

DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Déardaoin, 8 Márta 2018

Thursday, 8 March 2018

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Joan Burton,	Paddy Burke,
John Deasy,	Rose Conway-Walsh,
Pearse Doherty,	Gerry Horkan,
Michael McGrath,	Kieran O'Donnell.
Paul Murphy.	

I láthair/In attendance: Deputy Bobby Aylward.

Teachta/Deputy John McGuinness sa Chathaoir/in the Chair.

Business of Joint Committee

Vice Chairman: We are in public session. I propose we go into private session to deal with housekeeping matters. Is that agreed? Agreed.

The joint committee went into private session at 9.38 a.m. and resumed in public session at 10 a.m.

Vice Chairman: We will resume in public session.

Deputy John Deasy: Is the agenda for the day as advertised? Have there been any changes?

Vice Chairman: Not that I am aware of.

Deputy John Deasy: Are we still looking at 3.30 p.m. for the later session?

Vice Chairman: With the OECD?

Deputy John Deasy: Yes.

Chairman: Yes.

Deputy John Deasy: Thanks.

Scrutiny of EU Legislative Proposals

Vice Chairman: On No. 8, EU scrutiny for the public record, before we proceed with the business listed, I wish to record the decision taken by the committee on EU legislative proposals. The committee agreed that COM (2017) 790, COM (2017) 791 and COM (2017) 824 warrant further scrutiny and the committee agreed that COM(2018)20 and COM(2018)21 do not warrant further scrutiny. Full details will be published on the committee's website.

General Scheme of the Insurance (Amendment) Bill 2017: Discussion (Resumed)

Vice Chairman: No. 9, session one, is pre-legislative scrutiny on the insurance (amendment) Bill 2017 (resumed) with Mr. Kevin Thompson, CEO, and Mr. Declan Jackson, direct of government affairs, Insurance Ireland. I welcome Mr. Thompson and Mr. Jackson to the meeting.

Before we begin, there is a note on privilege which I am obliged to read out. 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 their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, 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 any 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 parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I ask Mr. Thompson to make his opening remarks.

Mr. Kevin Thompson: I thank the Chairman and members of the committee for the opportunity to appear before the committee as part of the pre-legislative scrutiny on the draft general scheme of the insurance (amendment) Bill.

On behalf of Insurance Ireland, I welcome the proposed legislation as it brings to an end an anomaly which first came to light with the liquidation of Setanta Insurance by the Maltese authorities. Prior to the Setanta situation, insurance companies that encountered difficulties were placed in administration which allowed for the orderly wind down and transfer of policies. In a liquidation scenario, these tasks became much more complicated.

Insurance Ireland accepts the proposed funding arrangements as contained in the general scheme of the Bill. Prior to the Supreme Court decision in the Setanta case, the industry, through the Motor Insurers Bureau of Ireland, was responsible for meeting not only all the motor third-party liabilities, MTPLs, of Setanta but also for any other company which entered liquidation. Clearly, the circumstances where a prudent company was responsible for the liabilities of a less prudent competitor was a classic example of market failure.

Insurance Ireland has always been of the view that in order to maintain the orderly functioning of the motor insurance market in Ireland it is vital that certainty exists around the annual contribution rate. Such certainty is the key feature of both the UK and French markets. In the UK, there is a monetary limit to the contributions which the sector is required to meet in any given trading year. In France, an *ex-ante* contribution is collected in advance of any liquidation event. This rate does not change from year to year and therefore it also provides the certainty to which I referred earlier.

The proposed methodology in the general scheme is in line with international norms of consumer protection and as such is to be welcomed. Furthermore, we accept that it is prudent to begin the collections at a level of 2% of motor gross written premium and to taper this back as the fund is built up to an appropriate size. The collection of the fund is also equitable because the entire market would be required to contribute based on the previous years motor gross written premium. Insurance Ireland agrees with the general direction of the general scheme that the best manner to avoid the complications and unnecessary uncertainty which arose as a result of the Setanta liquidation is to collect an *ex-ante* contribution for all insurers writing motor business in Ireland.

Vice Chairman: I thank Mr. Thompson.

Deputy Michael McGrath: I thank Mr. Thompson and Mr. Jackson for their attendance and for the opening statement.

Perhaps Mr. Thompson could summarise his understanding of how the reformed system that will be brought about when the general scheme of the Bill is eventually enacted will work in practice in the event of another insurance collapse in Ireland and how will that be different from the saga we have had over the past four years following the Setanta collapse?

Mr. Kevin Thompson: First, I will provide a bit of context in terms of how we got to where

we got to with the Setanta situation. If one looks at the current insurance legislation, I suppose the anomaly reaches back to the 1964 Insurance Act which was amended in 2011. Under that Act, if a company - up until Setanta - went into administration, 100% would be paid through the ICF. Unfortunately, with Setanta, when it was put into liquidation by the Maltese regulator, it was the first time a liquidation had occurred within the State and an anomaly had appeared within the 1964 Act where in such cases one had a cap in terms of what could be claimed through the ICF, namely the lesser of 65% or up to €825,000. In short, unfortunately, that meant we had a liability of 35% for the claimants.

The proposed amendments to the Act would bring liquidation in line for compensation in relation to administration. They also propose a pre-funding mechanism to build a fund up to a maximum of €200 million through a 2% collection on gross written premium for market participants in the previous year. In addition, should the fund be called upon before an adequate amount could be built up within that fund, the Insurance Compensation Fund, ICF, would back-stop it until the ICF could be paid through the pre-contributions of the industry. There is also provision within the proposed general scheme that an extra 1% could be called upon in extraordinary cases.

The pre-funding mechanism, in terms of getting this lump sum or funding together, will bring stability to the market in that policyholders who are affected by such liquidations in the future would have moneys to call upon. From an industry point of view, it brings certainly in terms of the contribution that will have to be made to the fund, and which is in line with international practice. Under the French model, for example, they collect a 1.1% levy from policyholders and the industry makes a 1% contribution as well until they build the fund up. That is our view of it.

Deputy Michael McGrath: In essence, in the event of a further collapse, instead of this 35% shortfall, the ICF will meet 100% of the cost of outstanding claims-----

Mr. Kevin Thompson: Correct.

Deputy Michael McGrath: -----and that will be funded by the levy. Is the 2% non-life levy that people are currently paying here to stay?

Mr. Kevin Thompson: Correct. That will still go to the ICF.

Deputy Michael McGrath: To what level will the fund have to be built up? There is a very significant shortfall currently projected due to the work-out of the Quinn Insurance deficit. There is probably a decade or more of 2% contributions that will have to be paid in to clear that alone and then one must build up the fund. How does Mr. Thompson see that working its way through?

Mr. Kevin Thompson: With the proposed pre-funding 2%, it will probably collect, on the latest gross written premium, between €34 million and €40 million a year. Currently, the ICF collects approximately €74 million a year. All in all, one will be collecting over €100 million a year.

Deputy Michael McGrath is correct in stating there is approximately another ten years to go in paying down the Quinn piece. Even though we are only contributing the €34 million, in the context of Setanta where there was a €90 million, one is looking at a three-year contribution to cover that liability. Once the fund is established, it will bring a degree of certainty should such other events occur in the future.

Deputy Michael McGrath: I will ask Mr. Thompson about a related issue, the passporting into Ireland of insurance services. Ireland is part of the EU Single Market and it is allowed that firms such as Setanta can have their prudential regulation in another EU member state and be regulated here only for conduct of business purposes. Does Insurance Ireland have any concerns about the nature of the EU-wide regulation? Has it improved and can we have reassurance that we are not likely to see a Setanta-type collapse over the period ahead?

Mr. Kevin Thompson: In terms of reassurance, the Deputy will probably be aware that, in the last couple of years, we have gone through the implementation of Solvency II. One can argue this is a risk-based prudential model that is more robust in terms of prudential regulation of insurers within the marketplace. As an industry, we are firmly committed in terms of the existing FOS and FOE passporting model because our industry is ultimately heavily reliant on that. If one looks at the Irish international financial sector, particularly in regard to insurance, insurers domiciled here passport into 110 different countries, servicing 25 million policy holders across Europe and beyond. Our industry has been built on this and we firmly believe in the FOS model. We also firmly believe that the establishment of Solvency II, particularly as it becomes more established and refined, will be the ultimate protector for consumers in terms of making sure there is adequate solvency within each entity in Europe.

Deputy Michael McGrath: With regard to the outstanding claims that are caught up in the Setanta collapse, Mr. Thompson knows it has been a real nightmare for many because claimants have been left short and left waiting to get all of their legitimate claims settled. Of course, policyholders have been really left there in the sense that they have been informed that, legally, they could be held personally liable for any shortfall, which could include judgments against them, judgment mortgages and so on. It has been a real nightmare for such people who bought a legitimate insurance policy here.

We now have the Government statement that 100% of the cost of claims will be met, so we have the 65% from the ICF and we will have some amount of money left over from the liquidation process eventually. What role do Insurance Ireland or its member companies have in the work-out of the remainder of these claims? Does Insurance Ireland have any role in ensuring this is dealt with efficiently and closed off quickly, and that all outstanding claims can be settled in full in a short period? Is it involved in any way in this process?

Mr. Kevin Thompson: First, I would concur it has been a difficult time for both policyholders and claimants and we totally sympathise with them in this situation. Our focus is on trying to make sure that legislation is enacted as quickly as possible to allow payments to be received, particularly in regard to the claimants. As an industry body we will engage with the Department of Finance as and when we need to, and as requested by it, to make sure there is refinement of the legislation and that it is passed as quickly as possible. Ultimately, once that legislation is passed, our industry will help in whatever way we can to make sure these claims are processed as quickly as possible. Our focus is on making sure the legislation is enacted as quickly as possible and doing anything we can do to assist that.

Deputy Michael McGrath: The legislation will not be retrospective so the resolution of the outstanding Setanta claims will be dealt with outside of this legislation. Is that not the case?

Mr. Kevin Thompson: Yes.

Dr. Declan Jackson: There is an appointed liquidator and it is an ongoing process. We have no formal role in regard to those cases but the goal has to be that we learn the lessons so people

are never in a situation like this again.

Senator Paddy Burke: I welcome the witnesses. They have said that the case of liquidation is much more difficult than examinership. We have seen in the past when places go into liquidation that the liquidator is always the first person who is going to get paid, and things can be dragged out. In the case of future liquidations, will the ICF, given it is the body which will collect the funding, have any say on who the liquidators are, how quickly a liquidator is appointed and how quickly the situation is dealt with?

Mr. Kevin Thompson: The Senator is right that once the anomalies are evened out, it will be a decision for the Central Bank and the State Claims Agency, which works through the claims, to decide whether the scheme is either put into administration or liquidation. The advantage of administration is that it allows for an orderly run-off over a long period of time, which has less detriment to both the policyholders and to claimants. The Senator is right in respect of the liquidator, who has to be appointed, that there is an order in respect of who gets paid what if a company goes into liquidation. However, that will be down to whoever goes to the High Court to seek that the insurer be put into either administration or liquidation, and that will generally be the Central Bank.

Senator Paddy Burke: Would the ICF have any say in the appointment of the liquidator and who that would be? Would it give the liquidator a timeframe in which to wind things up?

Mr. Kevin Thompson: Our understanding is that, yes, it would, in conjunction with the Central Bank.

Deputy Paul Murphy: If this comes into place, can policyholders expect that their premia are going to go up by 2%? Will this just be passed on to policyholders?

Mr. Kevin Thompson: As an industry body, we have no insight or any interaction regarding how companies conduct their pricing. It will be for each individual company to decide how it applies this, whether it applies a 2% levy or whether it absorbs the cost itself. It is down to each individual insurer how it participates within the market, particularly in the context of pricing.

Deputy Paul Murphy: There is nothing in the legislation to prevent or discourage insurance companies from simply putting the 2% onto policyholders.

Mr. Kevin Thompson: No, and, equally, there is nothing preventing them from absorbing the cost.

Deputy Paul Murphy: I would say their drive for profit might push them in one direction rather than the other.

Senator Rose Conway-Walsh: I apologise for being late. We were at the Vótáil 100 show with Ryan Tubridy. Happy International Women's Day to all, even though there are not many women on this committee.

I have a couple of points and I apologise if they have been covered before. Now that we have the system in train to deal with future Setanta-type issues, how much do the witnesses expect premiums to fall by? At the end of the day, this was one of the main reasons the industry gave for the huge price increases in recent years. I and many others imagine this will lead to a dramatic drop in insurance prices.

Mr. Kevin Thompson: I refer to my earlier comments. We have no visibility in terms of

premiums or the commercial activities and how our members price. What we do know is that, within the market in which they operate, we had a lot of volatility and, of course, we had Setanta. There is the established fact of the claims inflation environment which is out there. We also had a reduction in investment returns and changes within the jurisdiction limits. There were a lot of factors out there which led to the situation we had. On the positive side, what we have seen recently, particularly through the CSO figures, is a reduction in motor insurance premiums to the extent of some 9% or 10%. Our view is that market dynamics will play out and companies will compete against each other, and, when they do, it generally delivers good value for the consumer.

Senator Rose Conway-Walsh: This really concerns me, not least because my own car insurance - which is on the same car and the same everything else, with no claims - has gone up by 20%. I would be surprised if I am the only person in the country this has happened to. The CSO figures giving that information on insurance costs do not reflect the reality on the ground that I am dealing with. The insurance industry has said that because of Setanta and the resulting liabilities, and because that was not sorted out, this caused insurance premiums to be higher than they would normally be. People's expectation now is not words or platitudes but a decrease in their insurance policies, and the witnesses need to give us more assurance that this is going to happen. It has been a major piece of work to bring us to this point and we need to see that reflected. It is absolutely useless, and we have all wasted our time, if it is not going to be reflected in a dramatic drop in insurance costs.

Mr. Kevin Thompson: I can only come back to my earlier comments. We have always said premiums are a function of claims. That is where the bulk of the costs arise for all types of insurance. I highlighted the numerous factors responsible for claims inflation in the marketplace, the liquidation of Setanta Insurance being one. Previous figures from the Central Statistics Office reflected increases in premiums and Insurance Ireland was challenged in this regard. More recent CSO figures reflect a reduction in premiums, which we view as a positive development.

I return to my earlier comments. The market dynamics will take effect in that companies will compete for customers. We encourage people, in trying to obtain the best premium, to ensure they shop around because there is value to be obtained in the market.

Senator Rose Conway-Walsh: As the organisation representing the insurance industry, can Insurance Ireland take a proactive approach to encouraging consumers by directing insurance companies to reflect in their premiums the fact that the case of Setanta Insurance has been taken out of the equation?

Mr. Kevin Thompson: We cannot do that. We have no involvement whatever in terms of the pricing decisions of members, which are a matter for each individual company operating in the competitive and free market we have.

Senator Rose Conway-Walsh: Mr. Thompson's response is not encouraging for people whose pockets are still being raided by insurance companies. People must have insurance and premiums are not falling, unless I am only meeting people whose premiums are increasing. I tested this personally by asking my insurance company for a reduction in premiums on the basis that there had been no changes in my policy. It refused to do so and informed me my premium would increase by 20% this year for the same car on a policy on which no claims or any other changes had been made. That Mr. Thompson's view is not reflected on the ground is a matter of great concern. My message to the insurance companies is that they must stop ripping off citizens who must have motor insurance because it is not right.

Now that the insurance compensation fund, ICF, will come under the Central Bank of Ireland, will it be subject to scrutiny by the Comptroller and Auditor General?

Mr. Kevin Thompson: We would expect so.

Senator Rose Conway-Walsh: That is significant and I would welcome that if it is the case.

Mr. Kevin Thompson: Yes, that is to be welcomed.

Senator Rose Conway-Walsh: What is the current balance of the ICF?

Mr. Kevin Thompson: It is in deficit at the moment. I understand approximately €800 million remains to be paid out arising from the liquidation of Quinn Insurance. As I noted, the ICF currently collects approximately €74 million per annum. Under the proposed legislation, an additional amount of between €34 million and €40 million will be collected, giving a total annual figure of slightly more than €100 million.

Senator Rose Conway-Walsh: When will it be possible to remove the levy? Has Insurance Ireland made a calculation in years?

Dr. Declan Jackson: No, we have not examined that issue, which is a matter for those who administer the insurance compensation fund.

Senator Rose Conway-Walsh: It is important that this is done and that Insurance Ireland keeps track of this issue. I am sure actuaries in the insurance industry have worked on a calculation and I would expect Insurance Ireland to have a figure. I also expect the Comptroller and Auditor General to play a key role in this matter. Irrespective of what we in this committee may say or what scrutiny takes place, it will not matter if a damn unless insurance premiums are reduced and insurance companies stop insuring people on the basis that they will never make a claim.

Mr. Kevin Thompson: On that point, the insurance industry has actively engaged with the Government as part of the recommendations of the cost of insurance working group. As an industry, we have lobbied and advocated hard for reform of the Personal Injuries Assessment Board to ensure it is given more powers and more claims are processed by the board at a reduced cost. We have also argued that the level of personal injury claim costs, as borne out by independent facts, is out of kilter with costs in other jurisdictions. Hence, we have actively engaged with the Personal Injuries Commission under the chairmanship of Mr. Justice Nicholas Kearns. We submitted data covering Ireland to the commission in order that awards made here could be benchmarked against those made in other jurisdictions. We hope a recommendation will be made providing that awards can be pitched at a level that society can afford. Insurance is very simple. Premiums are a function of claims and only when the cost of claims in this jurisdiction is addressed will we see real reform in respect of premiums.

Senator Rose Conway-Walsh: I will conclude at this point because I am afraid I will become even more irate.

