be allowed to act in the public interest but would be public interest directors. Mr. MacSharry and everyone else here know that under the stabilisation Act every director must act in the public interest and must protect the taxpayer. The late Minister for Finance, Brian Lenihan, said he would consult with the Opposition parties on the possible candidates for appointment as public interest directors. He did not consult with Sinn Féin on this matter. Those appointed include three former assistant secretaries of Departments and four former Ministers, including two former Tánaistí from across the political divide.

I want to put the following on record. During the past five years, Ms Hayes and Mr. MacSharry received €271,000 and €239,000, respectively, by way of remuneration as public interest directors. During that same period Mr. MacSharry, as a former Minister, received €445,000. He is also a former EU Commissioner and Governor of the Central Bank. I do not know what salaries he may have received in that regard. Ms Hayes also serves as chairperson and as a member of other public boards. Perhaps they would spell out for the committee the total remuneration package they have received from the public purse.

Mr. MacSharry said that his task is to help challenge the culture which has so clearly taken over the boardrooms of our financial institutions. Was Mr. MacSharry ever a non-executive member of the Bank of Ireland?

Mr. Ray MacSharry: Yes.

Deputy Pearse Doherty: Was he a non-executive member of Bank of Ireland from 1993 to 2005?

Mr. Ray MacSharry: Yes, up to early 2005.

Deputy Pearse Doherty: Did Mr. MacSharry participate in board meetings of that bank during that 12-year period?

Mr. Ray MacSharry: Yes; I attended every meeting.

Deputy Pearse Doherty: Mr. MacSharry served with Mr. Brian Goggin and other bank officials at that level. He was part of the culture which he has told this committee he is trying to wipe out. Mr. MacSharry was a non-executive member of the board of Bank of Ireland for 12 years. While the crash happened in 2007, the damage was done at the time Mr. MacSharry was a non-executive member. Does Mr. MacSharry believe he is fit to serve as a public interest director for a bank into which the State has put another €4 billion and in respect of which we pay him fees of €239,000, given his previous involvement at that bank and the damage it and others have caused Irish society and the economy?

Mr. Ray MacSharry: I am not here to answer on behalf of any other bank. I was a non-executive director of Bank of Ireland until February 2005. If the Deputy looks back at what happened he will find that the greatest difficulties occurred after 2005. There is no question about that. The Deputy can check the figures. I am satisfied to act in the public interest as I have been doing on the board of Irish Life and Permanent for the past four years and in Permanent TSB for the past number of months. We do act in the public interest. Headlines about fees received by former Ministers or directors general of Departments aside, the fact is that we are getting no more and no less than any other director on any of the covered banks. That is a fact.

Deputy Pearse Doherty: Mr. MacSharry approved a CEO's salary of €400,000 earlier this year.

Chairman: Deputy Doherty's time has expired. I call Deputy Ó Ríordáin.

Deputy Aodhán Ó Ríordáin: I thank Mr. MacSharry and Ms Hayes for attending this meeting. I would first like to hear from Mr. MacSharry and Ms Hayes their understanding of the term "public interest directors".

Mr. Ray MacSharry: Having been a public representative for 30 years, I believe I have some knowledge of what is on the public's mind. When I was in the position in which I had to make a decision that affected the public, I considered what I believed to be in the public interest. I would do exactly the same at a board meeting of the bank as to what would be in the public interest. We are bound under company law to look after the interests of the institution. If the Oireachtas wishes, it can change the law. We do that to ensure that it is run appropriately and responsibly.

Ms Margaret Hayes: I think it would be helpful to refer to a parliamentary question answered on Thursday, 16 December 2010 by the then Minister for Finance, the late Brian Lenihan, when he responded to a question on the duties and role of public interest directors. I quote:

> Public Interest Directors bring in addition to other experiences, a civic mindedness and a sense of what is in the public interest and this experience will inform their sense of what is in the covered institutions' interests. To a great extent the public interest and the covered institutions' interests are likely to coincide. A solvent, liquid, low-risk, prudentially run, profitable company which is a going-concern and which has the confidence of its stakeholders is as much in the public interest as it is in the interests of the institutions.

I can honestly say that Mr. MacSharry and I have pursued those objectives since our appointment to the board.

Deputy Aodhán Ó Ríordáin: Yet, in response to previous questions, the witnesses cannot identify how their approach is different from that of other bank directors.

Mr. Ray MacSharry: It may not be different. The other directors are human beings and have common interests. We are governed by company law and take into account the institution when reaching decisions in the difficult and perilous situation in which banks have found themselves in recent times. Challenging times still exist and will for the foreseeable future.

Ms Margaret Hayes: How would I distinguish the role? I come as an individual with 26 years experience in the public sector, working full time in the service of the public. That has certainly informed the perspective I bring to things. Let me emphasise that section 48 effectively makes every director on the board of Permanent TSB a public interest director. They are obliged to have regard - in fact, the overriding concern in all decisions - is the public interest and has been since the enactment of that legislation. It is extremely difficult for us to distinguish what would have been different if we had not been there because we are all working collectively towards the one objective.

Deputy Aodhán Ó Ríordáin: By the public interest, does Ms Hayes mean the wider economy?

Ms Margaret Hayes: It is worth remembering that we are working towards delivering a solvent, liquid, low-risk, prudentially run profitable company, which is a going concern and

which has the confidence of its stakeholders. That is a very demanding agenda but that is the agenda.

Deputy Aodhán Ó Ríordáin: I think most people listening to the previous replies will be disturbed to hear phrases such as "consensus decision making" and "very few votes". Do the witnesses think the public would find that a bit troubling in terms of the witnesses' role, how they perceive that role, how they view the public interest and their interest in the wider economy? However, when they attend board meeting, there is a level of consensus between what the witnesses think and what other bank directors think in terms of decision making.

Mr. Ray MacSharry: That is the way that decisions are reached. If decisions are reached by consensus there is no requirement for a vote.

Deputy Aodhán Ó Ríordáin: Is there ever a vote on any matter?

Mr. Ray MacSharry: Rarely.

Deputy Aodhán Ó Ríordáin: Does Mr. MacSharry think that the public who put their faith in him battling on their behalf will find that a bit strange?

Ms Margaret Hayes: The Deputy is putting us in a difficult position. Every decision is incorporeal. All the deliberations - - -

Chairman: Could Ms Hayes explain that term please?

Ms Margaret Hayes: It is a single decision and it is a board decision and we all stand behind it. It does not mean that everybody started off in the same position but through long discussion we work out a position and agree a decision that everybody can live with. We all believe that collectively it is in the best interest of the company to act on the lines we decided.

Deputy Aodhán Ó Ríordáin: It was stated, almost as an achievement, that 80% of the mortgages are performing loans. Does Ms Hayes consider a loan that is in negative equity to be a performing loan, even if the mortgage is being repaid and there are no arrears?

Ms Margaret Hayes: As far as the bank is concerned it is a performing loan, it is meeting the conditions of the contract under which the mortgage was granted.

Deputy Aodhán Ó Ríordáin: Most people would find that statement strange that the 80% of performing loans, includes the negative equity loans.

Mr. Ray MacSharry: I am sure some of them are in negative equity. We are giving the answers to the questions we are asked.