Vice Chairman: My car is getting older, as am I, and I am doing fewer miles on the road, yet my insurance premium has increased by 17% or 18%. I share the frustration that has been expressed. While I acknowledge that increases in premiums are connected with claims, it is highly frustrating for someone who does not have penalty points and has an ageing car that is

losing value to see his or her motor insurance premium increase rather than decline. I expected my premium to decline, especially as my car has lost value and I am getting older.

Senator Rose Conway-Walsh: While Mr. Thompson can argue that premiums are a function of claims, they are also a function of greed, bad business practices, losses in the industry and reckless business decisions. They are the function of many factors, not only claims.

Vice Chairman: Fraudulent claims are also a factor.

Senator Rose Conway-Walsh: Yes, but they are not the only one and it would be wrong to argue otherwise.

Mr. Kevin Thompson: In my opening remarks, I highlighted the various elements that brought volatility to the marketplace. One was Setanta Insurance and another was the reduction in investment returns. For Insurance Ireland, the predominant element was claims inflation and claims frequency in the marketplace. We have highlighted numerous factors which have contributed to where we are now. We are working through the recommendations of the cost of insurance working group report. Our ambition is that reform will be implemented, particularly within the claims environment, as quickly as possible in order that consumers can benefit from it because we understand the frustrations of consumers.

Senator Rose Conway-Walsh: As each of those elements is removed, we need to see this reflected in the costs.

Vice Chairman: I remind members that we will meet the Minister again to discuss the implementation of the working group's recommendations.

Dr. Declan Jackson: If I make one point in response to the Senator's original question, we need to be very careful from a competition point of view. We cannot facilitate or engage in any conversations on pricing. However, what we can do is work towards bringing certainty on issues such as claims and Setanta Insurance. If we do that with the various stakeholders, and Insurance Ireland is invested in doing that, we will see positive outcomes for consumers. We are seeing this trend take place, although we accept and share the frustration with the pace of reform. However, we are working night and day to ensure certainty is delivered and consumers benefit as a result. On the Senator's specific request, as a trade association, Insurance Ireland is correctly prohibited from having any such discussions.

Senator Rose Conway-Walsh: While I completely understand Dr. Jackson's point, I was referring to the insurance industry in general rather than individual insurance companies.

Senator Paddy Burke: How will the 2% levy be imposed on an insurance claim? Will the insurance company collect the 2% levy with the premium? How will the proceeds be handed over to the insurance compensation fund? Will this be done at intervals or at the end of each year? Will the insurance industry hand over the full sum in one amount? Will the 2% be immediately transferred to the ICF once a person pays the premium? How will the levy be administered?

Mr. Kevin Thompson: It is proposed that the levy will be collected via the Motor Insurers Bureau of Ireland, MIBI. The reason is that anyone who wants to act in the marketplace, that is, sell motor insurance, must be a member of the MIBI. This applies both to insurance companies domiciled here and insurers passporting into this country from other jurisdictions. The MIBI will collect the 2% on an annual basis and build up and hold the fund. In the event

that an unfortunate event, namely, a liquidation, takes place, the insurance compensation fund will call on the Motor Insurers Bureau of Ireland to make remittance to the ICF. In very simple terms, that is how the mechanics of it will work. The Motor Insurers Bureau of Ireland, MIBI, will collect and hold, and the insurance compensation fund, ICF, will call against MIBI as and when it needs to do so.

Senator Paddy Burke: Is it the case that MIBI could hold this fund for years? Will it invest that fund or what is envisaged?

Mr. Kevin Thompson: The mechanics of that need to be worked out but, in short, it will collect and hold the fund up to the ceiling of €200 million, at which point the levy will stop.

Senator Paddy Burke: Cut back.

Mr. Kevin Thompson: Yes. I assume that any fund of that size would be administered in such a way as to try to get the best investment return that maintains security around the fund, that is, no losses.

Dr. Declan Jackson: There are oversight mechanisms envisaged in the legislation in terms of the governance around the holding of such a considerable amount of money by MIBI but in terms of the actual operation, that is probably an issue for MIBI.

Senator Paddy Burke: Who are MIBI?

Dr. Declan Jackson: MIBI is the Motor Insurers Bureau of Ireland and its role is to pay claims associated with untraced or uninsured drivers. If one of us was misfortunate enough to be hit by a stolen car or something like that, MIBI would pay that claim. It operates on the basis of a pay-as-you-go model, so each year it will look at its claims. If a driver at fault could not be identified or found, MIBI will step in, in conjunction with the State's responsibilities under the European regulations, and pay that compensation. It funds itself on a pay-as-you-go model, so it levies a cost on the insurance industry. I believe its annual run rate is approximately €60 million.

Senator Paddy Burke: Who has the oversight on MIBI?

Dr. Declan Jackson: I believe there is an agreement with the Department of Transport, Tourism and Sport, which is the line Department regarding the motor insurance directives. If the Senator has detailed questions on that I would suggest they are probably more appropriate for MIBI. We are happy to give any indicative answers but it is just to ensure accuracy.

Senator Paddy Burke: We do not know much about MIBI but it will collect and hold the fund.

Dr. Declan Jackson: As it is envisaged, yes.

Mr. Kevin Thompson: That is the proposal.

Senator Paddy Burke: That is the proposal for this legislation.

Mr. Kevin Thompson: Yes.

Senator Paddy Burke: One of the biggest costs in insurance arises from bureaucracy and paperwork. We all thought that computers would cut out the need for paperwork but there seems to be more now than ever was the case in the past. Are there any proposals to make the

process easier from the point of view of paperwork?

Mr. Kevin Thompson: In general, like any sector, our industry is moving more and more towards online. That is both at the quotation and issue of a policy stage but also at the claim stage. For any type of claim there is a certain level of assessment and statements which have to be made and sometimes that ultimately results in paperwork having to be carried out. However, the majority of simple claims are processed quickly and in an efficient manner, and often electronically. I know from my own experience that I was able to do that. That is a natural course of events. In time, more electronic formats will be part and parcel of the industry.

Vice Chairman: I thank Mr. Jackson and Mr. Thompson for attending today. I propose we suspend the meeting before proceeding to session B. Is that agreed? Agreed.

Sitting suspended at 10.35 a.m. and resumed at 10.38 a.m.

Vice Chairman: We are resuming on pre-legislative scrutiny of the Insurance (Amendment) Bill 2017 with Mr. Gerry Cross, director of policy and risk, and Ms Sylvia Cronin, director of insurance supervision at the Central Bank of Ireland. This session is to conclude by 11.20 a.m. Both witnesses are very welcome to the meeting.

Before we begin I will read a note on privilege, which I read out earlier but the witnesses would not have heard. 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 their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, 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 any person or an entity by name or in such a way as to make him, her or it identifiable.

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I invite Mr. Cross to make his opening remarks.

Mr. Gerry Cross: I thank the Chairman and the members for the invitation to meet them today as part of the pre-legislative scrutiny of the Insurance (Amendment) Bill 2017. I am joined by my colleague, the director of insurance supervision, Ms Sylvia Cronin. In my short opening remarks I will briefly outline the bank's current role regarding the insurance compensation fund, provide a brief overview of the Central Bank's involvement to date regarding the revised framework for insurance compensation in Ireland and outline the new envisaged role for the bank as set out in the Bill and our views on this proposed role. Overall, the Central Bank supports the proposed amendments set out in the general scheme of the Bill as a welcome development for consumers. The failure of Setanta Insurance and the uncertainty that followed over compensation arrangements had a detrimental impact on Irish policyholders. The bank welcomes the enhanced clarity that this Bill will bring to the insurance compensation framework.

As the committee is aware, the insurance compensation fund, ICF, was established under the Insurance Act 1964. This Act has been amended on several occasions, most recently by the Insurance (Amendment) Act 2011. At that time, the insurance compensation fund levy was reintroduced and a significant policy change was made, as the scheme changed from a home-based

to a host-based insurance compensation scheme. Under a home-based scheme, compensation is paid by the insurance compensation scheme of the member state of the regulator of the insolvent insurance company while under a host-based scheme, compensation is paid by the member state in which the risk is located. Ultimately, this means that the scheme is targeted at Irish customers of Irish and EU insurers rather than at the EU and Irish customers of Irish insurers.

The bank's current role in respect of the ICF involves the following functions: carrying out an annual assessment of the financial position of the fund; determining an appropriate contribution to be paid to the fund by non-life insurance companies, not to exceed 2% of gross written premium; liaising with the Department of Finance in relation to interest rates and repayment terms on any loan advanced by the Exchequer to the fund; and publishing a notice on the Central Bank's website and delivering a notice to each non-life insurance company specifying the contribution to be paid to the fund.

In early 2016, the Department of Finance set up a joint working group comprising representatives from the Departments of Finance and Transport, Tourism and Sport to review the current insurance compensation framework in Ireland. The focus of the review was primarily on motor insurance. The Central Bank, drawing on expertise across a number of areas within central banking and financial regulation, provided technical input and policy views to the Department of Finance during the early stages of its proposals. The bank is supportive of the extension of compensation for third party motor claims in the case of insurer insolvency from 65% to 100%. This removes an inconsistency and is positive from a consumer perspective. In regard to the split funding concept for third party motor liability claims, where the insurer is insolvent and in liquidation, whereby the liability for the payment is to be shared 35% and 65% between the Motor Insurers Bureau of Ireland, MIBI, and the fund respectively, the bank has been concerned to ensure that the practical operation of this arrangement not give rise to undue complexity for affected consumers. Our view is that the proposed approach appears to address this concern. There remain some points of complexity in the wider scheme that might be considered as part of this process. In particular, we would like to see some analysis of the current difference of approaches between the situations where a firm is in administration and when it is in liquidation.

Notwithstanding the above points, the main impact on the bank directly is, of course, that the administration of the fund will be transferred from the accountant of the High Court to the bank. In January 2017, the Governor of the Central Bank confirmed to the Minister for Finance that, subject to an appropriate legislative framework and consultation with the European Central Bank, ECB, the Central Bank would be willing to take on this function. It already administers the deposit guarantee scheme, DGS, which protects depositors in the event of a bank, building society or credit union authorised by the bank being unable to repay deposits. In administering the fund, the bank will liaise as necessary with the relevant stakeholders, including the State Claims Agency, relevant liquidators and the Department of Finance, to ensure the proper operation of the fund. In the event of the liquidation of an insurance company resulting in a draw on the fund, the liquidator will make an application to the High Court to approve payments from the fund, on receipt of a verified claim with due diligence completed by the State Claims Agency. On High Court approval, the bank, as administrator of the fund, will pay the specified amount to the liquidator for distribution to claimants. The bank will also provide an annual statement of account for the fund to the Minister for Finance. This will be in an agreed format, similar to that currently provided to the Minister by the accountant of the High Court.

It is important to note that the proposed conferral of new tasks on a national central bank in the European system of Central Banks must be assessed against the prohibition on monetary

financing. In the context, therefore, of the proposals to transfer this new function to the bank, an assessment is required as to whether the task proposed to be undertaken by the bank is a central bank task or a government task. Assuming the latter, the bank must be fully compensated for the work that it will carry out in administering the ICF. The bank cannot provide any moneys to the fund from its own resources nor can it have any liability from the fund. This is provided for in head 4 of the Bill. The assessment mentioned is to be carried out by the ECB. We understand that the Department of Finance will request that the ECB assesses this once the legislation is published.

Work is currently under way at a European level on recovery and resolution in the insurance sector. Currently, there is no European harmonised framework of recovery and resolution for the insurance sector. The Central Bank is participating in work being carried out by the European Insurance and Occupational Pensions Authority, EIOPA, to examine what such a framework might look like.

The bank is supportive of the proposed amendments to the Insurance Act and its objectives of addressing the lack of clarity in current compensation arrangements for claimants as highlighted in the Setanta case. In regard to the bank's proposed new function as envisaged under the Act, we will continue to work with the Department of Finance, the accountant of the High Court, the State Claims Agency and other relevant stakeholders to ensure the successful transition of this function to the Central Bank in line with the finalised legislation.

Vice Chairman: I thank Mr. Cross for his opening statement.

Senator Rose Conway-Walsh: I, too, thank Mr. Cross for his opening statement. In Mr. Cross's opinion, what difference will this legislation make to insurance policyholders?

Mr. Gerry Cross: In general terms, when an insurance firm gets into difficulties and needs to be wound up the situation of policyholders is obviously significant and it is important that we have appropriate compensation arrangements in place and in so far as this addresses the problems that were identified during the Setanta Insurance case, it is welcome from the Central Bank's point of view.

Senator Rose Conway-Walsh: We, too, very much welcome that this will bring an element of certainty to the industry. Has the Central Bank assessed how this might be reflected in terms of a reduction in premiums?

Mr. Gerry Cross: There are a number of choices to be made. As the scheme will now compensate to a higher level, there will be a cost that needs to be borne somewhere and how that cost is to be distributed needs to be examined. One option would have been to have it borne by the current insurance compensation fund but because of the way in which that fund is levied, the result would have been a direct additional levy on policyholders and so this option was not chosen. With this approach, a MIBI fund has been set up for the additional 35%. This fund will be built up to €150 million in the first instance on the basis of a 2% levy to insurance companies. It is a levy to the insurance companies, which will form part of their cost base. How they manage it is a matter for them. It is different to the ICF levy in that it is levied directly on the premium holder. As I said, in this case the levy will form part of the insurance companies cost base.

Senator Rose Conway-Walsh: Is there a possibility that as a result of this insurance costs could actually increase rather than decrease?

Mr. Gerry Cross: The 2% levy represents a modest increase in the cost base of relevant

insurance companies and there is clearly a possibility that this cost could be distributed across policyholders generally.

Senator Rose Conway-Walsh: If I understand Mr. Cross correctly, he is saying that there is a real possibility that insurance premiums may increase rather than decrease? We have been told for so long by the insurance industry that the uncertainty in terms of Setanta and so on is one of the substantial drivers of the cost of motor insurance premiums. Is Mr. Cross now telling us that following on from what is provided for in this legislation, that uncertainty has been removed but there is a possibility that people's insurance will increase?

Mr. Gerry Cross: There are two issues, the first of which is motor insurance premium levels, which this committee has discussed at great length. The Central Bank has been very involved in the work of the cost of insurance working group led in the first instance by the then Minister of State, Deputy Eoghan Murphy, and later by the Minister of State, Deputy Michael D'Arcy, in addressing questions around the reason premium levels have increased. We are now seeing a moderation in premium levels. On this side, there is a whole suite of issues to be addressed. On the straightforward issue of compensation, clearly if there is enhanced compensation to be available to individuals, if and when there is a failure of a firm which needs to be paid, then that cost is distributed across-----

Senator Rose Conway-Walsh: I completely understand that. I cannot understand how there would be a disconnect between the two. To me, they are directly connected. There is the levy put on the insurance companies. However, that big chunk of uncertainty has been taken out, which we were told all along was one of the drivers. There was an expectation that once Setanta was dealt with, it would reduce insurance premiums across the board. Will that happen?

Mr. Gerry Cross: For example, if it was required that compensation was to be paid all in one go by, say, the Motor Insurers Bureau of Ireland, MIBI, that would have a significant potential impact on the contributors to the fund. They would be required to pay a large sum in a relatively short period. This arrangement allows for the money to come from MIBI. If it does not have that money, it can be loaned by the Government and then be paid back over a period at 2%.

Senator Rose Conway-Walsh: I understand the different models.

Mr. Gerry Cross: That leads to a moderated impact.

Senator Rose Conway-Walsh: However, I am concerned that, even with all of this work, there could be even a chance that insurance premiums could go up rather than down. For example, my motor insurance premium went up 20% this year while none of the elements of the coverage changed. Will the delegation give me an assurance that it will not go up another 20% next year?

Ms Sylvia Cronin: Over the previous 12 months, there has been uncertainty over this particular issue. Accordingly, insurance companies have had to put aside reserves for the worst-case scenario. Now, with this certainty, those reserves should be able to be released. In turn, this should result in more money becoming available in the short term.

Senator Rose Conway-Walsh: If more money is available in the insurance industry, then that should automatically lead to a reduction in premiums.

How will the Central Bank ensure we get the result we need?

Ms Sylvia Cronin: Insurance pricing is a commercial decision for all insurers. There are several factors which they need to take into account, the key one being the whole claims environment. We are actively involved in the good work being done by the working group in the initiatives in the claims area. We closely monitor how that is being assessed in the insurance industry.

Senator Rose Conway-Walsh: What form will that monitoring take?

Ms Sylvia Cronin: On the supervision side, we have engagements with the companies. We conduct on-site inspections and thematic reviews. We look across sectors and assess how reserving is effective. The important point for us is to ensure the financial resilience of insurers and that there are enough funds to pay claims.

Senator Rose Conway-Walsh: Does this mean that the insurance compensation fund, ICF, will be brought under the scrutiny of the Comptroller and Auditor General?

Mr. Gerry Cross: That is a good question. I would imagine the administrative functions of the ICF which fall within our remit would be subject to the Comptroller and Auditor General. However, we are not responsible for auditing decisions around the payment of claims, for example. That is for the State Claims Agency.

The work done by the cost of insurance working group, CIWG, has led to the publication of heads of a Bill for the establishment of a claims information database. That will not just allow the overall premium prices to become available but also a large range of data that was missing from the discussion to date.

Senator Rose Conway-Walsh: How much is in the ICF?

Mr. Gerry Cross: After the Quinn administration, there is an outstanding need for €782 million to be paid back to the Minister. There is an additional €110 million in respect of Se-tanta. There is currently €22 million in the fund, meaning there is an outstanding amount of €870 million. We calculate that on a 2% levy basis, it will take 11 years to clear that.

Senator Rose Conway-Walsh: Insurance Ireland was only €70 million out. What is €70 million to the insurance industry?

Mr. Cross said the Central Bank will have to get resources from the Government to do this work. How much will that cost? Has the Central Bank had discussions with the Government on this? Has it given the Central Bank a commitment in this regard?

Mr. Gerry Cross: We have not got to the costing stage at this point. I would, however, expect it to be a relatively modest amount.

Senator Rose Conway-Walsh: That will be up to the Government.

All of this work will matter nothing if it does not reduce the cost of premiums. My experience is that they are continuing to escalate. I hope involvement from the Central Bank, and the Comptroller and Auditor General indirectly, will lead to reasonable costs for insurance.

Senator Kieran O'Donnell: Is the ICF in a deficit of €870 million?

Mr. Gerry Cross: Yes.

Senator Kieran O'Donnell: Over how many years has that deficit been run up? What is

the reason for that being so high?

Ms Sylvia Cronin: Basically, it started when PMPA went into administration. We have had PMPA, ICI, Quinn and Setanta.

Senator Kieran O'Donnell: What is the levy on the insurance companies?

Mr. Gerry Cross: It is a 2% levy. That is the maximum allowed by the legislation.

Senator Kieran O'Donnell: Has that been in place since the PMPA days?

Mr. Gerry Cross: It came in with PMPA.

Ms Sylvia Cronin: It was a 1% levy for PMPA and then 2% for Quinn.

Senator Kieran O'Donnell: In essence, there is no fund but a large overdraft.

Mr. Gerry Cross: Yes, it is an *ex post* system.

Senator Kieran O'Donnell: Even when it is taken over by the Central Bank, it is not in a position to get returns on funds. This is purely about pulling back on the deficit that is there.

Mr. Gerry Cross: The ICF - the 65% bit - is always after the event.

Senator Kieran O'Donnell: If one were to pull that back and clear the €870 million, what would be required for the fund to operate efficiently in terms of being in surplus and of a levy on the insurance industry? What is happening here, in essence, is that a model is being established to clear an overdraft. I am taking it a little further and trying to put it into a space as to when a fund like that becomes self-financing. Has the Central Bank looked at what will be levied on individual insurance companies based on modelling and so forth to establish the rate to levy to make the fund self-financing?

Mr. Gerry Cross: It is 11 years down the road before that is even in prospect. In effect, for the fund to be self-financing, it would almost be a different model. The focus at the moment is very much on getting to the-----

Senator Kieran O'Donnell: This is individual insurance companies which do not have proper reserves or whatever. It is nothing to do with the actual consumer. We have seen it in more recent times with Quinn and Setanta. The Central Bank is taking this over. If it is levying an extra 2%, is that another 25 on top? Am I correct?

Mr. Gerry Cross: The new MIBI fund for the 35% is a different model. There, the idea is that the fund will be built up to €200 million. That is based on a 2% levy. If it drops below a certain point-----

Senator Kieran O'Donnell: In essence, it is a 4% levy in total. Am I correct? It is 2% for the insurance company and 2% for - they are both the same.

Mr. Gerry Cross: Yes. When the MIBI fund is built up and reaches €150 million, the levy drops to 1%. When it reaches €200 million, there will be no levy.

Mr. Gerry Cross: When does the Central Bank anticipate that will happen?

Mr. Gerry Cross: It will take four or five years.

Senator Kieran O'Donnell: If it gets above €200 million in four or five years, there will be no levy.

Mr. Gerry Cross: The original 2% for the ICF is still there.

Senator Kieran O'Donnell: I want to look at it in the round. There is a deficit of €870 million and 2% per annum indefinitely. The Motor Insurers Bureau of Ireland levy is 2% to deal with the 35% coming out of the Setanta judgment. If a company is licensed in Malta and operating in the Irish market, will it be levied with the 2% as it is and will it be levied with the new 2% from the MIBI?

Mr. Gerry Cross: Yes.

Senator Kieran O'Donnell: Did the Central Bank ever consider seeking a larger payment from the insurance companies? I understand why it is working with the model it is using, but how can it prevent insurance companies from passing this on to the end consumer? That is the problem.

Mr. Gerry Cross: In my opening statement I alluded to the following. The Central Bank does not have the legislative and policy-----

Senator Kieran O'Donnell: The €870 million is still underwritten by the State.

Mr. Gerry Cross: Yes, but it is not for the Central Bank to determine what the right system for running this scheme is. If one looks across Europe, one finds all sorts of different schemes. Some countries go to 100% for all non-life or life. Some countries do 90%. Some do home and some do host. There is a real variety and one of the things we are engaged in is work in Europe to get that harmonised a bit. For now, it is not.

As to whether one can stop the levy being passed on, European legislation prevents the Central Bank and the Government from interfering in that commercial decision of an insurance company. That is the difference. The scheme says it forms part of the cost base. I am not clear what more can be done.

Senator Kieran O'Donnell: Can the Central Bank say that if there are adequate reserves in a particular insurance company, there is no justifiable reason it should pass this 2% on? It is the sense of fairness. Someone looking in from the outside sees €870 million, which is not too far off €1 billion, in debt placed on the shoulders of hard-pressed people who are trying to cover rising insurance costs. According to the latest returns, insurance companies are making serious money. That person will therefore ask why there is a 2% levy - in essence a 4% levy - being placed on those people for companies which are making incredible levels of profit. Everything is about fairness. We need an insurance industry that is solvent and profitable but we also need one which is competitive and does not fleece the market. The ordinary person is looking in and sees that there is nearly €1 billion in debt which he or she is being asked to repay through a 2% levy that is passed on directly. He or she also sees that there is a 2% levy coming on the new MIBI for the next four or five years which will more than likely be passed on as well. That person will ask what can be done where companies are making enormous profits with healthy reserves to prevent them passing on the 2% on the MIBI for the next four or five years.

Mr. Gerry Cross: As a regulator, our objective is to ensure to the extent possible that we have a well-functioning market in insurance products, that companies are well run and financially sound with strong and effective governance and that they operate in the interests of con-

sumers in terms of fairness, suitability of products and clarity of pricing. Acknowledging very much the issue the Senator identifies, the answer goes back to what I said to Senator Conway-Walsh at the beginning. Whenever one wants to provide a compensation scheme and there is money to be paid into it, one has a distribution question. It is hard to avoid that distribution question. My answer to the question Senator O'Donnell puts relates to the work that has been done by this committee and the cost-of-insurance working group under the Minister of State at the Department of Finance. Various pieces, proposals for change and recommendations emerged there and the work is ongoing. It is about bringing forward improvements in transparency and a review of how the costs of claims are divided and arise. All of those things will contribute to there being a more effective motor insurance market. We are seeing a moderation in premium levels.

Senator Kieran O'Donnell: Everything must be done to ensure the insurance industry does not exploit this particular 2% on the MIBI to increase premiums. Over the last year, I have met people involved in various areas who deal with insurance companies. They all predicted a year ago that profits for the insurance industry this year would be very high. The ball appears to always be in the hands of the insurance companies rather than the consumer. We have to find a way to give the ball back to the consumer. Everything here appears to add extra cost. Premia should only be decreasing and I ask that insurance companies do not exploit the situation and use it as an excuse to raise premia.

Senator Paddy Burke: I welcome Ms Cronin and Mr. Cross to the meeting. Did the liquidation of Setanta cost €70 million?

Ms Sylvia Cronin: It cost €90 million.

Senator Paddy Burke: How much did it cost to do the same for Quinn?

Ms Sylvia Cronin: It cost €900 million.

Senator Paddy Burke: All of the cost, in terms of AIB, has been eliminated. Is the outstanding sum of €870 million relatively new, between Setanta and Quinn?

Ms Sylvia Cronin: Correct. It would be primarily made up of Quinn.

Senator Paddy Burke: It would. Was the Quinn proceedings a liquidation or examinership?

Ms Sylvia Cronin: No. It was administration.

Mr. Gerry Cross: It was administration.

Senator Paddy Burke: Therefore, the administration of Quinn cost the insurance industry €900 million. Will the Central Bank have oversight in the legislation on the Motor Insurers' Bureau of Ireland, MIBI?

Ms Sylvia Cronin: No.

Mr. Gerry Cross: No.

Senator Paddy Burke: Will MIBI self-regulate?

Mr. Gerry Cross: Yes.

Ms Sylvia Cronin: It is run by itself.

Mr. Gerry Cross: It is run by itself.

Ms Sylvia Cronin: Yes.

Senator Paddy Burke: Will MIBI not be subject to oversight by the Central Bank?

Mr. Gerry Cross: Yes. The role for the Central Bank is in relation to the insurance compensation fund piece. That is the bit that is under us.

Senator Paddy Burke: Will MIBI collect the 2% levy?

Mr. Gerry Cross: Yes.

Senator Paddy Burke: How will the 2% be collected? Will the insurance companies collect the 2% levy? Will they hand it over on a case-by-case basis or at the end of the year, every three months, six months or whatever?

Mr. Gerry Cross: It is an annual 2% levy on insurance companies.

Ms Sylvia Cronin: It is annual.

Senator Paddy Burke: Will the levy be collected by MIBI?

Mr. Gerry Cross: Yes.

Senator Paddy Burke: Will that be done without oversight?

Mr. Gerry Cross: With respect, it will be in the same way as it currently operates - whatever the current arrangements are for MIBI.

Senator Paddy Burke: The 2% levy for the compensation fund may not be collected in the case of a liquidation. Is that correct? Let us say a company went into liquidation or examinership at the end of the year but there is 2% on all the premia. The client will have paid his or her 2% in the full knowledge that the contribution is for the compensation fund. I believe the levy may not be collected and will go into the liquidation.

Mr. Gerry Cross: I do not know and I am not even sure if it is clear from the heads of the Bill at this stage. The current MIBI arrangement is based on the firms that are in business this year and on the claims that were made previously. The Senator has raised a good point and it is something to be considered when drafting the Bill.

Senator Paddy Burke: In the case of Quinn liquidation, is it fair to say that the levy probably was not collected by MIBI? How would MIBI be treated in such an instance? The compensation fund should be deemed a preferential creditor.

Ms Sylvia Cronin: Yes, the levy would have been outstanding.

Senator Paddy Burke: In other words, the money would have gone down the swanny in this case if the levy was not paid. The matter should be considered-----

Ms Sylvia Cronin: Yes.

Mr. Gerry Cross: Yes.

Senator Paddy Burke: -----in either the regulations for oversight or in the legislation.

Do the witnesses envisage the new data protection Bill will affect the way the insurance industry retains insurance records?

Ms Sylvia Cronin: Let us consider the insurance industry itself. In 2016, the introduction of the Solvency II Directive was probably the single biggest regulatory overhaul in a generation. Solvency II came into play for all insurers that operate in all member states across Europe. At that time there was quite a significant focus on data protection because of the cross-border nature of insurance and the tendency to have a parent company located in one state and a number of subsidiaries located in different states. There was a focus on data protection because information was being centralised within the European Insurance and Occupational Pensions Authority in Frankfurt. There was a need to ensure that personal data was protected and what could and could not be transferred between member states. Yes, a lot of work has already been done in the insurance sector but further work will need to be undertaken with the general data protection regulation, GDPR, coming into play.

Vice Chairman: I thank both Mr. Cross and Ms Cronin for attending here today. I propose that we suspend the meeting until 11.30 a.m. when we will commence the next session. Is that agreed? Agreed.

Sitting suspended at 11.20 a.m. and resumed at 11.35 a.m.

Deputy John McGuinness took the Chair.

Tracker Mortgages: Mr. Padraic Kissane

Chairman: I welcome Mr. Padraic Kissane. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, 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 any person 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 parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I invite Mr. Kissane to make his opening statement.

Mr. Padraic Kissane: I thank the Chairman and members for inviting me to appear before the joint committee. In my opening statement I wish to give it the up-to-date facts on the ongoing tracker mortgage investigation. As the investigation develops, it brings up more questions every day, some of which remain unanswered for affected customers. I will address some of the key issues that remain outstanding and update members on the key matters that remain unresolved by some of the lenders.

Of the lenders affected by the investigation, the following still have cohorts of customers

whose accounts have not been corrected, as well as customers who have been deemed not to have been impacted on. I will deal with the banks in alphabetical order.

First, there is AIB and its subsidiary, the EBS. The mortgage accounts that remain outstanding are those of homeowners who took out mortgages with the EBS and have not been returned to the tracker mortgage rate. The number affected could be up to 3,000. The key matter in the case of this cohort is that no customer was told that he or she was forgoing the variable rate basis of the loan in applying for a fixed rate for a period of the loan. The other issue is that the variable base rate tracked the ECB rate perfectly until 2008 and then magically transformed into a standard variable rate. There are outstanding issues that must also be dealt with by the EBS in a satisfactory manner. There are issues for the staff who took out mortgages with AIB. The question I pose is whether AIB or its subsidiary, the EBS, is sorry for the manner in which it is treating its customers?

Cases remain outstanding in Bank of Ireland, especially of the bank staff who availed of a fixed rate for two years on the understanding their loans would revert to the tracker mortgage rate of the ECB, plus a margin of 0.75%. Of the cases corrected, I have seen none that has been restored to the ECB rate, plus a margin of 0.75%, as was supposed to happen as per the infamous letter. There is a small cohort of customers who could have availed of the tracker mortgage rate but who instead chose a two-year fixed rate as there was certainty, given that the roll-over position was the ECB rate, plus a margin of 0.75%. There remain outstanding cases that became tracker mortgage loans after the loan offers were issued and that have not, as yet, been restored to the tracker mortgage rate. In total, there could be approximately 800 cases.

Danske Bank also has outstanding cases that it has deemed were not impacted on. The stated position of the bank which it seems to have forgotten was that the customer on a tracker mortgage rate prior to moving to a fixed rate would at the end of the fixed rate period revert to the ECB rate, plus a margin. Danske Bank has many questions to answer about tracker mortgages, especially as it is the lender that began the race to the bottom in the margin being charged on tracker mortgages. In October 2006 it introduced a product called the LTV, loan to value, tracker product. It resulted in all other lenders immediately putting in place retention departments in their mortgage departments as it became clear to the other lenders that retaining their book of business was just as important as garnering new business. It was more important to some banks, especially the main lenders which wanted to protect their market share. This is a very important issue for all lenders, as well as in the investigation into the crisis. This key issue had a dramatic fall-out effect on other lenders, as has become clear in the investigation.

In summary, many customers of Danske Bank have not been restored to their tracker mortgage product, even though the bank stated in its communications that I have seen and hold in my office: "You have the option to choose between one of the following: To move to a Variable Rate; To Agree a new fixed rate period; To revert to an ECB Tracker rate (with the margin which had applied before your fixed rate period)". This has not occurred and remains an ongoing issue. The statement is from the lender's own communication, that it should be applied to the loans affected, but to date that has not been done in the accounts I have reviewed.

KBC Bank, formerly known as IIB Homeloans, resisted all matters related to tracker mortgages for many years. It consistently attempted to suggest it never had an issue in denying people their right to a tracker mortgage, even though it was clear to me from the outset that the opposite was the case. The bank's loan offers stated clearly: "The interest rate shall be no more than [a factor] above the European Central Bank Main Referencing Operations Bid Rate ("REFI" Rate) for the term of the loan". I have listened to statements made by KBC Bank rep-

representatives to the committee and want to pose the following question and thoughts to the committee: have they been given the communication to which they made reference in their most recent presentation which supposedly had been issued in February 2008? The communication sent to all brokers which is now being described as a “flyer” was never removed or discontinued in any subsequent communication that I know of and if it was, I should have been sent an email. The communication, now known as the “flyer”, did not reference any preference that it only applied to homeowners. That is simply not true. It is clear that there seems to be an agreed or negotiated position adopted on the issue between the Central Bank and KBC Bank, but it is wrong to try to dismiss the other affected cohorts within KBC Bank.

The communication was crystal clear. It stated: “Fantastic News From IIB Homeloans ... All IIB Homeloan fixed rates will now roll onto tracker rate upon expiring. Offering your clients even better value”. It did not apply to new business only because all lenders at the time were reacting to the launch by Danske Bank of the loan-to-value tracker product. KBC Bank did so with this announcement in late 2006. It applied to existing business, as well as new business, but it was primarily directed towards existing business. The new business aspect of the communication was covered in bold print, with a further offering which was available to “ALL NEW CUSTOMERS* who want to take out a mortgage with IIB Homeloans”. I reference this to highlight the differentiation in the communication between existing and new business. I will be asked what is the current position on these matters and, unfortunately, I do not know the answer, as I do not know what was agreed to by KBC Bank in its discussions with the Central Bank. The numbers the bank has issued are on record. However, I know for certain that the communication of November 2006 was not withdrawn in February 2008 as claimed.

Another matter that has not yet been addressed by KBC Bank in the investigation concerns the loan applicants who began on a fixed rate for three years or more. The only reason KBC Bank did this was, astonishingly, fixed rates for three and five years were not stress-tested by the bank which allowed it to lend more money than any other lender could have. Other lenders would have had to stress-test the rate, which was generally done at a rate of 2% above the rates on offer. To now suggest the reason customers cannot go to a tracker mortgage rate is the bank lent more money as a result of the non-stress-testing of the loan cost is wrong and utterly unfair. The “flyer” issued in late 2006 addressed this issue of concern at the time among customers and brokers alike. There are still many of these cases with KBC Bank. However, I am pleased to report that I met KBC Bank management recently and hope to expand on these issues in future meetings, but, for now, large cohorts of customers are still in the waiting room of not knowing what is going to happen.