I wanted to put on record that we are not just dealing with arrears, sad and all as they are and the pain they are causing. It is correct to state that 80% of loans are performing, some of which are on properties in negative equity.

Deputy Aodhán Ó Ríordáin: That is the problem with statistics. Mr. MacSharry states that 80% of mortgages are performing loans. However, most ordinary members of the public who are looking to him to battle on their behalf would look at that statistic and wonder that the 80% contains mortgages in serious negative equity which can be repaid, but could hardly be described as performing. I can only imagine the difficulties that the remaining 20% of borrowers are in.

Mr. Ray MacSharry: The Deputy is correct. People who are meeting their commitments may find that in time due to reasons such as unemployment, increased taxes or cuts in wages they fall into arrears but now the management have set up the structures to ensure that there will be full consideration given to their position and the best deal that can be worked out for them so that they can continue to stay in their home. The last thing we want to see is anybody being faced with repossession. When the chief executive appeared before the committee he stated there were 300 repossessions, 200 of which were voluntary. We do not want voluntary repossession, we want to see whether we can work on behalf of the company and the individual borrower. That is our intention. It must be in the public interest.

Deputy Aodhán Ó Ríordáin: In respect of those loans, I think there was a play on words or a misunderstanding of the phraseology when we discussed write-offs, write-downs and debt forgiveness. Most people want to know the absolute definition and how the witnesses define the difference between write-off and debt forgiveness.

Mr. Ray MacSharry: Let me give an example of debt forgiveness. If I owe the Deputy €100 and I can only pay him €80, I will have to write off €20. We are not going to do that. On the other hand, if I owe the Deputy €100 and I can give him €80 and in six months or two years, I give him €10 more and in 20 years I cannot give him the last €10, then that might be written off, but not until then. That is the way the system works. It is the only fair way in the context of treating all borrowers equally.

Deputy Aodhán Ó Ríordáin: Is that the way the system worked or is it the way the system will work as a result of the current mortgage crisis?

Mr. Ray MacSharry: I am sure that has been the way. I am sure there have been write-offs already in every institution.

Deputy Aodhán Ó Ríordáin: Have there been write-offs in the institution in which Mr. MacSharry is a public interest director?

Mr. Ray MacSharry: With odd individuals. I am not on the credit committee. However, the chief executive who is on that committee said when he appeared before this committee that he had written off some debt in some instances.

Chairman: On a case-by-case basis.

Mr. Ray MacSharry: Yes, thank you Chairman. It is on a case-by-case basis.

Deputy Aodhán Ó Ríordáin: It is not necessarily a change in policy, it is just how things are done.

Mr. Ray MacSharry: I think so.

Deputy Aodhán Ó Ríordáin: So it is not a reaction to the current mortgage crisis?

Mr. Ray MacSharry: No. The reaction to the current crisis is the level of contact that staff are trained to make to help customers who are in difficulty.

Deputy Aodhán Ó Ríordáin: I would like both witnesses to respond to questions on the overarching policy. There has been no change in policy, effectively. There has been on an individual, case-by-case basis but there is no overarching change in policy as a result of the mortgage crisis.

Mr. Ray MacSharry: There has been a significant change in the management and personnel in the bank contacting customers even prior to them going into arrears.

Deputy Aodhán Ó Ríordáin: There is no overarching policy difference?

Ms Margaret Hayes: We have differentiated in a menu of treatments in a way not required in the past, starting with interest payments only through to split mortgages and eventually, if it has to be done, a write-down of debt.

Deputy Aodhán Ó Ríordáin: The variable rate went from 5.19% to 4.5% in recent months. Is that correct?

Ms Margaret Hayes: It went to 4.34%.

Deputy Aodhán Ó Ríordáin: One of my constituents tells me she is being punished for the stupidity and greed of the decision makers in Permanent TSB who sold too many tracker mortgages. Do the delegates agree?

Ms Margaret Hayes: No.

Mr. Ray MacSharry: We do not agree. As a director, I do not agree.

Deputy Aodhán Ó Ríordáin: Given what happened during the boom and bubble years, when all of these tracker mortgages were being sold, do the delegates not agree that it amounted to stupidity and greed?

Mr. Ray MacSharry: In general, the beneficiary of the tracker mortgage is the borrower. I think it was Deputy Pearse Doherty who said he pitied anybody on a standard variable rate. No doubt, there is a huge difference.

Deputy Peter Mathews: All other things being equal-----

Chairman: I call Deputy Donnelly.

Deputy Stephen S. Donnelly: I thank the delegates for accepting the invitation to appear before the committee. I am puzzled by their interpretation of their role and surprised by what I have heard. If I understand it correctly, both delegaes essentially are saying they were governed by the same set of laws as non-public interest directors.

Mr. Ray MacSharry: Exactly.

Deputy Stephen S. Donnelly: In response to a parliamentary question the Minister for Finance stated: "To address the scope for actual and perceived conflicts between the fiduciary responsibilities of the directors of financial institutions under company law and the wider public interests ... [I am skipping a line or two but the meaning holds] ... the over-riding duty of directors [the Minister is talking about public interest directors] of the covered institutions relates to the public interest as set out in-----

Mr. Ray MacSharry: In the 2010 Act.

Ms Margaret Hayes: The Minister is referring to all non-executive directors on the boards of the covered institutions.

Mr. Ray MacSharry: There is a difference between the 2008 and 2010 Acts.

Deputy Stephen S. Donnelly: I have a copy of the 2010 Act. It is the appointment of public interest directors specifically that is being talked about in section 48, to align the activities of the relevant institutions and the duties and responsibilities of their officers with the public interest. As the delegates are aware, section 48 goes on to state the duty imposed by subsection (1) to which I have referred, the public interest duty, "takes priority over any other duty of the directors".

Mr. Ray MacSharry: Not company law, in respect of which the Deputy read a previous provision.

Deputy Stephen S. Donnelly: That is clear. If there was no difference between public interest and non-public interest directors, there would be no need for this provision. There is specific legislation dealing with the delegates' role which is unique in response to the crisis. I find it extraordinary that they say there is no legal difference between their role and that of directors. There is a difference. There is legislation which specifically addresses the differences in terms of the role of public interest directors and which critically gives them the authority to over-ride their other responsibilities in the public interest. That is what the Act states.

Mr. Ray MacSharry: We have been appointed under the 2008 Act, not the 2010 Act. The 2010 Act provides that the over-riding duty concerns the public interest for all directors of the board.

Deputy Stephen S. Donnelly: Does Mr. MacSharry consider himself to be governed by the 2010 Act?

Mr. Ray MacSharry: Yes.

Deputy Stephen S. Donnelly: Is it reasonable for me to say the over-riding duty is to the public interest?

Mr. Ray MacSharry: Yes.

Deputy Stephen S. Donnelly: Therefore, Mr. MacSharry is not constrained by his duty to the institution.

Mr. Ray MacSharry: I still have to go by what is stated in company law, under which we were appointed. All non-executive directors are in that position having been nominated from whatever source, including public interest directors appointed under the 2008 Act. That is my interpretation.