The level of ongoing issues with PTSB is staggering. What is more remarkable is that this lender will inform the committee that it believes it has addressed the issues surrounding tracker mortgages. It has not and many issues remain. However, I am pleased to report that I have reopened lines of communication with this lender and its senior management and hope some of the key matters that remain will at least be discussed at the coming meetings. I believe there is a growing acceptance within PTSB that if it is serious about putting its customers first, it needs to revisit some matters that remain unresolved. I have begun recently, including yesterday, with broad-based matters such as the treatment of appeals and the restoration of accounts that were moved to another bank.

The margin issue has not gone away. I am certain that I am 100% right on the issue which is central to the big remaining issue within PTSB. I am 100% certain that the position I hold on what the correct margins should be for each individual loan account is the right one. The

loan offer and the ESIS sheets applicable to each loan inform, with 100% accuracy, what the correct rate should be. I want to give an example of what is occurring on this matter. Many of the loans that remain unresolved were commenced on what was called a “discounted tracker rate”. I have only one question: what was the rate from which it was discounted? A parent rate applies to enable the discount to apply from it and that is the rate to which the loans should be returned. PTSB never had what it now calls “The non-price promise tracker”. It simply did not exist in 2006, 2007 or 2008. The Danske Bank matter is the reason the margins were not included in the loan offers. The margin could be improved but not increased. I will report later on the progress I make on this matter and continue to challenge the Central Bank to deal with the margin matter properly.

The key ongoing issue with Ulster Bank relates to First Active account holders, few of whom have been reimbursed and restored to their tracker mortgage rates. There is also the ongoing delay in the issuing of redress letters and statements. Ulster Bank, in its replies to me during the years in respect of First Active, seems to be satisfied that the documents customers signed to apply a fixed rate for a short period were clear and that the forms also included what Ulster Bank now titles “A Tracker Removal letter”. Of course, it was not titled or stated or even indicated when customers went to fix their interest rates, but nobody was told directly that he or she was forgoing the tracker mortgage rate. Not one person was told by a member of staff of First Active that fixing his or her interest rate also had the effect of removing and altering the variable interest rate basis of his or her loan. If it was the case, this is what should have been printed and stated in all communications between the customer and the bank: “If you fix the interest rate on this loan, you will lose the right to go back to the tracker rate”. If it had been stated and printed in this clear fashion, I would have no argument and that applies to all lenders. Ironically, the terms and conditions of a First Active Tracker loan include the following clear and unequivocal condition: “In order to transfer from the Tracker Mortgage product to another mortgage product the Borrower must [among other things] first redeem the tracker mortgage loan”. No loans were, or have ever been, redeemed by First Active when a customer chose to fix the rate and the reference number never changed for the accounts I have reviewed. On the first page of the same book of conditions the following is stated: “(m) “fixed rate period” means the period during which First Active has agreed to fix the interest on the loan”. That is the key. First Active agreed to fix the interest rate for a period without first redeeming the loan; therefore the underlying variable rate basis of the loan continues to remain in force.

Overall, there are outliers which are outstanding across all lenders, but they are more individual and singular arguments by nature. The issues I have covered comprise large cohorts in each bank that have not as yet been addressed. It raises the question as to whether the relevant lenders are sorry for these customers or apologetic for their actions, or whether they are glad that, to date, each has not been forced to fully correct the position on the accounts. It is important to acknowledge that the investigation is ongoing.

Another matter that still comes up on a regular basis is the churning of loans. This has occurred in different volumes across all lenders. I mention as an example, with permission, Ms Marian Kenny who took out an interest only loan with PTSB for €550,000 for the full term through a broker. She then applied for a top-up loan of €80,000 but went directly to a branch of PTSB and ended up with a new interest only loan for the entire amount of €630,000 but only for three years. She lost not only her competitive tracker mortgage rate but also, crucially, the basis of the agreement for the main loan. The branch gained a “new” lending figure of €630,000 when all that needed to change was the top-up facility of €80,000. That is just one example of how churning affected customers when the drive for new lending was at its highest and it oc-

curred across all lenders. I was told by a bank branch manager in 2007: “I have to get €7 million out that door each week and they don’t care how I do it.”

I had established a triage process to deal with appeals directly with AIB, but that has now been set aside, wrongly. I must submit all aspects of an appeal through the relevant appeals process. I have spent the past few weeks putting in place a process that will assist customers who have grounds for appeal to submit same in a detailed and formatted way. I have a sample of an appeal. They do not come easy to customers. I hold grave concerns, however, about the issuing of data access requests, as some pertinent documents seem to be withdrawn by banks. It is utterly unfair and wrong that a process that requires a high level of proof to substantiate an appeal is restricted because banks are not making paperwork or evidence such as telephone calls available to support a position. This is relevant to appeals and in proving if a case should be deemed to have been impacted on. Importantly, not all customers submit appeals but for some the impact of this issue on their lives has left scars that will not heal if an appeal is not brought.

In summary, I have not heard from the Competition and Consumer Protection Commission. I am meeting the Financial Ombudsman in the coming weeks. I have held meetings in the recent past with senior management of Ulster Bank, Bank of Ireland, KBC, AIB and Permanent TSB in the hope of resolving outstanding matters for their customers. I am also in ongoing communication with the Central Bank.

The appeals process is difficult for people to complete simply because the customers who most need to bring appeals are the ones most affected by what has occurred. Travelling back over that period of time is not easy. I began working on this issue in 2009 and it is not acceptable that some matters remain unresolved nine years later. I am aware of the customers watching who know that I may not have covered all the relevant accounts affected. However, they can be certain that I am aware of them. There could be another 5,000 cases outstanding and while tracker fatigue could become a factor, it is vitally important that we continue to work for all those families who have been deemed by the banks not to have been impacted. In that context, the following considerations must be borne in mind by those lenders that still have issues with tracker mortgages. First, where there is doubt about the meaning of a term, the interpretation most favourable to the consumer should prevail. This is not just a desire but is the law. Second, if there is any doubt about what was to occur following a fixed rate period, lenders should disregard the fixed rate period and behave as if it never occurred. That will address the lack of clear information. Third, if a tracker mortgage was one of the options then the lender should offer the customer the tracker rate even if tracker mortgages are no longer available. That comes from the CCMA. Fourth, if the lenders’ apologies are sincere and if their desire to put customers first is real they should resolve these outstanding matters immediately. This will send the clearest signal yet that attitudes and the culture within banks has changed for the better.

I was asked by a reporter recently if I would do it all again, given the tough journey involved for me and my staff. I said that I would do it all again but that the question should be whether the banks would do it all again. I fear the answer to that question might be “Yes” but I hope I am wrong, for once. Finally, I want to thank this committee for all of its work on behalf of the people affected. I believe that saying sorry is just not good enough for what has happened. I am happy to take questions from members now.

Chairman: I thank Mr. Kissane and call Deputy Pearse Doherty.

Deputy Pearse Doherty: Go raibh maith agat. Cuirim fáilte roimh an Uasal Kissane chuig an choiste. Gabhaim buíochas leis as ucht an cur i láthair iontach cuimsitheach a rinne sé. Bhris

sé síos na hábhair uilig sna bainc difriúla. I welcome Mr. Kissane and thank him for his presentation which was very comprehensive. He has given us an under the bonnet look at what is happening in all the different financial institutions. As I have said before, Mr. Kissane has done this State and the victims of the tracker mortgage debacle some service. He has served those whom he has represented individually as well as those he did not actually represent but who have benefitted from the work that he and others have done.

Mr. Kissane mentioned that there could be at least another 5,000 cases on top of the 33,700 already identified. Are those 5,000 cases dispersed across all the financial institutions or are we likely to see a concentration in a number of institutions?

Mr. Padraic Kissane: There are probably four main areas involved there. Ironically one key sector, which is the margin issue, would already be classified as impacted cases, even though they are on the wrong margin. I would consider them not concluded but they would be included in that figure. The outstanding cohorts in the main are with First Active, EBS Homeowners and KBC. There are some staff matters within Bank of Ireland and AIB.

Deputy Pearse Doherty: The issue of affected staff within AIB has not had a proper hearing. There is a view abroad that staff matters are only an issue for Bank of Ireland. I ask Mr. Kissane to address the fact that AIB has not dealt with all the staff issues. I understand the bank has dealt with some of them but that there are still individuals working for AIB who are victims of the tracker scandal who have not been acknowledged by the bank.

Mr. Padraic Kissane: A staff member of AIB in the majority of cases could borrow a maximum of €190,000 at the staff rate. The balance of the loan would generally have been on a tracker rate during the relevant period. However, it was not made clear to any of the staff that if the €190,000 ever became more expensive, they had the option to go back to the basis on which the rest of the loan was advanced. The balance of the loan might have been €20,000, €50,000, €100,000 or even €500,000. That depended on how much the individual was borrowing. There was a maximum amount that they could borrow on the staff rate but there was always a link between the underlying basis of the other loan that could have been adopted in. However, when the trackers were removed, the bank used it as a reason not to give it back but there was an unwritten understanding among bank staff that the tracker option was always going to be available to them as a default position.

Deputy Pearse Doherty: Does Mr. Kissane understand that there are many people in that cohort? It is a horrible word to describe individuals who are victims.

Mr. Padraic Kissane: It is a similar situation to that pertaining to staff in Bank of Ireland. It is difficult. The staff are in a peculiar position because they are not only challenging their bank but also their employer. It is a unique position in that regard. It is difficult too for the staff of Bank of Ireland who have been granted redress because in terms of submitting appeals, they are essentially writing to work colleagues with their issues. The staff issue is one that I will be bringing up with the institutions, although I have not spent as much time on it as I have on the broader issues. More investigative work will probably be required before I can be certain about where I can challenge them on this issue. That said, there is certainly an issue to be addressed.

Deputy Pearse Doherty: As I understand it, some of the cases within AIB are before the Ombudsman at this point.

Mr. Padraic Kissane: Yes, there are people challenging through the Ombudsman's office.

Deputy Pearse Doherty: Mr. Kissane mentioned the appeals process and I ask him to give his current view on the experience of that process in each of the banks. I ask because correspondence I have received from people dealing with Permanent TSB would indicate that its appeals process is very unsatisfactory. Is Permanent TSB an outlier in that regard?

Mr. Padraic Kissane: I am on record already with regard to my views on Permanent TSB. There were two panels there - the independent review panel and the customer appeals panel. Of the submissions that I made on behalf of customers to the latter panel, the only description I can use is that those customers were “treated disgracefully”. I make no bones about saying that. Thankfully, however, the bank itself has now realised that. Members must understand that submitting an appeal in the first place is very difficult for people. They are talking about matters that are very personal to them. There did not seem to be any credence given by the bank to the fact that I had met these people, listened to them and assessed their case. Essentially, I listened to them and determined whether an appeal was merited. Members of the aforementioned panel - and the chairperson, in particular - then called into question their position. Members must remember that customers were automatically awarded 10% of the interest that was overcharged. If someone was overcharged €50,000 then he or she was awarded €5,000, for example. People who were rich and who did not care whether the interest rate was 10% or 0% got the 10% payment. That is fine because there should have been an acknowledgement for the wrongdoing. However, what seems to have morphed into the appeals process was that if customers got 10%, they had to prove their claim to be above that in order to get any money. If that was to follow, then there was no acknowledgement of any wrongdoing. The people who suffered the most were those who were financially restricted. They were also the people who submitted appeals because the cause and effect was more dramatic for them.

While I am not here to defend Permanent TSB, it was the first out of the block on this. It was adapting to a process that was new to all the banks and was the first to do so. It did not look right that a member of Permanent TSB staff would be on the panel. Thankfully, that has now been addressed by all the banks. As Deputy Michael McGrath said here, it was like having a member of the defence team on the jury. The statistics are clear on this. I saw their last presentation here. They are still reluctant to deal with the independent review panel statistics and the customer appeals panel statistics separately. That is because the customer appeals panel statistics are astonishingly in favour of the bank. That is ironic, given who is causing the effects.

Deputy Pearse Doherty: If somebody was awarded €2,000 in compensation and decided to appeal, he or she would have to prove that the damage done to them was in excess of €2,000. Mr. Kissane can correct me at any time. Such a person would actually have to show that he or she lost the value of €2,000. Is that correct? For example, perhaps he or she incurred expense in travelling to Dublin to meet with legal advisers or taking other steps. If he or she could not show that the damage exceeded €2,000, the appeal was not successful. That meant that the wrongdoing, which should be an automatic sum because the banks took money from their customers wrongly, never occurred. A customer was left out-of-pocket.

Mr. Padraic Kissane: That is what I said. No compensation was given. It was an astonishing position, and I could not understand how it was sustained. Essentially I did not consider what customers were awarded in redress at all. I listened to people. What I told all the banks is that everyone assumes that everyone who came to me brought an appeal. That is not the case at all. In a lot of cases where people came to me, there was no reason for an appeal. I would assess their situation as an adviser.

However, I heard people’s accounts of the carnage that had happened. I will give an ex-

ample. Yesterday I spoke to a lady who was so upset that I had to make time to speak to her even though I was busy at the time. She sold her house in 2016 because the family was fearful of going into debt. However, KBC does not classify that as a lost home. Just a month ago, KBC approved her for another loan of €200,000. The mortgage was originally for a sum of €220,000, but it was not on a tracker. It is astonishing. I give this case as an example. This woman was completely broken. I had to say that although it would be difficult to re-crash this car, she had to do it.

I had a lady in my office recently who was dealing with another bank, but this example is illustrative of all the lenders. I asked her what she would want from the appeals process if I had a magic wand and I could do anything. She picked up her redress letter and said she would like me to travel back in time with it by four months, because she did not want it. She could not relive that period. That is the feeling I am trying to express.

What really annoyed me about the customer appeals process in Permanent TSB was that it just dismissed all these concerns and threw them in the bin. I met a girl who had receipts for the babysitters that she needed to hire on the days she had to go to standard financial statements meetings in the bank. Those expenses were all thrown in the bin. She had proved every cent of extra money she had spent.

People go on a journey before they go into arrears. This is an important issue with regard to the warehousing cases and so forth. They empty every single bucket that they have. They then run up every credit facility they have to the maximum. They then go to their friends, parents and other family members. Only then do they go into arrears. They travel that journey before they get to the arrears position. I am not talking about the strategic defaulters, a group about whom I do not even care. Families, in particular, will tighten every single belt they can before they get to arrears.

Deputy Pearse Doherty: I agree with Mr. Kissane and with his sentiments. The way these individuals have been treated is disgusting. It is heartbreaking. After one of the meetings the committee had with one of the banks, I received an email. The person wrote that she had cried and cried and cried, because her voice was being articulated for the first time by members of this committee. She had felt powerless. She had done exactly what Mr. Kissane described. She emptied every bucket. Emotional torture was inflicted on her, and in the end, when the banks had to acknowledge that the game was up, she was not adequately compensated.

Mr. Padraic Kissane: It also raises the question of what adequate compensation is. That is the question nobody wants to address. Putting a tort and a quantum of damage on this is simply impossible. It can be multiplied to any figure. For people who have lost investment properties, the rent runs forever. It can run for generations. Some level of realism is required, however. Astonishingly, one of the things all the people I have met want from me is a way to draw a line under the matter. They just want to move on with their lives. The parts that cannot be captured in an appeal are the financial plans that were destroyed. These people have to rebuild their pension planning, the education funding for their kids, their savings in the post office and all such savings. The committee will remember the journey that I described. All those savings have been reduced to zero. Life assurance is cancelled, critical illness, income protection-----

Deputy Pearse Doherty: I would like to ask about mortgages taken out individually and mortgages taken out jointly. We all know what happens in cases of separation, or when one party decides not to pay. Parties to a mortgage are jointly and individually liable. Yet when it comes to redress, it is only one payment. An individual might be wronged by the bank to a

value of €20,000 and be offered €2,000 compensation. Another account, which had two individuals signing up to get exactly the same amount of money-----

Mr. Padraic Kissane: The explanation for that is that the redress process is about the account. It is important to say that. Let us say that a customer is dealing with Permanent TSB or Bank of Ireland. The bank can only populate the redress letter from information in the Bank of Ireland system. In simplistic terms, the redress letter is about the account.

Deputy Pearse Doherty: Yes, but I am not talking about the redress. I am talking about the compensation.

Mr. Padraic Kissane: That is what I am coming to. The redress letter is about the account, the appeals process is about the people. The bank can only compensate based on the account. In an appeals process, claimants do not bring an appeal about an account. The appeal is about the people involved. If a case involved a husband and wife with three children, there are five appeals relating to one account. That is the easiest way of explaining it.

Deputy Pearse Doherty: I have also had correspondence from an individual who had to engage a solicitor to fight the case in the appeal. I presume this would apply to many people, who get not only legal representation but advisers such as Mr. Kissane. There are cases where the banks do not recognise the fees that are involved there. We have had the banks before the committee to tell us the schedule determining how they allocate compensation. There are those who have to fight the bank, in cases where the bank actually acknowledges that they were wronged. They may have lost a house. In this case, the individual lost a house as a result of the tracker mortgage scandal. The legal fees incurred were not top-sliced. They had to be paid out of the compensation. What are Mr. Kissane's views on that?

Mr. Padraic Kissane: If any matter of the appeal is upheld in the appeals process, any costs for other parties involved in supporting the customer bringing the appeal are chargeable to the bank. Those fees should not have been taken from the compensation.

Deputy Pearse Doherty: Before the appeal, however, many of these individuals-----

Mr. Padraic Kissane: Is the Deputy referring to the payments in working?

Deputy Pearse Doherty: Many of these individuals approached legal professionals or individuals like Mr. Kissane before the banks acknowledged their claim.