Ms Margaret Hayes: Perhaps I might refer to the Minister's own interpretation of section 48 which I pursued a few months ago. He stated in the House some time ago that, to assist in addressing the scope for action and perceived conflicts between the fiduciary duties of all directors of financial institutions under company law and the wider public interest in circumstances where institutions were in receipt of huge financial support from the State, section 48 of the 2010 Act provided legal clarity not just for the role of the public interest director but for that of the entire board of such institutions. It provides unequivocally that the over-riding duty of all directors of the covered institutions, irrespective of the circumstances of appointment, relates to the public interest as set out in that Act. Therefore, in truth - if the Deputy wishes to use the phrase - all directors are public interest directors.

Deputy Stephen S. Donnelly: I thank Ms Hayes. We agree, therefore, that, by law, the

delegates are covered by legislation which states their over-riding duty is to the public interest.

Ms Margaret Hayes: Yes.

Deputy Stephen S. Donnelly: That is very different from saying they are simply bound by company law. They are not. There is legislation which provides that one can over-ride any of those responsibilities in the public interest.

Ms Margaret Hayes: Yes.

Deputy Stephen S. Donnelly: That is not what has been said. There is a very important distinction.

Mr. Ray MacSharry: To clarify, I will quote from a reply given by the late Brian Lenihan on 16 December 2010: "Public interest directors, though nominated by me, have been appointed by the boards of the various covered institutions. Details of individual public interest directors, including remuneration, are published in the annual reports. The general rule is that directors, including non-executive directors, owe their duties to the company." Therefore, we operate by company law. The Minister further said: "The interests of the company are paramount. Public interest directors bring, in addition to other experiences...," and so on, as stated by Ms Hayes.

Deputy Stephen S. Donnelly: I thank Mr. MacSharry. I will stay with the issue because this is very important. I accept what Mr. MacSharry has read which goes on to state, "To address the scope for actual and perceived conflict..." Let us think carefully about what the Minister said. He said one's responsibility was to the institution. However, for public interest directors, there is the potential for actual conflict. In such a case one's over-riding duty is to the public interest. That is very clear, but that is not what has been represented. The delegates are not bound solely and exclusively by company law. One can over-ride company law, as laid out in the legislation and as stated in the narrative provided in the Minister's answer, in the public interest. It is important we understand the scope the delegates have.

Mr. Ray MacSharry: That relates to an actual conflict before what the Deputy said takes effect.

Deputy Stephen S. Donnelly: Yes. I thank Mr. MacSharry.

Mr. Ray MacSharry: I agree with the Deputy completely.

Deputy Stephen S. Donnelly: Great. This is important because it is a nice gateway to the next issue I wish to raise. I wish to continue on an issue raised by Deputy Pearse Doherty. As the delegates will see on the screen, the Personal Insolvency Bill is making its way through its Final Stages and we will vote on it this evening. I regret that I will vote against it, having supported the Minister for Justice and Equality, Deputy Alan Shatter, the whole way through. One of the reasons I have decided to vote against it - I made the decision today - is that Mr. Richie Boucher said yesterday that within the context of the personal insolvency legislation there would be no debt forgiveness. Mr. MacSharry has also said there will be no debt forgiveness. We will not be writing off any debt. I appreciate the semantics between writing off debt and debt forgiveness and know no insult was intended. As I find the phrase "debt forgiveness" insulting, I would like to use the phrase "debt surrender".

Let us take an example, which I find it is usually the best way to clarify these issues. Let us take the example of a Permanent TSB borrower who borrowed €400,000, whose property is

now worth €200,000 and the change in her circumstances means she can now service a mortgage of €250,000, capital and interest. The specific intent of the legislation making its way through the Chamber and on which I am about to go and contribute, is that Permanent TSB would surrender €150,000 worth of debt in the case of that borrower. In other words, it would say to her that for, say, a three-year period it would leave her with enough to have a reasonable standard of living, it would take the rest and at the end of the three-year period her mortgage would not be €400,000 it would be €250,000. That is the intention of the legislation and that, by the way, is in the public interest. Unless I misinterpreted what Mr. MacSharry said, what I heard him say is the bank's position - he used worrying phrases such as "we in the bank" - is a very different interpretation of how that example would work through. Can he explain to the committee how he would see Permanent TSB engaging with that example?

Mr. Ray MacSharry: I was following on in regard to the same kind of questions that were asked of the chief executive when he was here when both sides, the committee and the chief executive, used the term "debt forgiveness". There can be many other ways of describing that.

Deputy Stephen S. Donnelly: Yes.

Mr. Ray MacSharry: I was following on from that. As a non-executive director of the board and not an executive of it, I am not fully sure of what policies might or might not be developed by an executive that may or may not come to the board for approval at some stage. These things happen all the time with executive teams. We are talking about the position as of now. I know legislation is going through the Oireachtas at the moment and I know it is to help those unfortunates who are in great difficulty with their mortgages, whether they be in negative equity or whatever. The fact of the matter is that in so far as Permanent TSB is concerned, it will deal with that legislation It will be the law and it will deal with it accordingly. In so far as individual cases are concerned, as of now without that legislation being in place, our team is dealing with customers in arrears and difficulties on an hourly basis every day.

Deputy Stephen S. Donnelly: I am sorry to cut across Mr. MacSharry but I have very little time remaining and this is a very important point. As a public interest director. he might answer, as might Ms Hayes, in respect of that example an individual who borrowed €400,000, can service a mortgage of €250,000 and her personal insolvency professional recommends that it be €250,000 and recommends that Permanent TSB brings down or surrenders €150,000 of the debt, and all legal hold on that, for her. Is that Mr. MacSharry's understanding in this respect and is that what he, as a public interest director, would represent Permanent TSB should do in this case?

Mr. Ray MacSharry: At all times I will represent the law whatever the law is and the interpretation of that law.

Deputy Stephen S. Donnelly: Could Mr. MacSharry answer the specific question?

Mr. Ray MacSharry: I do not know because it is hypothetical. I do not know exactly what the situation would be-----

Deputy Stephen S. Donnelly: It is not hypothetical at all.

Mr. Ray MacSharry: -----and it will be a matter for management to take the new legislation into account and come forward with proposals in that context for the type of case the Deputy outlined.

Deputy Stephen S. Donnelly: I am going to interpret Mr. MacSharry's answer as a "No" because what he said is that the bank is not going to engage in this sort of thing.

Mr. Ray MacSharry: As of now, that is the position. I said as well - the Chairman may not have written it down - that in the context of the new legislation, we will look at it and see how we have to apply it. That will be our duty.

Deputy Stephen S. Donnelly: It does not seem that the witness, wearing his public interest director hat, is doing that. In consulting, in which I spent several years, there is a phrase used and whenever we sent a team to a client we were always afraid that they would go native and by that I mean that they would forget what their job was and would become part of the client they had gone in to see. I say this with the greatest respect for both of the witnesses' long careers of public service, but in my opinion, based on what I have heard, essentially in response to Deputy Doherty's questioning, it seems both witnesses have gone native. I say that with the greatest respect for their many years of public service. The language I heard, particularly from Mr. MacSharry and particularly with regard to the Personal Insolvency Bill, is not in the public interest; it is in the interests of the banks, and I say that regrettably and with respect. That is certainly my conviction.