Mr. Padraic Kissane: That is, before the Central Bank investigation.

Deputy Pearse Doherty: Yes. They were the pioneers who forced all this into the open, and there were charges as a result of that which were not acknowledged by the banks.

Mr. Padraic Kissane: From my experience to date, I can certainly state that prior to the Central Bank investigation, cases against the AIB and Bank of Ireland were won. I have managed to get them included in the redress process. Any of the engagements are being honoured. I was paid a completion fee or a success fee if I won the case, because the ombudsman did not award costs. As such, the costs had to be taken from the interest that was refunded. I believe that all those costs should now be repaid by the bank.

If somebody came to me in that position and he or she had incurred legal costs of €5,000 in challenging the issue, it would be a matter for the appeal. I would bring it in as part of the appeal, and I do not see how a panel could refuse it. As I have said to many of the banks, all the

people who have been engaging with me, some of them since as long ago as 2010, have helped to inform the investigation. I do not see why those people should be charged any more or less than those who did nothing about it and did not even know it was an issue.

Deputy Pearse Doherty: When representatives of one of the banks appeared before the committee, we questioned them at length on repossessions and contacting individuals who lost their homes. After that session I received a call from one of the victims, who was livid at the testimony given by the banks. They outlined to me in detail how in their view, the banks had misled the committee. They told me very clearly that their only option was to take the bank to court, a course of action they were taking. Has Mr. Kissane encountered many individuals for whom the end solution may be to take a case on behalf of a representative group? Mr. Kissane has spoken about this previously. Is that something he is still considering? Is he familiar with many individuals who are willing to take such a case?

Mr. Padraic Kissane: The ideal solution is to deal directly with the bank and get it resolved there. In respect of the quantitative damage done to somebody who has lost their home, one can visualise the evening the person had to leave it but then to be told a certain number of years later “oops, systems error, we made a mistake and we overcharged you” can destroy some people. It pushes them right back over the edge. Many of these cases are subsequent to PTSD if the banks are not prepared to step up but they would be individual by nature. They are not really something I would classify as a class action or grouping position because they are individual by nature. One must understand the journey of coming to arrears and then serious arrears. The banks will defend some of those positions. I have concerns, if they do go to court, about the six-year timeframe for the statute. The statute is supposed to be set aside but my legal advice is that they could challenge that setting aside in some aspects. In other words, the cause and effects that are being challenged within the banks on the appeal stage at a court case could be challenged if they are outside statute. It is something about which I would have grave concerns if they push that line because we should remember that these lenders have far greater access to legal teams than I have.

Deputy Pearse Doherty: I previously sent two cases to the Central Bank. Those cases involved documentation and evidence showing that during the period of the investigation by the Central Bank, lenders continued to challenge borrowers who were within the scope of the Central Bank examination and in those two cases, homes were lost as a result of the actions. The Central Bank is investigating that but given its rules, it cannot inform me about any progress or lack thereof. Does Mr. Kissane have any evidence about whether this is a widespread issue? Is it an individual issue? Another case with which we are dealing, which presented recently, involved an individual who is seriously ill. I have the consultant’s letters here. The medical documents I have state clearly that the illness is as a result of the stress that individual was placed under by the financial institution in question. During a period of the individual’s account being deemed within the scope of the Central Bank investigation, this institution continually pursued the individual about issues like repossession and voluntary surrender of the house. It eventually materialised that the individual was not deemed to be impacted by the tracker mortgage scandal. Nonetheless the rules were breached during that period to a point where the individual has a serious and long-term illness as a result. Are these individual cases or is this more widespread?

Mr. Padraic Kissane: I do not want to appear flippant but there is a huge issue with the left hand not telling the right hand within the bank because they are departmental and it is a nice blame game they can play. It is a case of the bank saying a department was not involved in the

tracker investigation and did not know and it had to continue with the legal route because of the issues involved. I have cases in my office, one of which involved a lady who got a phone call from the arrears unit while she was in the cardiac unit of a hospital. I have come across cases of attempted suicides. They are not explained but they are not with us any longer. I have come across health issues. I said a long time ago that what is within it still has to come out. If financial stress is brought to bear on a family or a person, isolation, health and relationship issues arise. The tentacles of this octopus spread everywhere. If somebody takes €400, which was the average overcharge, out of a person's wallet, purse or bag every month for seven years, at what point does it get in on that person? That is what happened. Taking money by stealth is the way I would describe it. One of the first things people have difficulty understanding is when they have to revisit it. I would get people to print off details of every single bank account they had at the period, because it jogs the memory. I recently asked a man from Kerry who came to me whether he had ever had a rejected direct debit. He told me he had lots of them and I said that they were €10 a go. I told him that €10 is a lot of money and he made a very important point to me when he said, "Padraic, where I was, €1 was a lot of money". He told me that €10 was a fortune and was the difference between him eating and not eating. I would love a project to be undertaken to see how much was made from rejected direct debits through this period because I would say it is a small fortune. They were always charged even though the debit would have been balanced.

Deputy Pearse Doherty: That is a question we can definitely put to the banks at our next engagement.

Senator Kieran O'Donnell: Mr. Kissane has done the State some service on this issue, in particular, the day he brought the four witnesses before this committee. I think they represented a watershed moment in the tracker issue. Their stories were compelling and brought across the impact of this issue. I thank Mr. Kissane for the work he has done. His summary conclusion is that there are about 5,000 outstanding cases. He said there are 3,000 EBS customers who have not been returned to trackers. I am assuming that of the 5,000 cases, 3,000 of those are EBS customers. A total of 800 involve Bank of Ireland customers. I assume that these 800 cases do not include the employees of Bank of Ireland.

Mr. Padraic Kissane: No, it does. There are some employees involved. One of the key issues with the employees that they have not addressed is the fact that if Padraic Kissane took the two-year fixed rate, he was assured he was going back to 0.75%. If the original loan was not a tracker, I have not been corrected.

Senator Kieran O'Donnell: So that leaves a balance of 1,200. Where does Mr. Kissane anticipate those 1,200 case are at?

Mr. Padraic Kissane: The further I have moved on in the investigation, the more difficult it has become to guess figures. What is astonishing is that every figure I have put forward on this has proved to be correct. I am now probably doing more less informed guesses than I would have done heretofore. First Active is a large cohort. It could be more than that. I put in 5,000 to put a quantum on it to some degree. I do not know how many EBS customers have not got their trackers back but it must be a substantial number because, to date, other than the people the bank described as getting the wrong form when they were fixing their mortgage, it could have been the right form if one looks at another way-----

Senator Kieran O'Donnell: In respect of those 3,000 EBS customers, did that come up in the discussions when AIB appeared before the committee?

Mr. Padraic Kissane: This is one thing that has surprised me and I brought it directly to the Chairman. First Active and EBS have not been here individually. I know they are owned by parent banks - Ulster Bank and AIB - but EBS and First Active should be called to task here or representatives that are only knowledgeable about their front because there are issues in those two banks.

Senator Kieran O'Donnell: When Mr. Kissane is dealing with customers in respect of EBS and First Active, is he dealing with EBS and First Active as stand alone entities or he is dealing with Ulster Bank and AIB?

Mr. Padraic Kissane: One is dealing with AIB and Ulster Bank but the issues relate to EBS and First Active because all the paperwork relates to EBS or First Active.

Senator Kieran O'Donnell: If we look to bring EBS and First Active in, and we should take up the request from Mr. Kissane, who should we be looking to bring in? Is there a head of EBS? How do they work?

Mr. Padraic Kissane: EBS is an entity within AIB and runs-----

Senator Kieran O'Donnell: And First Active?

Mr. Padraic Kissane: I am not as sure about First Active. If the session only involved First Active, the people who would come in would have to be informed about the First Active issue so they will self-select, for want of a better word.

Senator Kieran O'Donnell: Does Mr. Kissane believe that a large cohort of, dare I say it, the hidden trackers that have not come to the fore are probably within EBS and First Active?

Mr. Padraic Kissane: I am certain of it.

Senator Kieran O'Donnell: Chairman, I suggest that we write immediately to both EBS and First Active to invite its representatives to appear before the committee as a matter of urgency.

Chairman: Is that agreed? Agreed.

Senator Kieran O'Donnell: I thank Mr. Kissane for that. Why are the banks fighting this so hard? The amount of money involved in the overall scheme of things is not enormous from a bank's perspective, but it is of gigantic proportions for the individuals. People cannot sleep at night and they are getting old before their time. I have referred to this previously, but a lady rang me on 21 or 22 December last, just before Christmas. She was a Permanent TSB customer and there was a knock on her door at six o'clock at night - the lady lives alone - which resulted in a legal document from Permanent TSB being served on her. She was petrified. As she lived some distance away, I immediately rang a personal insolvency practitioner, PIP, who was dealing with Permanent TSB. Obviously, we are dealing with Permanent TSB on a daily basis now. He made a quick telephone call and the dogs were pulled off. Why do the banks not say that they need to put this matter to rest, sort out these customers and move on? It is doing incredible damage to the banks in terms of image, reputation and probably even finance.

Mr. Kissane is dealing with them daily. I do not wish to be cynical but he says that Permanent TSB is re-engaging. By the time it re-engaged, had Mr. Kissane already agreed to appear before the committee at that point?

Mr. Padraic Kissane: In fairness, Ger Mitchell contacted me-----

Senator Kieran O'Donnell: It was prior.

Mr. Padraic Kissane: Absolutely. It was regarding an appeal matter that involved a specific issue. However, he used the opportunity to-----

Senator Kieran O'Donnell: I am reflecting the disbelief among the public.

Mr. Padraic Kissane: Absolutely. To return to the question of why the banks are fighting, it is down to money. One can dress it up any way one wishes, but I can give an example. Where there is a €300,000 loan over 25 years at 3.25%, the total interest charged for the 25 years is €138,584. The total interest charged for the same mortgage at 1.1% is €43,274. That is the reason.

Senator Kieran O'Donnell: What is the differential there?

Mr. Padraic Kissane: It is just over €90,000.

Senator Kieran O'Donnell: The differential on a €300,000 mortgage over 25 years is not far off €100,000.

Mr. Padraic Kissane: That is correct.

Senator Kieran O'Donnell: It is nearly a third of the original principal.

Mr. Padraic Kissane: That is correct. That is why they are fighting it. What has come from the investigation is the reasons they have lost or won - the documentation, the wording and why the client should have been the most informed financially astute person who ever walked in a door. None of the banks has ever advised a customer on a mortgage. It is quite an astonishing statement. As I have said previously, I have a letter in my office that a bank seems to have forgotten it wrote to me in which it states that it has no fiduciary duty of care to its client and as such is entitled to look after its own economic welfare. That was written by a bank to me about a complaint.

Senator Kieran O'Donnell: There are a few final points. With regard to the various institutions, we are going to invite the EBS to appear before the committee. Bank of Ireland has 800 customers and Mr. Kissane referred to Danske Bank. That has not come under our radar.

Mr. Padraic Kissane: That is a key one.

Senator Kieran O'Donnell: AIB, KBC and Ulster Bank have, Permanent TSB very much so, and we are going to invite First Active to appear before the committee. Will Mr. Kissane talk about Danske Bank? It has not come on our radar and I wish to know why he has included it.

Mr. Padraic Kissane: I had a discussion with a reporter from a newspaper in Denmark who rang me-----

Senator Kieran O'Donnell: When?

Mr. Padraic Kissane: It was six or eight months ago. She said that Danske Bank did not really have a big tracker issue in Ireland. She was reporting for Denmark.

Senator Kieran O'Donnell: At that time it was National Irish Bank.

Mr. Padraic Kissane: Yes, at the time. My initial reply to her was: "What if I told you that it caused it all?" There was silence on the telephone and then she asked what I meant. I told her that it introduced a product in October 2006 called a loan-to-value tracker product and that is when the margin started to tighten. The ECB rate plus 1.25% was no longer competitive. Within about six weeks, retention departments came into play across every lender. At the time in 2006 and 2007 the average life of a loan was four years, that is, the mortgage lasted in the institution for four years. It was done by churning, moving, getting more competitive rates and so forth. The average lifespan of a mortgage now is probably around 12 years. I credit Geg Allen, who works with me in my office, for this information. It is important to understand that the banks were starting to realise that the procurement of business was costing them so much it was as easy to spend some time on keeping the business because that was-----

Senator Kieran O'Donnell: That was where the margins were.

Mr. Padraic Kissane: It was the margins but also the retention of the business. If it was moving within four years, the bank was not getting a return on its costs. Many people started in this investigation by talking about Bank of Scotland, which introduced the product, but its first margin was 1.75% or 1.5% above the ECB. We ended up with margins of 0.5% and 0.4%. I even saw a margin of 0.2% above the ECB. It was Danske Bank, I might add. When Danske Bank introduced the loan-to-value tracker product some of the other things that have emerged from the investigation, such as the margin issue in PTSB, resulted from that move. PTSB felt that if it left out a definitive tracker rate, even though there was a tracker rate used, it could lower the margin on the expiry of the fixed rate and counter the option that the broker might move people to Danske Bank and so forth. Interestingly, Danske Bank was not predominantly a broker. It only did a pilot with a number of brokers. It was predominantly a direct bank through National Irish Bank. That is what lay at the door of concern with AIB, Bank of Ireland, PTSB and Ulster Bank, the key banks.

Senator Kieran O'Donnell: To get back to practicalities, Danske Bank is gone. Where is the loan book it would have had where individuals would have been on trackers?

Mr. Padraic Kissane: If memory serves, I believe Pepper Group is the agency looking after it. I do not think it is owned by Pepper Group. It is still owned by Danske Bank.

Senator Kieran O'Donnell: In terms of getting compensation for customers-----

Mr. Padraic Kissane: It originates with the original bank.

Senator Kieran O'Donnell: However, Danske Bank as an institution is no longer in Ireland.

Mr. Padraic Kissane: I understand, but it is a very successful bank. The issues of concern-----

Senator Kieran O'Donnell: Has anybody who was a Danske Bank customer come forward to Mr. Kissane in his professional capacity? Has anybody come forward on the tracker issue where the person's loan would have started with Danske Bank or National Irish Bank?

Mr. Padraic Kissane: Absolutely. There is a huge amount of cases in the office.

Senator Kieran O'Donnell: How is Mr. Kissane dealing with them on a practical level?

Mr. Padraic Kissane: We are writing to the Danske Bank address in the International Financial Services Centre, IFSC. It still has an entity here. It is a commercial bank but it is for the corporate sector.

Senator Kieran O'Donnell: Is Mr. Kissane interacting with it on the cases?

Mr. Padraic Kissane: I wrote a letter to the bank and its reply was that reputational concern is not a worry for it because it is out of here. That is the reply I received.

Senator Kieran O'Donnell: Was that recently?

Mr. Padraic Kissane: No, that goes back a while.

Senator Kieran O'Donnell: Chairman, Mr. Kissane is an expert on this area so for the sake of complete coverage we might issue a letter to Danske Bank as well with regard to the issues he has highlighted.

Chairman: I presume Pepper Group is the regulated agent.

Mr. Padraic Kissane: Danske Bank has an entity in the IFSC where there are members of senior management.

Chairman: Are you suggesting that we write to both, Senator?

Senator Kieran O'Donnell: Yes. We are duty bound to do so, given what Mr. Kissane is telling us. He deals with people on a daily basis. There is a danger that we are going to reach major fatigue on the tracker issue. The banks are trying to turn this into a marathon.

Mr. Padraic Kissane: There are two issues I would raise about Danske Bank. The reason I give importance to it is that many of the banks improved the margin position to retain the customers who were threatening to go to Danske Bank. The loan-to-value product is clear from the outset. However, with regard to fatigue, I can say for certain that I will not stop. There are still issues and I intend to see them through to the end. There are some cases that are more debatable. They are not in the collective and are more singular in nature. That is fine. They were always going to be there anyway. However, the larger cohorts are still in existence.

Senator Kieran O'Donnell: Chairman, I will summarise what I get from today's discussion. Mr. Kissane has now highlighted to us that there is a large cohort of up to 5,000 customers, 4,000 of whom are with either EBS or First Active. I believe we have to pursue this matter as a committee. It is a significant proportion. We are talking about 36,000 customers at the moment and maybe another 10% on top of that. That is significant. As a matter of urgency, I ask that we invite EBS and First Active to come before the committee along with Danske Bank and Pepper. I ask that we ensure that banks cannot continue to stretch this out. They are hoping fatigue will set in and, dare I say, that we pull back a 5,000 m race rather than a marathon. We must get closure on this.

Mr. Padraic Kissane: They may say I am wrong.

Senator Kieran O'Donnell: Expand.

Mr. Padraic Kissane: The forms are clear; all of the other excuses that I have been given-----

Chairman: I think, rather than get into that, we will agree to invite EBS and First Active to

attend and we will add Pepper and Danske Bank and see what the response will be. Then we can take it from there.

Senator Kieran O'Donnell: Thank you, Chairman. I thank Mr. Kissane.

Deputy Paul Murphy: I thank Mr. Kissane for all his work on exposing this scandal and fighting for those who have been affected by it. Does Mr. Kissane have an estimate of the overall amount gained by the banks as a result of these practices?

Mr. Padraic Kissane: "Gained" is a word that I would say was temporary. The money that was overcharged, in the collective, is probably about €700 million. There are a couple of aspects that probably do not get as much prominence as they should. In taking €700 million from customers, they also took it from the economy, at a time when the economy could have done with €700 million extra to be spent. It is a key issue that a lot of people miss.

Another thing about the €700 million is one has to double it to earn it. That means there is €1.4 billion that has to be earned to create €700 million of overcharge. Even if it was only €100 million it would still be wrong but the fact is that the numbers are so astounding.