Mr. Ray MacSharry: The Deputy can have his interpretation as he likes and I have mine. There is nobody around more than I who would love to see the kind of questions the Deputy is asking being answered in the positive but somebody somewhere, the taxpayer probably, is going to have to put up money - in addition to what already has been put in - if that has to be done. I would love to be in a position to say to the Deputy that is going to happen but, first of all, I am not an executive of the company; I am a non-executive director with the role of approving or not approving policies brought forward by the executive with my vote, if it is required, or my consensus. I will continue to play that role but in the public interest I personally would love to see everybody who is in arrears tonight find a windfall before Christmas and have their arrears wiped out but that is not the real world. We have to live in the real world under company law.

Chairman: I call Deputy Mathews and remind him that I want to restrict timeslots to eight minutes.

Deputy Peter Mathews: I had an enormous sense of unreality about this for the first hour of this conversation. If the witnesses saw the film "The Truman Show", it was like that, a weightless unreality. The language of the opening remarks was so similar that I had a sense that the same author wrote both papers in that they were in committee language. I wish this conversation could have kicked off in ordinary English, as we would use with our families around the dinner table. They should get robust. The witnesses are directors appointed in the public interest. I am not going to go into the semantics of it but I am glad Deputies Doherty and Donnelly asked the questions that they did.

When the witnesses came on board at the end of 2008, the board of the group had a chairperson who had come from a totally different sector than either insurance or banking. There were other directors who were part of the establishment director club, as David McWilliams or somebody else might call it. There was complacency and stale air around the boards of banks and financial institutions. The bank did not even know how the crash had occurred. It had the highest loans to deposit ratio in the euro area, it was extraordinary, and it did not know how it got there. The excuse was that it was a mixture of an insurer and a bank and to that extent one could not apply prudential architecture tests to the balance sheet of the bank. Of course, one could. The question that arises at the top of one's fingertips is what is the size of the balance

sheet? What is it currently?

Ms Margaret Hayes: It is €41 billion.

Deputy Peter Mathews: Is it €41 million?

Ms Margaret Hayes: It is €41 billion.

Deputy Peter Mathews: What is the size of the total loan book?

Ms Margaret Hayes: It is roughly €35 billion.

Deputy Peter Mathews: What is the size of the loan provisions for losses against the size of that loan book?

Ms Margaret Hayes: At the end of last year it was €2.3 billion.

Mr. Ray MacSharry: It is rising. It is between €2 billion and €3 billion now.

Deputy Peter Mathews: That is very light when one considers that Certus, which is the workout vehicle for Lloyds Bank, has to date written off €22 billion of the €40 billion at which its loan book peaked. That begs a question about the 80% capital adequacy. What do the witnesses mean by an 80% capital adequacy?

Mr. Ray MacSharry: It is 18% capital adequacy.

Chairman: The Deputy is three minutes into his allotted eight minutes if he wants to allow time for the witnesses to respond to his questions.

Deputy Peter Mathews: That is okay. I am happy with the way this is going. It is terribly light. It is about 7%.

Chairman: I interject to ask Deputy Creed to take the Chair.

Deputy Peter Mathews: It is very light provisioning. Certus has written off €22 billion for Lloyds Banking Group, which is more than 50% in this context. We know that the Central Bank and the Regulator made two attempts at a prudential capital assessment review, PCAR, in 2010 and 2011, both of which were wrong by 100%. The Deutsche Bank cannot even get things right. Two weeks ago there was talk that it had a €12 billion accounting fraud at the height of the crisis. Are banks and financial institutions playing loose with all the family savings around the world? They are the fundamental questions. They are the questions that it would take character for public interest directors to raise at board meetings. I would love to have heard responses to such questions. The public interest directors should not have been afraid to ask questions of the former chairperson who remained *in situ* for a year and a half after they were appointed. It was crazy stuff. One should think about it. The person who had crashed the bus was still in charge and the witnesses were on the board then.

Acting Chairman (Deputy Michael Creed): I will ask the directors to comment and Deputy Mathews can respond then. His time is running out.

Deputy Peter Mathews: Okay. How much exceptional liquidity assistance, ELA, is there on the balance sheet?

Mr. Ray MacSharry: At the moment there is none.

Deputy Peter Mathews: How much is there in advances from the European Central Bank?

Ms Margaret Hayes: It is around €11 billion at the moment.

Deputy Peter Mathews: They are the people who should capitalise the bank. The bank should not come near citizens again. It should get tough with the people who deserve it not the little people who are paying 4.35% variable interest rates.

It is very simple; it is writing down debt. Let us just call it that. If I lend a person money and he or she cannot pay it back but they are doing their best – hand on heart, and their prospects are whatever they are - I will write it down. When Dunnes Stores buy in stock of the wrong colour, shape, size or material it does not say in the long-term economic cycle it will drift the dresses, garments or children's clothes into the market over a period, it writes it down straight away and if it does not it is a sign that it does not have enough capital because it means that it is not doing its business.

Mr. Ray MacSharry: It is a sign of a margin, not to do with capital.

Deputy Peter Mathews: It is a sign that it is not on top of its business if it does not write it down and it is a sign that it does not have capital. If one is not on top of one's business, one does not have capital and one does not have management. What is Mr. Masding doing? We are four years into the crisis.

Acting Chairman (Deputy Michael Creed): Deputy Mathews.

Deputy Peter Mathews: We did multiple reporting in ICC as a matter of course, giving all the breakdowns of the ledgers and how many days. We knew it every month. The information was at the tip of our fingers right through the 1980s crisis. We knew what was going on and what has been going on since. Let us talk in ordinary around-the-table language. Let us forget this sort of stuff. The witnesses can come in and say that the size of their balance sheet is €40 billion, which includes insurance.

Ms Margaret Hayes: No, it does not. With the insurance it was over €70 billion.

Deputy Peter Mathews: Right. I have become a little bit sloppy. I used to have this information at the tip of my fingers.

Mr. Ray MacSharry: I love listening to Deputy Mathews.

Acting Chairman (Deputy Michael Creed): Would Mr. MacSharry like to answer some of the questions? I am concerned that there is only a minute and a quarter remaining for Deputy Mathews.

Deputy Peter Mathews: The witnesses must stand up and speak to the Minister. They must open a conversation with him. The former Minister asked them to go on the board. In many ways it was a poison chalice. There was an opportunity to open the curtains and let the light in as that is the best disinfectant. The witnesses could have decided to tell the newspapers what the position is and get it out fast because then it could be dealt with. One could then go to Mario Draghi and say that we need another €6 billion. One could say that we want a minimum of 20% provisioning and we would feed it back into the balance sheet or give it back to him. That is the type of technical engineering that should be done.

Mr. Ray MacSharry: To answer some of the points that have been raised, as I said, the

capital adequacy ratios are 18% and that is on the basis of a 55% drop in house prices in recent years.

Deputy Peter Mathews: That is irrelevant. It is loan collections that are important.

Mr. Ray MacSharry: I did not interrupt Deputy Mathews.

Acting Chairman (Deputy Michael Creed): Deputy Mathews should allow the director to speak without interruption.

Mr. Ray MacSharry: If house prices drop by 59% or 60% that capital adequacy ratio could drop to 6%, which is a real stress case. To return to loan to deposits, which the Deputy mentioned, in 2009 our loan-to-deposits ratio was 265%. It went to 273% then it reduced in 2011 to 234% and it now stands at 192%.