One of the connective issues was that the standard variable rates that were being charged at the time were the highest in Europe, as the committee has heard. That is what made it more pertinent in respect of the importance of the tracker. If the ECB rate is at 0% and the tracker margin is 1% but customers were being charged 4.5%, the differential was off the charts. Add to that the tsunami of the economic crisis and it was a perfect storm that hit families. Importantly, when it hit those families, they did not know there was a wrongdoing going on in the background and that is the issue that hurts the most. Whatever about the money aspect, the fact that the banks did it is what hits them hardest. That has become clear to me from the meetings I am holding with people. Banks were held in a regard of trust and they have broken that. It is going to be very difficult to restore and regrow that trust. The banks' behaviour and the ongoing nature of the issues are certainly not helping.

Deputy Paul Murphy: There was a huge amount of money taken from people and from the economy. When he was reaching the conclusion of his remarks, Mr. Kissane said the question should be whether the banks would do it all again and he feared that the answer might be "Yes". Could he explain why he thinks that is the case? This also relates to what factors were driving this effective robbery of people in the first place.

Mr. Padraic Kissane: It probably comes to what lessons will be learned. The part that will be intriguing for me is the final report that will come from the Central Bank. Will it be a synopsis, as happened in the UK recently with the global restructuring group, GRG, division of Royal Bank of Scotland, or will the Central Bank issue the full report? It will probably be the full report and there will probably be some very damning statements in there. If the banks could be trusted, in an idyllic world, we would not need the Central Bank because we would not need an overseer. Putting the desire to return to shareholders ahead of customers is what is wrong.

There are other connected issues with regard to the non-payment of loans and the difficulty in taking repossession and getting the debt repaid. It cannot be viewed as an easy ride, either, for non-payers, because then the whole thing will crumble. One of the questions I have is why it is necessary for the bank to make €143,000 on a €300,000 loan, rather than €53,000. How much is enough?

If I was to give any indication of what should happen going forward, I would suggest that

the family home should be treated as a cheaper loan anyway. We have to be careful that the desire to own a home does not drive the prices crazy as well. It could have a double edge to it. There is a certain level of affordability for people. It is estimated that about 35% of income is what people should be spending on a mortgage, yet we are up at 60% and 70% at the moment in some cases because the supply of housing is not there.

As for the fallout, to learn from this and reposition it again is going to be difficult. We are back with the same leopards, same spots, same treatment. If it happened again, would they do it again? I hope they would not because of their reputations and the carnage they are starting to see in the appeals. One could not do it to anybody willingly. There are good people in these banks and they know, but some people made the decisions. There were deliberate actions taken by some of these banks to ensure the restoration of the tracker did not occur.

Deputy Paul Murphy: To follow up on that, when Mr. Bernard Byrne, CEO of AIB, was before the committee two or three months ago, he described taking people off tracker mortgages, etc., as an unforeseen and unintended consequence of the decision to stop offering tracker mortgages to new people. The other banks that came before the committee effectively offered similar versions of that explanation. Does Mr. Kissane accept that what happened was unforeseen and unintended?

Mr. Padraic Kissane: Different banks have different levels of behaviour and important distinctions have to be made. Some banks did it deliberately. Deliberate changes were made to their mortgage systems. That I know. In regard to why, the reasons were extant for every bank, namely, trackers were costing money. It was a short-term cost, by the way; trackers are freely available in the UK as I sit here today. They are not a product that has suddenly vanished. If I was advising the banks, I would suggest applying a floor in respect of trackers below which the rate could not go. That would probably have solved a huge issue.

We are moving into the area of the criminality of this and to be honest, I have concerns about some lenders and how they did it and the deliberate nature of it. However, more of the concerns are about how they have resisted it. For example, AIB is stating one position about AIB customers and that it was a natural fallout, yet EBS homeowners are all sitting in listening today - I know lots of them are - and not one of them is back on a tracker. They got the wrong form. The wrong form for whom? I find it astonishing that the wrong forms are always in favour of the bank.

There is a rule of law here. If the documentation is not clear, the rule is that it should favour the lesser party, and the lesser party should be and is the customer. There is a lot more I could say on the issue but I do not think it would be fair in the middle of the investigation with lines of communication open. As a warning to the banks, I would say that I have a lot more information than I am stating. The Central Bank has been informed and is aware. It has told me it is absolutely accepting and working with the information I am submitting. Obviously, it has to go and prove it. For example, here is the KBC report I sent to the Central Bank in June 2016. The jigsaw pieces have to be put together here. It tells us everything we need to know.

Mortgages should never have been complicated. There should have been simple documentation and if there is any vagueness, it should favour the customer without question. This is what is annoying me now, that they are still questioning the vagueness and stating it should slant in their favour rather than that of the customer. It really annoys me because it has been ongoing for nine or ten years.

Deputy Paul Murphy: To return to the more general picture, one of the interesting things Mr. Kissane spoke about was the role of Danske Bank's loan to value tracker project in effectively kicking off a race to the bottom. Will Mr. Kissane explain a bit more about how the dynamic between the various banks proceeded? Will he also explain the dynamic within banks, the role of a bonus culture and, within this, the pressures that existed on staff to get people to sign up to these and, at another stage, to get people off them?

Mr. Padraic Kissane: There was previous form with this. If we remember when Bank of Scotland came into the marketplace, it brought in a tracker product, and within three years every bank had a tracker product. It was naturally going to follow that if Danske Bank was the only bank that stated that as someone's margin loan to value improved it was going to lower that margin, every bank had to react to it because it could have cornered the entire market as the product was going to be a loss leader and it was going to garner everybody. What ended up happening was that many people negotiated to get the deal approved with Danske Bank, and then went back to their own banks and got it matched or even bettered. As a broker at that time, we sent email after email to the banks to state if they did not improve on 1% we would move the customer because we were obligated to do so. If there is a better available rate we are obligated to tell our customers about it. At that point, all of the banks were coming back with improving rates all of the time.

The reason I say it became a race to the bottom is because the desire then was not how much profit the banks were making from a mortgage, it was market share and how much they were lending. If we listen back to all of the announcements, they were all about how much they lent in each year. It had nothing to do with the margins at which they were lending. It resonated because the volumes were so great they were making profits, but the profits in a normal banking environment should have been a lot more. They were charging minimal amounts and it was about getting volume. The bank manager who spoke was factually stating what the position was. He had to get €7 million out the door of one branch in a week, and he did not have lot of footfall crossing. That is an astonishing amount. The worrying point was his end comment, that the bank did not care how he did it.

Deputy Paul Murphy: Does Mr. Kissane agree with the description of the culture given by the Governor of the Central Bank, Mr. Lane, of seeking profitability to the detriment of the banks' customers? He used a similar formulation earlier I believe.

Mr. Padraic Kissane: Without a shadow of a doubt the customers did not come first. I do not fully believe they come first even now, but it is a case that they have to. I have said before on record that if I were to say what was the banks' regret it is probably that they got caught. I know it sounds like I am glorifying it, but they probably never expected me to come along to spend the time I did. At present, most weeks we work on this six or seven days and sometimes 18 hours a day, because of the might of what we are up against and the certainty of what I have to do. I cannot be wrong. The one thing I say to every customer is that I absolutely acknowledge and understand the importance of this because it is life changing money for people. It is only €400 or €300, but it is a crucial €400 or €300 to that family. My opening remark to somebody new among the 33,600 who comes to me is to let us assume for today there is one tracker case and not 33,600, because for that person it is crucial.

Deputy Paul Murphy: I have one question on the detail. Mr. Kissane mentioned difficulties with documentation with regard to EBS, and this tallies with a case I am dealing with whereby someone was taken off a tracker and was not given the appropriate information. He has made the appropriate complaint and EBS states it should have sent him a letter and that it

believes it did send him a letter but that it cannot locate the letter it thinks it sent him that would have informed him on everything. Is a problem with tracking down documentation something that is commonplace?

Mr. Padraic Kissane: I was expecting a question on EBS. One of the issues with EBS, and what was unusual, was if someone wanted a tracker mortgage he or she had to sign a tracker application form which stated the person could move to a fixed rate or a variable rate once without penalty throughout the life of the loan. I have consistently challenged this bank as to where the without penalty aspect of this is. I have received a reply from EBS that there would be a penalty if there was a breakage fee in going from a tracker to a fixed or variable rate, which could never apply because there are no fees for breaking with a variable rate because it is a variable rate. Its loan offer, which in many cases was issued after that application form - and we are getting technical here - mentions the variable ECB rate plus 1.25%. With the tracker mortgage, the margin is linked to the specified index or indices and remains constant for the life of the loan.

One part not accepted by the banks - I am not going to say it is not understood by the banks - is that the first thing everybody forgot about with regard to a tracker mortgage was it was a product first and not an interest rate. The legalistic view is the underlying contractual basis of the loan was established when it became a tracker. It did not get altered when someone went into a fixed rate for a short period of the loan, it remained running. The only part that would change was the ECB rate, and nobody could predict what that would be at the end or at the outset, but the margin was constant. Everyone signed up to the very same tracker product. All that has happened since July 2008 is the banks have attempted to state retrospectively that this what they meant, or that they had a non-price promise tracker product, as Permanent TSB has said. All of this is made up. With certainty, in every system a loan must be underwritten before it is ever issued, and the margin is there because the underwriter must know if it stresses it to plus 2% what that will cost the customer. This is in everyone's system. What the banks did, and one can imagine the work that went into it because of the cost issue of more than €600 million, was looked to see whether there was any way to get people off tracker rates. I am absolutely certain this happened in all 15 banks.

As a complete aside, people who had credit issues and had to go to Springboard Mortgages, which is owned by Permanent TSB, to get a mortgage are on better margins today than someone with a 50% loan to value offer with Permanent TSB, and Permanent TSB thinks this is right. The important thing is no margin was stated in the Springboard Mortgage loan offer or in the Permanent TSB offer, but the Springboard Mortgage person is back on the margin used in the system and the Permanent TSB person is not. I had an exercise which I showed the Central Bank. I could put out four identical loan offers, one at 0.8% above the ECB rate, one at 1% above the ECB rate, one at 3.25% above the ECB rate and one at 2.25% above the ECB rate, and the job is to match the margins to the loan offers. Nobody could do it, because all of the loan offers are the same, but people think they are right. This is why I state today I am 100% certain I am right on the margin issue. I am challenging and continuing to challenge the Central Bank on this and I do not know why it is taking it so long, because these are the questions it should be asking Permanent TSB. My question on the non-price promise tracker is whether any of the customers were told this is what it was, because otherwise, why are they all challenging this issue.

Chairman: To clarify a matter Senator O'Donnell raised about Danske Bank, we got a reply from Danske Bank on 12 January and I will ask the clerk to circulate it to members again. The bank's reply to the questions we asked states the total number of accounts and customers

identified by the bank as impacted at the end of the fourth quarter of 2017 was 79 accounts and 78 customers. It also states the number of cases arising as a result of customers with tracker products was 18, and the number of customers denied the correct margin was 60. It also states redress and compensation payments have been made to ten customers as of 10 January 2018. It would appear it has identified its numbers and has dealt with them. We can circulate it to members and then consider whether or not to pursue their appearance.

Senator Rose Conway-Walsh: I thank Mr. Kissane for all the work he has done and continues to do on behalf of people who have been and continue to be affected by this scandal.

We spoke earlier of lives lost. I know that is difficult to quantify but Mr. Kissane is probably the person best able to assess how many people are not alive today because of this debacle.

Mr. Padraic Kissane: It is a hugely emotive issue. One thing which is common is that I have had no one come to me to say that the bank did it. In any appeal I have dealt with, I have not met anyone who would get out of a car and say they had whiplash unless they had it, in other words we are not naturally a claiming nation. This involves middle Ireland which pays for everything. It is people who ordinarily would never argue, complain, claim or appeal about anything. Over the many hundreds of meetings I have had, I have come to understand it and can see the upset in their eyes and in what they tell me. When people visit my office, they may share a bed but they are on separate pillows. Both are pretending to be asleep but both are awake.

Niamh Byrne was of of four customers before this committee. Thankfully Niamh has been redressed by Ulster Bank but the other three are in the same position that they were in in October. I recall Hazel Melbourne told this committee that she was literally begging it to help them. She does not say that lightly, and she is a special lady anyway. I recall Jenny who said "I might be 74 years but I am not dead". She lost three of her investment properties. I have hundreds or thousands of these cases. One must be careful, however. It is fine to continue and wallow in the difficulty but something that I say to many clients is that the problem may not be solved tonight but it is shared. They need to be given assistance to show them how to get out of this. Remember, until they received the redress letter, many of these people did not have a tunnel never mind a light at the end of it. There are cases. In common with the staff issue, it is not something that I would like to politicise or get public kudos for it but members can be certain that it has happened. It is not something that I wish to speak about publicly. It is too personal to people and it is something that I would handle with greater care than any other matter at issue here out of respect for the people who are picking up the pieces and who are still here. The media ask me to get people who lost their homes to talk to them but nobody will. Shame alone stops people from doing that; there is embarrassment having learned the excuses they gave for having to move from their home are now lies. One cannot expect them to do that. I was intrigued to see KBC tell this committee that of the six owner-occupied properties lost as a result of the bank's error and failure, it still had five in its possession. Good luck with moving back into that house. It is an impossibility. KBC thought this would be easy, that it still owned the properties so that it might give the customers back the house. Imagine the evening those people had to move out and think of the state of play, particularly for the children. I could have any bank before me, but when children are affected I get angry because that is unfair and it is abuse. It might be financial abuse and dressed up in white collars, but I do not care, it is still abuse. Parents have to take difficult choices, and I do not mean not taking holidays, Irish courses or so on, I mean real issues such as the standard of food they are giving. I raise this because it is the culture that must change. Banks telling people that they must stop shopping at a particular shop and they must shop elsewhere to save more money has to stop.

Senator Rose Conway-Walsh: Professor Philip Lane has told us that all customers will be compensated by the end of June.

Mr. Padraic Kissane: The desire is that would be the case for all customers who have been identified. Ulster Bank is picking up speed. It had an enormous issue with its systems, where there were five systems trying to feed in to a redress process. AIB is a little behind with the older conditions as they were only restored before Christmas, but it is also picking up the pace. AIB tells me that it hopes to have everyone redressed by the end of May. That does not allow for the cohorts that remain in there which have not been deemed impacted. One thing I can say with certainty, is that the banks are doing everything in their power to resolve cases of the people who have been deemed to be impacted. It is a given that there is no deliberate delay. If there was, the banks would be essentially borrowing from themselves at ridiculous interest rates. Members can be certain that the quicker this is sorted out the better.

Senator Rose Conway-Walsh: The appeals process deals with the level of compensation and redress. If someone received a letter to say that they have not been impacted, is it the case that there will be no mention of an appeal mechanism?

Mr. Padraic Kissane: No, if a customer is not deemed impacted they will not be included. There is no right to an appeal. I have raised this issue with the Central Bank but it still has not replied to me. Someone who has been deemed not to be impacted but feels that they are may be statute barred and now they have no place to go. The arguments are so old now that they are outside the six-year rule and because they have not been deemed impacted, they are not covered by the statute waiving.

Senator Rose Conway-Walsh: We need to raise the communication to people who are told they are not impacted with the Central Bank. That would be useful.

On KBC, is there a broader issue with people who bought either mortgage through a broker? Mr. Kissane touched on it in his presentation.

Mr. Padraic Kissane: No, the only reason that brokers were mentioned in relation to KBC was that its business was done predominantly through brokers. There is an issue of keeping the broker informed. Ironically in its case, the agreements between the brokers and KBC included the following clause, which I myself signed up to:

The intermediary shall not, without the consent of the lender, print or publish any advertisement or circular referring to the lender or any of its services and not make any promises or representations in relation to the services, otherwise than by reference to published material obtained by the lender.

Then KBC sent me what it called a “flyer”, although it was not a flyer, it was a communication. It was sent in direct opposition to a move which Dankse bank had just made. I find it astonishing that most of the people who are before the committee here were not in the banks when this happened but they seem to have forgotten everything that went before them. The broker game was the big game in town but for KBC especially, it would have provided about 90% of its business.

Senator Rose Conway-Walsh: Does Mr. Kissane think that anyone will be penalised or jailed for this?

Mr. Padraic Kissane: Honestly, as I have said before, I do not care. My intention was only ever that everyone would be given back their tracker mortgage. It is absolutely the case that there are concerns but I would hate for the real life issue of the tracker rate being restored to be lost in the debate over who was or was not guilty. There are people who engaged in deliberate actions but they probably did so with the intention of trying to save their bank and secure its profits. The reasons they did it could have been laudable but it was still wrong. I have been asked how much of it was criminality and whether it was fraud many times. That was never my concern. If I press that button I would lose control of what people want, which is having their tracker rate restored. They are not interested in the wider aspect. Obviously they are very important questions in this forum and for the Central Bank. If it needs to move to that level, I would give what I know but for now, my concern is for my customers. I have moved from getting them back to the tracker to the clean-up phase which was always going to be the tougher part of the job. The banks nearly sighed with relief when they put the customers back on tracker but they did not know the carnage that would arrive at their door. I did not expect Permanent TSB's appeal panel to treat it as it did, with the one panel cap. What was astonishing about the appeals was that the more serious ones were with the independent review panel. All of those bar two were resolved with me. It is quite astonishing. An oral hearing was given to everybody. If I were to raise any issue here, it would be that, while appeals take time, the people need to be heard. One cannot put into that what it has done to people. It must be acknowledged that it is not easy for the people brought in. Astonishingly, bringing an appeal that has merits is therapeutic. It is actually the best way to draw a line on the matter. It has nothing to do with the level of compensation. I know many believe compensation is what is desired. I have asked the question on compensation in my office umpteen times but I have never got an answer from a borrower to the effect that he or she wanted €1 million back. None of them is looking for it. They just want the wrong to be acknowledged and proper compensation to reflect it. Most of them ask for a genuine "Sorry" because they do not believe what was printed.

Senator Rose Conway-Walsh: I understand that. On the issues of individual culpability and sanctions, it is very important to prevent a recurrence. If this is not achieved, the institutions will basically have got away with their activity, and individuals will have got away with certain behaviour. Mr. Kissane will agree the excuse of trying to save the bank is not a laudable one for what I consider criminal activity - the taking of money from people.

Mr. Padraic Kissane: I would classify it as a phase of the investigation that is probably occurring but I would nearly have it as a separate leg. In other words, it is a discussion that should take place around the table with appointed parties to some degree. It should happen for certain but the customers should be out of that.

Senator Rose Conway-Walsh: I understand how Mr. Kissane is trying to hone in and how he must do so to get the results he absolutely needs and that families and individuals deserve.

I found it quite difficult to understand why there are not unannounced inspections by the Central Bank given the scale of the scandal. Does Mr. Kissane believe there should have been?

Mr. Padraic Kissane: Yes. Mr. Joe Meade, the original ombudsman, wrote to the Central Bank in late 2008 and warned it of the tracker issue. That is how long ago it was. In some sectors, there is over-regulation by the Central Bank, and in others there is none. When a former Minister referred to the importance of having pillar banks in this economy, I asked him to define one. The definition to date is not of what I would regard as a pillar bank.

Interestingly, Italy, which is also in the mire economically, has very competitive mortgage

rates. It took a different view from the ECB on some matters. It can still be done. I have said before that what is despicable about what has happened here is that it concerns homeowners. This is the one sector one should never have been gone near. Whatever about the global restructuring group, GRG, issues – they are here in Ireland too – and the commercial aspects, there is not the same carnage and tentacle stretch as with a home. The Central Bank came in here initially and said it did not have enough powers. The family home is protected in the Constitution. There were enough powers. The attack to which I am referring was on the family home. It is absolutely connected to renters. For the investors, most of whom were amateur, losing the properties was the same as losing a home. Many people kept their first home and went on to buy another with the increased value. They lost the rental property. They were classified as amateur investors. They paid the stamp duty, VAT and non-principal private residence tax, property taxes and water rates. The amateur investor is almost a collection device for tax for the Revenue because the level of tax being paid. We wonder why there is a housing crisis in terms of the private rental market. Eighty percent is the only amount of interest a private investor can offset on a rental property. If it is a commercial loan, it is 100%. I acknowledge there are other aspects but the banks come in here, deliberately in my view, and talk about the lost homes and this other number that does not seem to matter. It does matter, however, because most of those affected viewed the properties as their pension plans or homes, or believed they had the option to trade back to them if they sold their original home. That is all set aside.

I said a long time ago that I do not know how this State allowed the Revenue Commissioners bail out our banks, as well as the taxpayer. Most people would ask what I am talking about. Banks are currently being allowed to increase rates on tracker mortgages if capital and interest payments cannot be picked up, Bank of Ireland being the main culprit in this area. The loans were underwritten as interest-only. If there is a 20-year loan of €1 million, it is €50,000 and 0%. If there is only ten years to go, it is €100,000. There was never the affordability to pick it back up but the banks have used it as another opportunity to take the borrowers off trackers. They were given permission to do this. The interest on €1 million at a rate of 1% is €10,000. Eighty percent of that is deductible against rent. If the interest rate is moved to 2%, €16,000 is deductible against rent, so the Revenue Commissioners lose out. How did that happen?

I wrote a letter to the Central Bank on this in 2011. I said the institutions would start with investors, move to arrears and then to homeowners because the intention was to get everybody off a tracker. I wrote that to the Central Bank in 2011. It still went with what was happening. I asked how, after we had given what we gave, we were allowing the Revenue Commissioners to lose out with interest.

Senator Gerry Horkan took the Chair.

Senator Kieran O'Donnell: Is Mr. Kissane saying that if somebody is on a tracker and is unable to make capital payments, the bank can force him off the tracker under Central Bank rules and put him on a variable rate?

Mr. Padraic Kissane: Yes. They are being allowed to.

Senator Kieran O'Donnell: How long is that in place?

Mr. Padraic Kissane: Because the interest-only periods were either five years, seven years or ten years, it was from about 2012 onwards. It has happened. There is no basis on which affordability could have been established at the outset on a capital-interest basis over that shorter term.

Senator Kieran O'Donnell: Is that informing the review of the tracker cohort at the moment?

Mr. Padraic Kissane: No.

Senator Kieran O'Donnell: Why is it not?

Mr. Padraic Kissane: Because it is not being viewed as a tracker being lost as per the investigation criteria. It is being viewed as the borrower not being able to adhere to the strict terms and conditions of the loan offer, which state one has to move to capital and interest over the remaining period. The intention, however, was always for the interest-only arrangement to roll over, with a view to selling the property down the line or, if there were multiple properties, three to pay off the other two, for example.

Senator Kieran O'Donnell: In light of the funding and financial model of the banks, when the banks were considering providing trackers, were they justifying their activity on the basis that they would be getting capital back in addition to interest after the interest-only period?

Mr. Padraic Kissane: One hundred percent of those were underwritten on an interest-only basis. They were never underwritten on a capital-and-interest basis because most people could not have afforded those two loans, four loans or five loans.

I acknowledge this is moving into a separate area but it is a crucial issue. My report, put up on the website at the time in question, amounted to seven or eight pages. What I was trying to highlight at the time was that the institutions saw a chink, went for it and got what they wanted. I said it was only going to be a steppingstone to other matters.

Senator Paddy Burke: I welcome Mr. Kissane.

How far back do the loans under investigation date? Most loans might have had a term of 15 or 20 years. Could some be expired at this stage?

Mr. Padraic Kissane: Is the Senator referring to the impact date or the commencement date?

Senator Paddy Burke: The commencement date.

Mr. Padraic Kissane: From about 2003 onwards. There were some before that. Most people would not have selected a fixed period until either late 2006 or during 2007 because the ECB rate did not move at all from 2003 to 2005, meaning the variable, fixed and tracker options were all running at the same rate. It was not until between 2006 and 2007 that the ECB rate moved about seven times and it increased every time. Nobody could determine at the time how high it was going to go so people ran for cover into fixed-rate loans.

Senator Paddy Burke: Could some of the loans have been taken out in the 1990s?

Mr. Padraic Kissane: Yes, some loans became tracker mortgages. They did not commence as trackers but became trackers because the banks made such mortgages available. Some of them have expired.

Senator Paddy Burke: Could they have been taken out as trackers in the 1990s?

Mr. Padraic Kissane: No. Tracker mortgages did not come in until 2001 with the Bank of Scotland and by 2003, all banks were doing them.

Senator Paddy Burke: Could interest-only loans have started in the 1990s?

Mr. Padraic Kissane: That is a separate issue. When people borrowed a deposit for a second house, while keeping their first, they took out an interest-only loan to supplement their pension or help repay their other mortgage. They were for periods of five, seven or ten years but when the interest-only period expired, people were told they had to give up their tracker rate if they could not adhere. Even though the margin was only increased by 1%, the loan is no longer a tracker but a variable rate which the lender can increase at will.

Senator Paddy Burke: Mr. Kissane raised the issue of the statute bar. The Central Bank told us the statute bar does not come into play once a person finds he or she is impacted.

Mr. Padraic Kissane: That is my belief. I wrote to the Central Bank and it suggested I should check with legal counsel. The view I have been given is that the tracker issue is not statute-barred but the causes and effects, and any damages, could become statute-barred in a challenge. If that were to be a defence of the banks, it would certainly not indicate that they had changed their culture and attitude.

Senator Paddy Burke: This would mean people would only be entitled to the difference in the interest rate.

Mr. Padraic Kissane: Correct. If a case went to court, I am told the banks could put up a defence that would statute-bar the other items being appealed. The appeal would not be statute-barred but I am being told I need to be careful about this on the court side, because they could put it up.

Senator Paddy Burke: What is the advantage of the bank taking a customer from a tracker to a variable rate?

Mr. Padraic Kissane: The first advantage is to gain control. With a tracker mortgage, the control over what the bank could charge lay with the customer and this was maximised at the margin that was set. This is why the margin issue in regard to Permanent TSB is so pertinent. The one key issue with each tracker mortgage was the margin a customer was to be charged and there was no such thing as a non-price promise tracker; it never existed. When the customer had an ECB+1% rate, for example, he or she had control but when the crash happened, the banks needed to get control back. The people affected, 33,600 of them and growing, are now no longer in charge of what the bank can charge them. We could not control what the ECB did but we could control what the bank charged. When the ECB rate started to drop the banks were not obliged to pass this on to the people who had lost trackers and, while they reduced rates for a while, they then put them up.

Senator Paddy Burke: The Bank of Ireland is now pushing fixed-interest rate loans for five or ten years, saying this is the way forward because one cannot pay lump sums off a tracker mortgage.

Mr. Padraic Kissane: One can. However, one cannot pay a lump sum off a fixed-rate mortgage without a penalty.

Senator Paddy Burke: Is that the case with a tracker?

Mr. Padraic Kissane: No, because trackers are variable loans. A tracker and a standard variable rate mortgage are the same thing. The underlying variable basis of the loan was es-

established at the outset and was never altered. The only thing that altered was the ECB rate. If a person has a fixed-rate mortgage and comes into money and pays, for example, €100,000 off the loan, there is a cost. Ironically, very few banks ever hedged fixed-rate mortgages and they took the chance that they would continue to make money from them. The bond issued yesterday was oversubscribed at 0.68% for seven years. That is the rate at which Irish banks are borrowing money and not one bank in Ireland is losing money on a tracker mortgage, apart from Danske because its rate is 0.2%. According to the banks themselves, it is that they are not making enough money from them, though they made a loss for a period when EURIBOR and the ECB rate went in different directions. Recently, EURIBOR has often gone lower than the ECB rate and is at a minus figure at the moment.

Senator Paddy Burke: Are the banks hedging now?

Mr. Padraic Kissane: I would not think so because, with the level of deposits they hold, it would not make sense. Customers now see rates of 2.3% 2.4% or 3% for the next five years as very competitive but that is because they have come down from 4.5%. A person in Europe can get a 20-year fixed-rate for 2% and will have certainty for the full term of the loan. I do not know why such a product does not exist in this country. The term and rate are set and a person knows what he or she is paying. It would give certainty to the economy and to the planners in the Department of Finance etc. Moreover, in the case of any improvement in wages and situations, the economy will get better because the cost is known at the outset. In America they also have full-term, fixed-rate mortgages and I do not know why they are not here. The banks still make their money and set the margins but they want to eke as much out of it as possible.

Senator Paddy Burke: Mr. Kissane said the Bank of Scotland was the first to introduce them. How long after that did it take the other banks to get in on the act?

Mr. Padraic Kissane: In order to prevent the market being cornered, they got in within six or eight months. The margins for the Bank of Scotland were 1.75% and 1.5% but the margin race to the bottom began with Danske Bank. Danske Bank was a niche player and did not have the volume of other banks. Professionals with large loans had access to rates of 0.5%, 0.6%, 0.4%, or 0.77% and at worst, they had a negotiating position whereby they could tell their original lender to match it or they would be gone. When I said this to a reporter from Denmark the reporter was astonished but I did not say it lightly. October 2006 is a key date for what went on and it has caused all the issues since, such as the margins being taken out of loan offers by Permanent TSB. The first time I brought up the issue with two senior managers at Permanent TSB they told me they did not take the margins out until 2008 because of the market crisis. I told them they took them out in 2006, put them back in, took them out again in 2007, put them back in again and took them out again later in 2007. This was all because of the move by Danske Bank.

Senator Paddy Burke: Does Mr. Kissane think a cartel operated at that time?

Mr. Padraic Kissane: All the banks had the same problems with the same product but I do not know if they were talking to one another. They came up with similar solutions. They were not all identical but they all had the same desired outcome, namely, to take everybody off a tracker rate. If they had their way, not one person would have a tracker mortgage today. They would have taken them off every single customer.

Vice Chairman: I thank Mr. Kissane. I propose we suspend until 3.30 p.m. for our session with the Secretary General of the OECD. Is that agreed? Agreed.

Sitting suspended at 1.20 p.m. and resumed at 3.30 p.m.

Deputy John McGuinness resumed the Chair.

Economic Survey of Ireland 2018: OECD

Chairman: I welcome the witnesses to the meeting. I know they have had a busy day of engagements and I hope it all went well and was productive. There is a vote in the Seanad and some of our colleagues are detained at other meetings but may join us later.

Mr. Angel Gurría: Thank you. We are presenting today the Economic Survey of Ireland 2018. We joined the Minister, Deputy Donohoe, this morning and presented the main conclusions. This is the PowerPoint presentation of the full document and it is for very busy chairs of committees. This is a three-pager and all three are meant to have to have the same messages and substance.

It is a pleasure to be back in Ireland to share the main conclusions from our economic survey. Ireland could be said to be at the origin of modern economic surveys. Back in the 17th century, William Petty's efforts to collect and collate data put Ireland at the forefront of what we now call evidence-based policy making, even if the policy was made elsewhere. What evidence would he find today? He would probably find that Ireland is doing well and the recovery in economic output since the crisis has been stronger than in any other OECD country. That is an important fact of which Ireland should be proud. The unemployment rate has dropped from over 15% in early 2012 to approximately 6% today, which is below the OECD average. Domestic demand is growing at around 5% while inflation is still only 0.2%. Some of us, especially when we were finance Ministers, have spent our lives trying to bring inflation down but it is only now, paradoxically, that we are trying to put up inflation, which is proving difficult.

The overall growth outlook is good too and we expect Ireland's gross domestic product, GDP, to expand strongly, albeit at a more sustainable pace, by around 3% this year and 2.5% next year. The economic successes of recent years owe much to the Government's efforts to address the legacy of the crisis. The fiscal deficit declined from 11.5% of GDP in 2009 to only 1% five years later and the reforms of the banking sector are starting to bear fruit. There was a relatively high cost of having cleansed the banks and made them functional again. The country bit the bullet when it was necessary and it would have been very destabilising not to do that at the time. Eventually, the country has received the benefits of a more stable and stronger banking sector.

Parliament played a role in this. Three years ago we produced a report with some ambitious recommendations about how the Parliament scrutinises and influences the annual budget. Many of these recommendations have now been implemented. Today, in addition to the work of the Committee on Finance, Public Expenditure and Reform, and Taoiseach, the new Committee on Budgetary Oversight has been established, with an intensive work schedule that includes reviewing the fiscal position of the Government and examining the expenditure policy proposed by the Government. In addition, a new Irish parliamentary budget office is up and running. I know of the Chairman's insistence throughout his career on the question of delivery of bang for the buck and getting public servants to deliver their commitments.

Chairman: Somebody is doing the job of briefing you.

Mr. Angel Gurría: The tax and transfer system continues to be highly redistributive. I mentioned this morning that this was something that was slowly disappearing from the taxation systems of other countries, including all the OECD countries. Like all other countries, Ireland initially had uneven and unequal income distribution but after the taxes and social security contributions, as well as the delivery of social security services, the country ends up with a much fairer society and much less inequality. That is a very desirable result and it allows the benefits of growth to be shared more widely.

The Irish people report a high level of satisfaction with their work-life balance, and social indicators such as number of social connections are also favourable. A parliament's work is never done, as members know, and it still has to tackle some of the legacies of the crisis and build resilience to future shocks. That means reducing debt or continuing to reduce debt. Ireland's gross public debt was around 75% of GDP in 2016 and it has continued to reduce in 2017. In *per capita* terms, it is high compared with the OECD average and reducing public debt would create scope for budgetary policy to support the economy in the event of a negative shock, such as a disorderly Brexit. This could be achieved through broadening the tax base in a growth-friendly manner. For example, VAT preferential rates and exemptions should be phased out and the property tax yield raised through more regular revaluations of the tax base.

I welcome the Deputy. It is nice to see her again.

Deputy Joan Burton: It is very nice to see Mr. Gurría.

Mr. Angel Gurría: She is a frequent visitor and has worked a lot with us. Financial sector vulnerabilities also need to be further addressed. While non-performing loans on bank balance sheets have declined by approximately 60% since their peak, the stock remains high. It is still in the double digits and it should be addressed.

The OECD Economic Survey has a special chapter on productivity. It paints a contrasting picture, showing that foreign-owned companies outperform local businesses by a wide margin and that this margin is getting wider. The labour productivity index of locally-owned firms has remained practically flat over the past ten years, while for foreign-owned firms with a baseline of 100 in 2006, it has risen to almost 400 in manufacturing and, almost eight times, to 800 in services, such that in ten to 12 years it has multiplied. Regional disparities are large too. Data from the Central Statistics Office show that the gap in disposable income *per capita* between the Border, midlands and western region and the rest of the State has not been reduced since the early 2000s and is still approximately 10%.

The resilience of the Irish economy and the fight to make growth inclusive hinge on boosting the productivity of local businesses and equipping workers with the skills to improve their outcomes. Only approximately 6% of the population aged 25 to 64 participated in education and training in 2015 compared with over 15% in Britain and almost 30% in Sweden. Irish-owned companies in most sectors have reduced employee training since 2000, when they should have been doing the opposite. The Government could allocate a greater share of funding under the national training fund for training for those already in employment. Online education could help but some workers and jobseekers may be caught in a vicious circle because, according to the survey, only 48% of Irish individuals had basic or above basic digital skills in 2017, which is 9% below the EU average. Therefore, if attempts to upskill are online based only, at least half of them would not be in a position to access it simply because they do not have the basic skills to do so.