Deputy Peter Mathews: It should be at 92%.

Mr. Ray MacSharry: Excuse me. It should be at least 100% to 110%. That is what we are working towards. In the four years that we have been there we brought it from 265% by one means or another to 192%. We must continue to bring it down. That is a fact of life.

Deputy Peter Mathews: It should be 90%.

Mr. Ray MacSharry: We would settle for 100% if we could get it to there. I would love it.

Deputy Richard Boyd Barrett: I will ask some quick-fire questions on facts before I get into the main question. It was said that 20% of the 174,000 mortgages are in arrears.

Ms Margaret Hayes: It is 20% of the residential mortgages. There are 174,000 mortgages and the residential segment is the biggest proportion of the overall amount.

Deputy Richard Boyd Barrett: How many residential mortgages are there?

Ms Margaret Hayes: It is approximately 20%.

Deputy Richard Boyd Barrett: How many of the 174,000 mortgages are residential? Is it 20% of the 174,000 mortgages that are in arrears?

Ms Margaret Hayes: No. The total mortgage book is 174,000.

Deputy Richard Boyd Barrett: How many of those are residential?

Mr. Ray MacSharry: It is up to 20% on the overall book?

Deputy Richard Boyd Barrett: Are we saying that 20% of 85,000 are in arrears? A fifth of 85,000 is approximately 17,000, which implies that number is in arrears.

Mr. Ray MacSharry: At the moment there is €7.9 billion in arrears.

Deputy Richard Boyd Barrett: How much of that is residential?

Mr. Ray MacSharry: I do not have the figure for residential. A graph has been given to committee members in the past week which shows exactly the amount of arrears per residential, rental property, CHL, and commercial. The total arrears amount to €7.9 billion.

Deputy Richard Boyd Barrett: It is probably about half.

Mr. Ray MacSharry: No, it is approximately 18%.

Ms Margaret Hayes: No. It is approximately 17% to 18% of the total book in monetary value.

Mr. Ray MacSharry: I can get detailed figures but the graph can help.

Deputy Richard Boyd Barrett: I am trying to find out what it costs. Someone said they were not interested in a blanket write-down, but we are. People rightly say the State should demand a write-down of the unsustainable debts that are on the back of the State.

Mr. Ray MacSharry: The answer is €8 billion. That is all of the debt at the end of 2011.

Deputy Richard Boyd Barrett: Is that for residential mortgages?

Mr. Ray MacSharry: No, it is the total amount.

Ms Margaret Hayes: If one is to write off arrears then it would amount to €8 billion.

Acting Chairman (Deputy Michael Creed): Everyone should speak through the Chair please.

Deputy Richard Boyd Barrett: What we are proposing is to write down to current market values the residential mortgages. Approximately how much would that cost?

Mr. Ray MacSharry: I do not know. We will get the figures.

Deputy Richard Boyd Barrett: We are interested in keeping roofs over people's heads.

Mr. Ray MacSharry: We will try to get the figures for the Deputy.

Deputy Richard Boyd Barrett: It is probably approximately €3 billion.

Mr. Ray MacSharry: We will get it checked but I would say it is more.

Deputy Richard Boyd Barrett: Okay. Perhaps it is between €3 billion and €4 billion.

Mr. Ray MacSharry: I will not be drawn on whether it is one or the other. The Deputy has asked the question and I will ask that an answer would be supplied to the committee.

Deputy Kieran O'Donnell: What percentage of the loan book is in residential mortgages?

Deputy Richard Boyd Barrett: It is my time to ask questions.

Acting Chairman (Deputy Michael Creed): Deputy Boyd Barrett should be allowed to speak without interruption.

Deputy Richard Boyd Barrett: The point is that all and sundry are saying that the State would like to write down its debts to sustainable levels in order that the economy can recover when it comes to debts. We apply the same principle to residential mortgages. That would be the easiest way to sort this out. The bank has been provisioned to do that. This gets to the heart of the question of whose interests the public interest directors are serving. That is what the public want for national debt and mortgage debt.

Deputy Peter Mathews: It is what the country needs.

Deputy Richard Boyd Barrett: Exactly.

Mr. Ray MacSharry: Public interest directors in any institution do not get appointed to just write off debt. They are non-executive directors of a bank that is governed by company law that has limited resources.

Deputy Richard Boyd Barrett: Okay, if Mr. MacSharry does not mind, I heard him say those things already. That is not clear at all to me. The 2010 Act states that the public interest duty imposed on directors takes priority over any other directorial duty. That is clear. They have a mandate to vindicate the public interest over any other duty. If the public had any opportunity to instruct them as to what representing their interests would amount to, they would say that they should write down unsustainable mortgages to sustainable levels and that they should do it now because it is not their fault. Why would we not do that?

Mr. Ray MacSharry: As our chief executive said when he was here, each case is examined on a case-by-case basis. He did say that he had some write-offs on a case-by-case basis.

Deputy Richard Boyd Barrett: So we have hundreds of people wading through, trying to figure out on a case-by-case basis what is sustainable and what the bank considers acceptable. Enormous resources are being wasted on that.

Mr. Ray MacSharry: They are not wasted. They are dealing with the customer's problem and trying to resolve it. They are making great progress in resolving those problems. We have got to be realistic.

Deputy Richard Boyd Barrett: Let me put it another way because I have two minutes left. Is not everybody who took out a mortgage, more or less from 2000 to 2008 - or who lost their job as a result of the crash, and who consequently cannot pay their mortgage - an innocent victim of a crisis caused by other people in the banking system?

Mr. Ray MacSharry: They are innocent, yes. It is unfortunate for them. Yes, the Deputy is correct.

Deputy Richard Boyd Barrett: To my mind, surely there is no moral hazard in giving them relief. It is in the public interest both in terms of the economy and for them as members of the public, that they get relief which should require debt write-down. The moral hazard for most of the public is that the banks who caused the crisis are the ones who get bailed out across the board. All the banks get bailed out but the mortgage holders, who are the innocent victims, do not.

Mr. Ray MacSharry: The moral hazard would be that if one starts doing that, why should anybody pay their mortgage. Why?

Deputy Richard Boyd Barrett: It is because most people are not scammers like, arguably, the bankers and speculators were.

Mr. Ray MacSharry: That is what I said earlier - up to 80% are still paying their mortgages.

Deputy Richard Boyd Barrett: Yes, but would it not-----

Mr. Ray MacSharry: Would they continue to pay if Deputy Boyd Barrett had a policy that

for these very tragic cases one began, on a global basis, to wipe off or forgive debt?

Deputy Richard Boyd Barrett: They would.

Mr. Ray MacSharry: Why should they?

Deputy Richard Boyd Barrett: It is very simple. If we identify the bubble period - and it is not hard to identify it, between about 2002 and 2008 - that group of people, whether or not they are in mortgage distress now, or whether they are in negative equity - which is also a form of distress, although not as bad as being in arrears - are unique. They are in trouble through no fault of their own. We could quantify how much would be required to write-down their debts to sustainable levels, so they can start to pay and be treated as normal customers from that point. Would that not be a reasonable position to take?

Mr. Ray MacSharry: It would be lovely to be able to do it, but I do not think it is possible.

Deputy Richard Boyd Barrett: It seems to me that there is no way out of this mess if we carry on because you guys have a veto. Mr. MacSharry has said he will continue to act primarily in the interests of the company. On a number of occasions, he has stated that he finds himself bound by company law. There is clearly a conflict between his loyalty or requirement to serve the best interests of the company as against the interests of those mortgage holders we are talking about.

Mr. Ray MacSharry: I am serving the interests of those mortgage holders with hundreds of people, as the Deputy said, talking with them, dealing with them, trying to understand their problems and helping them where we can.

Deputy Richard Boyd Barrett: Okay.

Acting Chairman (Deputy Michael Creed): I am going to ask the Deputy to conclude. I will give him 30 seconds.

Deputy Richard Boyd Barrett: When Mr. MacSharry says that 20% of the bank's residential mortgages are in trouble, would it not be fair to say that a lot of those people, if not most, have lost their jobs?

Mr. Ray MacSharry: They are in arrears all right.

Deputy Richard Boyd Barrett: In most cases, they are in arrears because they have lost their jobs.

Mr. Ray MacSharry: It is probably the biggest case.

Deputy Richard Boyd Barrett: Is Mr. MacSharry telling us that if a person has lost their job they are also going to lose their house?

Mr. Ray MacSharry: The last thing we would want to see for any customer is for them to lose their house.

Deputy Richard Boyd Barrett: Nothing Mr. MacSharry has told us gives us any reason to believe other than the fact that if a person has lost their job they will lose their house.

Mr. Ray MacSharry: The Deputy was not listening to what I said so.

Acting Chairman (Deputy Michael Creed): I will ask two brief questions. In their earlier contributions, Mr. MacSharry and Ms Hayes made much play of the fact that on a number of occasions since their original appointment as public interest directors, they have been re-elected. At such annual general meetings over 90% of the voting rights are controlled by the State. In terms of their re-election on each of those occasions, what level of support did they command from the 8% of voting rights not controlled by the Department of Finance?

Mr. Ray MacSharry: I think it is 0.8%. The fact of the matter is that for four of those elections the State was not a 99.2% owner. It is only the last time when the Minister asked us. In fact, our term was up last year and we expected to be leaving after three years. Yet we were asked to stay on and were elected, including by the vote of the shareholder - i.e. the State and the Minister. Prior to that on the other three occasions we did not have the Minister as a shareholder.

Ms Margaret Hayes: The Minister had no shareholding until the 2012 AGM.

Deputy Michael Creed: In respect of the voting rights that are not controlled by the State?

Mr. Ray MacSharry: We had 97%.

Ms Margaret Hayes: Over 90% of the ordinary shareholders.

Mr. Ray MacSharry: Each time we were elected with over 90% of the 137,000 shareholders who were wiped out in the context of the recapitalisation. Am I allowed to put that on the record?

Deputy Michael Creed: Can I ask Mr. MacSharry and Ms Hayes about the definition of "public interest"? I have listened to a number of the other contributions and there is a view that the public interest is reflected by those who are in mortgage difficulty or by those who see the institution as an investment by the taxpayer who wants a return. Do Mr. MacSharry and Ms Hayes feel that the failure to define "public interest" has put them in a very invidious position? In effect, the title of public interest director means they are window dressing. Under company law - and they have to operate in that context primarily - they are no different to any other directors. Do they believe that they have been put in a most invidious position, trying to serve multiple masters, while in effect having to operate under company law? The latter makes their loyalty primarily to the company.

I was interested when the witness read out the late Brian Lenihan's definition of public interest directors. He mentioned a profitable company, among other things. If the loyalty of the public interest directors is to creating a profitable company, one could argue that that could only be done at the expense of many of those who are clients of the company and are now in mortgage arrears. Those who hold non-tracker mortgages are being asked to subsidise the bank's loss-making tracker book. Do the witnesses not believe that the failure to define "public interest" has left them in a very difficult position?

Mr. Ray MacSharry: Two Ministers have defined it. In the context of what the Deputy has said, a solvent, liquid, low-risk, prudentially run, profitable company, which is a going concern and has the confidence of its stakeholders, is as much in the public interest as it is in the interests of the institution. That was the Minister's response to a question.

Deputy Michael Creed: Does it include the confidence of its stakeholders as well as the confidence of those who hold mortgages, be they tracker or variable?

Mr. Ray MacSharry: It does include all stakeholders, but the shareholder is now the State with 99.2% of the bank.

Ms Margaret Hayes: I would agree with Deputy Creed that it is an extremely difficult balance. It is a balancing act that has to be conducted by the entire board. Since the 2010 Act, everybody on the board has to deal with what is defined for each decision as being in the public interest.

Mr. Ray MacSharry: Everybody is in the same boat.

Ms Margaret Hayes: Of course, the public interest implies that the company continues to run to serve that public interest, whatever it is to be defined or determined as.

Chairman: On a point of clarification, is that because the State is a majority shareholder in the bank, or would that apply in the case of the Bank of Ireland where the State is a minority shareholder? Is that standing unique because the State is a majority shareholder?

Ms Margaret Hayes: It is because we are a covered institution under the 2010 Act.

Chairman: In this circumstance, it would not apply to the Bank of Ireland?

Ms Margaret Hayes: It does.

Deputy Peter Mathews: It does, yes. It is a covered institution.

Chairman: Please let the witnesses answer the question.

Mr. Ray MacSharry: All covered banks, yes. It covers the Bank of Ireland.

Chairman: All covered banks, regardless of the State's percentage shareholding?

Mr. Ray MacSharry: That would be my interpretation, Chairman.

Chairman: Okay. I call Deputy Creed.

Deputy Michael Creed: I have a final question. Do the witnesses think that in the public interest it is desirable - and to prevent corporate capture or falling victim to the Stockholm syndrome - that there should be a regular turnover of public interest directors?

Mr. Ray MacSharry: The quicker the better, yes.

Ms Margaret Hayes: I do.

Deputy Mary Lou McDonald: I thank Mr. MacSharry and Ms Hayes for attending. To take up Deputy Michael Creed's point about the lack of a definition of what constitutes the public interest, I was struck by the fact that some of Mr. MacSharry's responses were almost in the style of de Valera looking into his heart and conscience to establish for himself-----

Mr. Ray MacSharry: I am sure the Deputy does that too. I still do it.

Deputy Michael Creed: The Deputy used to do it once upon a time.

Deputy Mary Lou McDonald: It is problematic that directors do not have a more pinned down directive sense of what is the public interest. Mr. MacSharry has articulated his obligations under company law. It is only fair to say that given what happened in the financial institu-

tions and the consequences for the public, the public has a view to have its interests protected against those of the banks. Mr. MacSharry should be aware that his sense of partnership with the company is not shared by the general public.

Mr. Ray MacSharry: I do not disagree with what the Deputy has said, but the fact remains that the majority shareholder in two of the covered institutions has the opportunity to change it if it so wishes. It may not be easy to do so in the banks in which it has a minority shareholding such as the Bank of Ireland. However, in the other two institutions it can have tremendous influence.

Deputy Richard Boyd Barrett: That is a fair point.

Deputy Mary Lou McDonald: Do I take it that Mr. MacSharry is asserting the shareholder should change it?

Mr. Ray MacSharry: No, in the context of many of the questions being asked, the implication is that the public interest directors have €8 billion in their hip pockets to write off debts when they do not.

Deputy Mary Lou McDonald: I did not hear any member say that.

Mr. Ray MacSharry: If the majority shareholder believes that could be done, then there is no problem. As I said, I would love to say to those mortgage holders suffering pain and in great difficulty that we would-----

Deputy Peter Mathews: The need is for public interest directors to recognise that and ask for it.

Chairman: I can bring the Deputy back in later.

Deputy Mary Lou McDonald: In respect of the shareholder, in a response to Deputy Shane Ross on 14 November, the Minister for Finance set out how he had last met the public interest directors on 17 May 2011. With whom did he meet from the institution?

Mr. Ray MacSharry: I do not know. He may have met the chairman and the chief executive officer who form the communication line. I know that under the framework arrangements, the chairman and the chief executive officer meet officials from the Department of Finance, the Financial Regulator and the Central Bank every month.

Deputy Mary Lou McDonald: When the public interest directors met him in May last, did the issues of dealing with the write-down of loans and personal insolvency feature in the conversation?

Mr. Ray MacSharry: I think they feature in all banking conversations now. As I said, at the time the institutions were - and are still - in a perilous position and had great difficulty in surviving. The Minister was as interested in this as we were as non-executive directors.

Deputy Mary Lou McDonald: I will take that as a "Yes".

Mr. Ray MacSharry: All aspects of banking-----

Deputy Mary Lou McDonald: Including the issues of write-downs and personal insolvency.

Mr. Ray MacSharry: No, I am not necessarily saying that.

Deputy Mary Lou McDonald: What is Mr. MacSharry saying then?

Mr. Ray MacSharry: It was about the general running of the bank, where the bank would end up and the sale of Irish Life. These were all matters being discussed by the board at the time.

Deputy Mary Lou McDonald: Presumably, it also included the issue of mortgage arrears.

Ms Margaret Hayes: There was the upcoming investment by the State in the bank.

Deputy Mary Lou McDonald: Do the directors know the extent of contact between their institution and the Minister over several months and conversations in respect of the personal insolvency legislation?

Mr. Ray MacSharry: I am not aware of any, but I am sure there would have been some exchanges about the personal insolvency legislation going through the Oireachtas.

Deputy Mary Lou McDonald: Does Mr. MacSharry know if there was any lobbying on the content of the legislation?

Mr. Ray MacSharry: No, not to my knowledge.

Ms Margaret Hayes: I know the executive team was involved with the Irish Banking Federation and I am presuming it would have had an input into the IBF's submission on the legislation.

Deputy Mary Lou McDonald: Outside of that collaborative approach, are the directors aware of other direct contacts between the institution and the Minister on this issue?

Ms Margaret Hayes: No, but I am aware that the issue came up in discussions with the troika when the institution's executive team made its views known to it.

Deputy Mary Lou McDonald: Mr. MacSharry is on the bank's remuneration committee. Is it in the public interest to pay somebody €500,000?

Mr. Ray MacSharry: Like who?

Deputy Mary Lou McDonald: The chief executive officer is paid this sum and it includes his pension entitlement.

Mr. Ray MacSharry: These are set arrangements. The chief executive officer's salary and conditions were approved by the Department and the Minister for Finance. They were not discussed at the remuneration committee.

Deputy Mary Lou McDonald: Therefore, the committee has no role in deciding the remuneration for somebody in that position?

Mr. Ray MacSharry: We do have a role, but for some time the Minister has taken a role in the payment of chief executives and had disputes with some. With regard to the appointment of Mr. Masding, that discussion took place. I am not familiar with whom it took place, but it was conveyed to us.

Deputy Mary Lou McDonald: Did the committee just rubber-stamp it?

Mr. Ray MacSharry: It was below the figure in the guidelines which was €500,000.

Deputy Mary Lou McDonald: The remuneration committee was not the deciding body. It simply rubber-stamped the decision.

Mr. Ray MacSharry: It is the deciding body for other executives, but in this instance, it was not.

Deputy Mary Lou McDonald: Through the lens of the public interest, did Mr. MacSharry have concerns when he saw a package of that size? Did it ring a public interest alarm bell in his head?

Mr. Ray MacSharry: No. We were lucky to get someone of that calibre. He has made an enormous change to the culture and attitude of the bank's personnel and through contact with shareholders and the asset management unit. His whole thinking was to have a total focus on the bank by selling off Irish Life.

Deputy Mary Lou McDonald: In Mr. MacSharry's previous incarnation through his involvement with the Bank of Ireland between 1993 and 2005 he probably took the same view of the remuneration packages enjoyed by senior figures.

Mr. Ray MacSharry: Remuneration packages were set by-----

Deputy Mary Lou McDonald: Mr. MacSharry probably would have sat before a committee such as this and told it that if one wanted the best, one had to pay the bucks. We know where that led us.

Mr. Ray MacSharry: At the time I did not sit before any committee.

Deputy Mary Lou McDonald: More is the pity.

Mr. Ray MacSharry: There were differentials in the conditions of chief executives in many institutions. It has now become more focused and concentrated.

Deputy Mary Lou McDonald: Were their salaries at the time merited?

Mr. Ray MacSharry: In the context of what was available in the market in the banking and financial institutions, that was what was available.

Deputy Mary Lou McDonald: In Mr. MacSharry's mind, therefore, it was merited.

Mr. Ray MacSharry: That was what was available.

Deputy Mary Lou McDonald: Up to 12% of Permanent TSB employees earn in excess of €100,000. I assume Mr. MacSharry believes this is the rate that has to be paid. Does he see how extraordinary this is for anyone looking in at a bailed out institution which is not enthusiastic about dealing with the issue of write-downs to give relief to the general public? In my mind, the institution does this in a delusional frame of mind. Nevertheless, Mr. MacSharry defends these packages just as he would have defended the packages of his colleagues in earlier years when he served on the board of Bank of Ireland. It is extraordinary.

Mr. Ray MacSharry: The salaries to which the Deputy refers were fixed before our time on the board.

Deputy Mary Lou McDonald: But Mr. MacSharry is on the remuneration committee and, in fact, chairs it.

Mr. Ray MacSharry: They are contractually based salaries agreed with the representative organisations which reflect the norm throughout the financial system.

Deputy Mary Lou McDonald: What is the point of the remuneration committee then?

Mr. Ray MacSharry: As I pointed out earlier, no pay increase, increment or bonus has been given since we joined the board.

Deputy Mary Lou McDonald: So, you stand over those salaries.

Mr. Ray MacSharry: Those salaries were there before my time.

Deputy Mary Lou McDonald: So, you do not stand over those salaries.

Deputy Joe Higgins: Will Mr. MacSharry or his colleagues send the information to which he referred to Deputy Boyd Barrett and me?

Mr. Ray MacSharry: It can be sent to all members of the joint committee.

Deputy Joe Higgins: We want a calculation of the cost to the bank of a write down of residential mortgages to reflect current market values.

Mr. Ray MacSharry: We will have that worked out and communicated to the joint committee.

Deputy Joe Higgins: Can Mr. MacSharry explain to his board that the reason we seek this information is that the bank's clients include a cohort of working and unemployed people who were blackmailed during the property bubble into paying extortionate rates for the basic right to have a home as a result of the outrageous racketeering, speculation and profiteering in the housing market to which Mr. MacSharry's previous political party was central? Can he explain that there is a fundamental issue of justice for the victims of that gouging as well as an important economic argument to the effect that the crisis in the economy could be addressed if mortgages were written down to reflect current property values, thereby releasing the significant funds tied up in monthly repayments by ordinary households to stimulate domestic demand? That is the logic of why we seek this calculation. I put it to the witnesses that as a nationalised institution, Permanent TSB should have an ethos which is entirely different from a capitalist institution in the financial markets. Has any dynamic thinking of the kind I have outlined been considered for the real public good in the boardroom of Permanent TSB?

Mr. Ray MacSharry: Our duty under the law is to manage a solvent institution. While we do not have the exact figures, the suggested write-offs would make for an insolvent institution unless someone else were prepared to pay for it.

Deputy Joe Higgins: In short, there is no difference in the minds of the public interest directors between how a publicly-owned bank and a bank in full capitalist ownership should operate.

Mr. Ray MacSharry: We are non-executive directors of a publicly-quoted company and we must deal with it accordingly.

Deputy Joe Higgins: What difference have the witnesses made as public interest direc-

tors of Permanent TSB over the past four years in the interests of the Irish people? Can they enumerate three points each which demonstrate how individually or together they have been responsible for making a significant difference to the taxpayer and the public good?

Mr. Ray MacSharry: As Ms Hayes said earlier, all decisions are made by the board whether by consensus or vote, mostly the former. We participate in the discussions which inform those decisions and each decision involved a contribution from us. We do not just sit there and say nothing. We participate in the proposals before the board and come to agreement or otherwise.

Deputy Joe Higgins: The witnesses are tasked with addressing for the public the serious and continuing disruption to the economy and the financial system. Can Mr. MacSharry not state concretely what he has brought to bear which has made a difference and point to something would not otherwise have occurred?

Mr. Ray MacSharry: All of us together are working to make the bank a viable institution which serves the community in the public interest. We have taken numerous steps to bring that about including selling Irish Life & Permanent, which earned the group €1.3 billion, and reducing payments to second-tier bondholders, which raised €1.2 billion. We will continue to do our utmost to ensure the bank deleverages non-core assets and to ensure that we return to the basic banking function of offering one rate of interest on deposits and making a margin by lending for mortgages, personal loans and credit cards at higher rates.

Deputy Joe Higgins: Does Permanent TSB provide mortgages, loans and credit cards?

Ms Margaret Hayes: We do personal banking.

Mr. Ray MacSharry: Personal banking, mortgages and credit cards.

Ms Margaret Hayes: Current accounts and deposit accounts.

Deputy Joe Higgins: The bank has no role with regard to small enterprises.

Ms Margaret Hayes: No.

Mr. Ray MacSharry: No.

Deputy Richard Boyd Barrett: Every member of the joint committee has expressed a frustration which represents the public view on mortgage relief and, though we did not go into it, lending to SMEs. We have invested a great deal in the banks and the public is getting very little in return. I ask the witnesses to disregard their current roles and to tell us objectively who is responsible for bringing about the change required to give us more influence over the banks we bailed out to effect greater lending and the writing down of mortgages to sustainable levels.

Mr. Ray MacSharry: We will soon bring forward proposals to return to the lending market, in which we have not participated for some time. The proposals will relate to mortgage lending, credit cards and personal loans. A theme in many of today's contributions has been debt forgiveness or write-offs. It is a question Permanent TSB is not in a position to discuss. As the chief executive explained to the joint committee, the bank deals on a case-by-case basis with people who are in trouble and in respect of whom residual debt may be written off.

Deputy Richard Boyd Barrett: Can the Minister tell Permanent TSB to write down the debt to sustainable levels?

Mr. Ray MacSharry: The Minister's general approach to any issue, and that of the Taoiseach in the Dáil this morning speaking about credit cards, is that it is a matter for the institutions concerned.

Deputy Richard Boyd Barrett: Nobody is responsible.

Deputy Peter Mathews: Acknowledging the point about directors' duties and public interest, I would ask Mr. MacSharry to report in conversation with the Minister, after carrying out a robust exercise across the loan book, on what update provisions would be needed to meet the collectability of the debts. It should not be a case of waiting on the never never. It should be realistic and get an idea of the new capital requirement and he should ask that the Minister would put the case to the euro system that we need further capital for that bank to do the very things that Deputy Higgins mentioned, to get the indigenous economy going again with money in households and businesses. There are plenty of businesses with legacy debts that are smothering their otherwise viable activities. There is a mountain of debt write-down needed at euro system level in two forms, namely, IBRC and the promissory notes should be torn up and the ELA should be cancelled. A total approaching €30 billion is needed for the survivor banks.

Chairman: I am not accepting commentary from the Deputy. I will take questions only.

Deputy Peter Mathews: I am asking the public interest directors to put that case, to get the information and facts calibrated and bring it to the Minister.

Ms Margaret Hayes: All I can say to the Deputy is that our restructuring plan puts forward the possible contribution that our institution can make to a system resolution. That is with the EU now.

Deputy Kieran O'Donnell: Is there anything, be it legislation or otherwise, that constrains the public interest directors' roles in representing the public interest?

Mr. Ray MacSharry: No. I never feel constrained by the public interest, having been a public representative for the guts of 30 years. I have an idea of the problems in the arena and of the problems that have occurred in arrears in mortgages and in the financial world in the past five years. There are many suggestions as to how they might be resolved. This recession is going on longer. Things would have been much better if after three years we could see the bottom and a bit of a lift. It is not coming anywhere which makes it more difficult for everybody, governments, banks and the community at large.

In response to Deputy Mathews's comment about a write-off in Europe it is the same as debt forgiveness here. If they will not do that in Europe maybe we should ask another question, let us have a particular bond for €40 billion or €50 billion over the next 50 or 60 years and an interest that is viable for us. That is the best way to help this economy for the foreseeable future.

Chairman: I thank Mr. MacSharry. In bringing this afternoon's module to a conclusion I suggest to committee members and others that the committee reserve its final views on the situation and make its recommendations after we have dealt with the individual banks and their public interest directors.

It has, however, become emphatically clear that despite the legislation stating that the duty of the public interest directors is owed to the Minister on behalf of the State, the role does take priority over the other duty of the directors and that there was an intention under the initial legislation that some sort of guidelines or terms of reference would be issued but never were.

We have confirmed that this afternoon. Mr. MacSharry has proposed that the committee should make a recommendation on whether the public interest directors should continue into the future. It is his position that they be rotated or rolled over from time to time.

Mr. Ray MacSharry: The quicker the better.

Chairman: I thank Ms Hayes for coming before us this afternoon. I appreciate and understand that this is the first time that the public interest directors in any capacity have given an open account in any forum and I appreciate their coming before the committee. I thank them for their time this afternoon as it was quite a long session. I thank Ms Hayes and Mr. MacSharry for briefing us and adding to our understanding of the role of public interest directors.

The joint committee adjourned at 5.35 p.m. until 9.30 a.m. on Thursday, 20 December 2012.