Obstacles to entrepreneurship which could be addressed include high regulatory barriers that make it hard for innovative new firms to gain a foothold and reinforce the position of incumbents. There are costly regulations relating to commercial property and legal services. The cost of business failure is too high. Modern entrepreneurship means being able to learn from experimentation and this sometimes means being allowed to fail and learn from mistakes and to get back up again. The firms have to make an effort too to improve their management skills and invest more in research and development but, again, Government can help by creating an enabling environment. It can also help citizens through reforms focused on housing, health and getting back into employment.

Ten years ago, when I was last in Ireland, ghost estates and unsellable property were making the headlines. Today, housing affordability is the issue for many people. I note that one of the national policy objectives of the Project Ireland 2040 is to prioritise the provision of new homes at sustainable locations and at an appropriate scale relative to location. While the latter is the preferable problem to have, it is still a problem and it needs to be addressed. The Government has implemented several policy measures to improve affordability but any long-term solution must focus on increased housing supply. Abolition of unnecessary housing regulations that raise costs and reduce the potential for greater density is a priority. So too is pushing the market to put well located but underutilised swathes of land to good use. To achieve this, the introduction of a broad based land tax would be a useful weapon.

The health system is another area of concern. There are worrying trends in terms of cost, patient satisfaction and waiting times. There is a graph in the study on waiting times, which shows that waiting times here are a multiple of those in New Zealand, Spain, Germany, France and other countries. In Ireland, waiting times for some treatments range from two to three weeks to six months. While there is scope for further improvements in health spending efficiency, a path to providing universal coverage should be laid out, keeping in mind the likely impacts of population ageing. There is a video game in which a little face known as the Pac-Man eats everything. Ageing does this with budgets. Ireland has a demographic window of opportunity in that its population is still younger than the populations of most of its peers in Europe. It must use this time to prepare for a time when ageing will catch up with Irish society and it will experience vast increases in health expenses.

Apart from housing and health, employment is a concern. This might sound surprising given that unemployment rates have been falling, but some groups, such as young, low educated individuals and women, must be encouraged to further participate in the labour market. They are under-represented. One way to do this is to change those aspects of the social welfare system that make people worse off when they take up a job.

Ladies and gentleman, the financial crisis is now behind Ireland, due in no small part to its dedication to promote better policies for better lives. The OECD looks forward to working with Ireland and for it in fulfilling this mission and in showing how, in the words of William Petty, “a small Country and few People, by its Situation, Trade, and Policy, may be equivalent in Wealth and Strength, to a far greater People and Territory.”

Chairman: I thank Mr. Gurría for his opening statement. I understand he has to leave at 4.15 p.m. and so we will try to keep the exchange as tight as possible.

Deputy Michael McGrath: I welcome Mr. Gurría and his colleagues. My first question is related not to the economic survey of Ireland but the OECD’s work on digital taxation. We know that the European Commission is working on proposals for changes in how tech com-

panies are taxed across Europe. I understand that the OECD is also doing work on this issue. Can Mr. Gurría confirm what work is being done and if proposals on the issue will be brought forward at OECD level?

Mr. Angel Gurría: The OECD is currently working on the issue. It will be discussed at the upcoming meeting of the Committee on Fiscal Affairs on 14 and 15 March. On 16 March, we will discuss with the EU Commissioner for Economic and Financial Affairs, Taxation and Customs, Mr. Moscovici, what the EU proposes to do. Apparently, it is to announce a proposal on 21 March. We will probably produce our own ideas before that. A G20 meeting will take place in Buenos Aires from 18 to 20 March. We will discuss this report and present it to the meetings of the IMF, World Bank and G20 in Washington in April. The Deputy asked what will be the substance.

Deputy Michael McGrath: Yes.

Mr. Angel Gurría: The substance is that this matter is too important to be urgent. One does not need to come up with some short-term solutions if they are not well thought out or consensus based and they do not take a longer-term approach. We must not do anything today that will make it difficult to have a long-term solution. If one feels compelled to do something because one needs to come up with something politically, let us talk about it and be very careful because many countries, including Ireland, are saying we should do something after we have thought about it very carefully, consulted and talked among ourselves. After all, according to the schedule, we should produce a final proposal in 2020, which means there is no need to deliver a proposal now.

The only issue is that there seems to be political urgency, an emergency almost, about being able to say digital companies are being taxed. The issue is not about digital companies but about the digital economy. We have an increasingly digitalised economy, with everything becoming digitalised, and the question is how to deal with this in terms of taxation. Imagine that the tax base is reducing dramatically because everything is digital and digital is not being taxed. How do we come up with a means of taxing a modern economy, period? The issue is not about taxing Google, Apple or Amazon but about taking a very hard look at the whole of the new economy.

Deputy Michael McGrath: For a number of European countries, the issue is about taxing these companies and generating more tax revenue from this source. Is the OECD seeking to move in the same direction as some European countries, at least the larger countries, in moving to a turnover based tax for these companies, whereby the tax would be levied based on the users of the companies' services are located, rather than where the companies are resident from a tax point of view?

Mr. Angel Gurría: No, we do not support the short-term solution or approach that would consider turnover only because that is only one part of the problem, would leave out many of the activities and would be very uneven in its application. This may be a reflex or an intuitive way to address the issue but intuition and reflexes do not offer good guidance.

Deputy Michael McGrath: Ireland has been highly successful in attracting foreign direct investment. One of the tables in the survey shows that corporation tax receipts in 2011 accounted for 10% of all tax collected in Ireland and this figure had increased to 16% in 2017. In addition, 80% of corporation tax collected in Ireland is paid by multinational companies and the top ten companies or groups pay approximately 40% of all corporation tax. Does the OECD

have any concerns regarding the growing level of dependence on corporation tax and the concentration of corporation tax receipts among a very small number of companies?

Mr. Angel Gurría: Concentration is a result of success because Ireland has been able to attract many large companies. It is not a problem if the companies pay their fair share and should not be a problem if everybody is dealt with in the same way. If Irish small and medium enterprises and large corporations know they are being charged 12.5% on their profits, the country will have a level playing field. The problem arose when there was a perception that while Ireland was taxing companies 20% and subsequently 2.5%, some companies were paying 2% or 0% tax under sweetheart deals. The clear view of the OECD is that we do not take a position on countries' overall tax number or level provided it is applied to everybody. If a country can make its economy work and make ends meet by applying a corporation tax rate of 0% or 9%, as some eastern European countries do, or 12.5%, as Ireland does, that is fine. Our threshold is that everyone must be treated the same. We do not believe a country that can make its economy work with 12.5% taxes is doing anything wrong or intrinsically taking competitive advantage.

We have been advocating that a number of the highest taxed countries reduce their taxes. The global trend is to lower corporate taxation, which is hovering around an average of between 20% and 25%, with few countries still applying a rate of 30% or more. Taxes on wages and labour, known as the tax wedge, are also reducing, although the wedge in some European countries is still higher than 50%. We also advocate compensating for the losses arising from the reductions in these typical taxes through better collection - the Deputy just referred to a figure of 16% - but also through property and green taxes.

Deputy Michael McGrath: Mr. Gurría referred to non-performing loans in the Irish financial system, which is also noted in the survey. While the level of non-performing loans is falling, it continues to be elevated compared with European levels. The OECD has referred to the need to reduce these loans. Does Mr. Gurría have a view on the different ways in which this type of loan can be reduced, for example, through more aggressive provisioning, write-offs, enforcement actions, more loan restructures or the option of portfolio sales. Controversy surrounds portfolio sales to private equity funds for a number of reasons, including that these so-called vulture funds are not regulated directly in Ireland and some good loans are finding their way into the portfolios being sold on. I am referring to restructured loans that comply with the terms of the restructure but are still deemed to be non-performing loans under the Single Supervisory Mechanism and European Central Bank rules. What is the OECD's position on the way in which non-performing loan levels should be reduced? Does it have preferred options?

Mr. Angel Gurría: I would say they should be reduced using all of the options simply because they are techniques. There is a recognised new lower value than the nominal value to the mortgages that are on the books. We should remember how the crisis started. Millions of mortgages were placed in very nice boxes tied with a ribbon and a triple A sign was attached by the rating agencies which sold the goods as triple A goods. However, they were not triple A goods and when non-payment started, they unravelled and the crisis unfolded. The first thing to do is to recognise that these are substandard loans. From the point of view exclusively of the banks and bank regulators - those checking whether the banks are stable - they do not want to pay for another bank crisis. Ireland paid a harsh price for the bank crisis. They also want to ensure the banking system is stable, transparent and reporting correctly. Second, they want the judicial system to be able to process cases quickly whenever a borrower is not paying and the lender wants to take action. Again, judges should not be asked to formulate social policy. It is not for them to do this work. Third, if in its collective wisdom Irish society wishes to take the

political decision to support some of the mortgage holders who may be unable to continue to pay their mortgages for whatever reason, not because it wants to salvage the banks or make the vultures better off but because it wants to help such people because they are especially vulnerable or a small group, it should do so transparently. The system and the banks should be made to cleanse their balance sheets. The judges should be made to adjudicate and move quickly. Then, for those whom society really wants to help, this support should be made transparent through the budget. It would be a line item of expenditure that the Government should choose. The Government should let those affected know it is doing this but also let all taxpayers know because they would actually be helping those whom the Government chooses to help. They would be contributing to help them, so the way it is done should be transparent.

Deputy Joan Burton: Mr. Gurría is very welcome again to Ireland, and it is very nice to meet him. I will outline one or two points concerning a number of areas. The OECD gave Ireland a lot of very valuable assistance during the crisis on trying to get people back to work, in particular in areas such as youth unemployment and long-term unemployment, both of which are referred to in the OECD's report. I certainly recommend that the Government consider commissioning a further report from the OECD, as independent experts in this area, specifically on the failure to create enough apprenticeships, particularly in housing and construction, because this area collapsed. The agency which provided the training in the old days, FÁS, collapsed as well, and a new agency was formed, but much of its attention is devoted to analysis. Regarding supply problems in the housing market, one of the key problems is that smaller and medium-sized firms cannot really take on apprentices because the format of the market has changed. It would be very helpful to have an independent set of eyes such as the OECD's look at this area because it may have examples from other OECD member states which might be useful for us to adapt.

Another issue is jobless households. I note Mr. Gurría said Irish employers are putting less into training than any other OECD country. Regarding the future of work, on which I know the OECD has done some work, it is really important that employers and government continue to invest in workers to raise their skills levels. I also wish to raise the issue of inequality of income and inequality in respect of the indices on well-being. I do not know whether the OECD has a policy *per se* on this, but we in Ireland need to move to a living wage. Wages have been very flat, notwithstanding the fact that, as Mr. Gurría said, the worst of the crisis has passed. This means that it has become extremely difficult for a person or a couple on a modest income to purchase or rent a house at a reasonable price. In certain areas, including in some of the professions such as teaching, many people are now going abroad because they are finding the traditional lifestyle expectancy they had of being able to begin to buy a house through a mortgage or rent is no longer realistic for them.

My other question concerns taxation, on which I know Mr. Pascal Saint-Amans has done a lot of work. How do the witnesses feel Ireland is performing? We have got quite a bad reputation in this regard, as they know, with certain countries almost seeming to target Ireland, as it were, as being responsible for all corporate tax inequality in the world, which is rather unfair. What are their observations on this? One of the attractions for foreign direct investment into Ireland is the calibre of the workforce here, both young graduates and young people from countries such as Italy, Spain and Greece who are willing to come here and work. Again, in many cases they are very highly educated young people from different countries. I ask the witnesses to comment on that.

Mr. Angel Gurría: Regarding getting people back to work, particularly youth unemploy-

ment, we would be very honoured, and we are certainly ready, to work with Ireland and for Ireland in doing an analysis or an update of the analysis we did a few years ago of jobs. What the Deputy is suggesting is that certain sectors in particular - she mentioned the construction sector specifically - have both an institutional and a market failure, the institutional one being the agencies that were set up in order to provide special training and which did not fly. The market is not working, evidently, because it is producing price bubbles. Ireland is not alone in this regard but this is no consolation. Australia, Canada, Sweden, the Netherlands - all these countries contain certain cities in which housing has become unaffordable. It is not an issue throughout the entire countries affected. An example of this problem is Stockholm, Sweden, which has a waiting list of 600,000 who want access to rentals because the rental market there is not very well developed. Therefore, even in the best social democracies, the welfare states, housing in certain parts of the capitals are becoming unaffordable either to rent or to buy. This requires public policies. In our chapter on housing in Ireland, we say, among other things, that supply needs to increase. There are financing issues but there are also land use issues. We recommend possible modifications in order that Ireland can have better land rezoning. I ask my colleagues to feel free to chip in if they think something needs to be said. This is a very difficult problem and goes all the way from China to Australia, passing through Ireland and the UK, which is in a very bad way. The UK has a very specific zoning and land use problem. The rigidity or lack of flexibility there sometimes produces these distortions and then housing is suddenly made impossible, which is an issue. This tends to exacerbate inequality - or rather inequalities. There is inequality of income, inequality of accumulated wealth and inequality of opportunity. Of course, to the extent that housing is unaffordable, this also provides for a rigidity. It is not easy for someone who knows there is a job waiting here for him or her to move because the problem is that he or she must live somewhere. If the living is impossible, this becomes very difficult.

The Deputy mentioned a living wage. There are different ways to take this on. In the case of Ireland, it used to have 15% unemployment and it is now 6%. As we have documented, wages are recovering - not from 2008 and 2009 and the big crisis, but from 2011 when they dropped further again. What does this mean? That means that the scarcity of labour, talent and skills is producing a recovery in the wages simply because supply and demand is acting. The country has more demand, investment is coming in and it needs more skilled labour. Wages are actually increasing. It is more than just providing money to people, although in some cases that must be done for the vulnerable. It is a question of providing skills, upskilling and reskilling.

Ireland presided over economic revitalisation in a way and it knows how important it is. However, it has this paradox. There is a bunch of people saying they cannot find a job and a bunch of companies claiming they cannot find the talent. The two cannot be matched because people's skills are not consistent with what the companies need. We need to be better at getting the Government, the private sector, the productive sector, the trade unions, the individuals and the universities to produce the right kinds of skills so that they match. We would then be better able to address the question of inequality.

Last, but not least, I come to the reputation of Ireland in terms of taxation. The former Taoiseach, Deputy Enda Kenny, went to the OECD and basically offered to dismantle the double-Irish system. Ireland did so and three years later it was no longer there. Today the big issue is the Apple case and the €13 billion. This would no longer be possible because the mechanisms that made it possible are no longer in place. It is something from the past that has to be addressed, but it could not be repeated today. People do not know this. People do not generally know that Ireland has dismantled the system that made it possible to have such a situation in the past.

We took Ireland's solution to the Dutch and we said: "Double-Irish is no more; how about dealing with the double-Dutch?" and they did. Then we took this to the UK and they did. Eventually we now have more of a level playing field by dismantling these special systems where basically all companies are treated the same, but not with the same level of taxation. Each country has a different level of corporate taxation as long as it treats them all the same.

Chairman: As I am conscious of the time, I will ask Senator Horkan to contribute.

Senator Gerry Horkan: I have been to the OECD a number of times and it is good to see the ambassador here as well. Deputies Michael McGrath and Burton have touched on almost all the points. Mr. Gurría has outlined the progress that Ireland has made in adopting country-by-country reporting, engaging with the BEPS process and so on. I am concerned that one or two US companies contribute a huge chunk of our corporation tax, which in one way, as Mr. Gurría acknowledges, is good because we are good at it, but if any of those companies were to move or the US decided to work differently with those companies, we could have a problem. It would create a very big hole in our budget if one, two or three of those companies were to disappear or the tax generated by those companies was gone. How vulnerable is Ireland being that focused on a very small number of companies contributing a large proportion of tax?

I ask Mr. Gurría to outline his attitude towards property tax. People in this country are not very willing to embrace the concept. They feel it is a tax on something they have had to earn money to buy and then they are being taxed on already owning it, whereas if they did not own it in the first place, they would have no tax to pay. There is considerable resistance to it. I know the OECD report proposed more revenue from property tax.

After Japan, Ireland has the second highest indebted public debt in the world. I ask Mr. Gurría to comment on that.

Mr. Angel Gurría: Ireland is on board with BEPS and with the automatic exchange of information. It has already received a few hundred million euro in unplanned extra revenue simply because the taxpayer reached the conclusion that his name would end up on the taxman's desk. People have asked: "Mr. Taxman, what could we do in a hypothetical case?" Taxmen all over the world have provided special windows to normalise. They do not want to put people in jail; they want people to pay taxes. We have provided that incentive and now everybody is on board. Some €85 billion in extra taxes were paid before we started the work. Now it is ongoing; we have started; the train has left the station. With BEPS, Ireland is on board and working actively.

Do I think Ireland is vulnerable? No, I think Ireland is being very successful in attracting the companies. It is very simple. Ireland has a set of rules by which it taxes the companies that operate here. That includes everyone who comes. Ireland applies the rule. The golden rule is: a company pays taxes where it generates the profits. It is that simple. We need to keep it like that. If the company generates them elsewhere, it pays elsewhere. If it generates them in Ireland, it pays in Ireland. Of course, there are also some intellectual property payments. It needs to be reasonable and companies should just pay taxes where they generate the profits. I would recommend keeping it like that and keeping it simple. It is a message that everybody understands. The tax reform in the United States is going in that direction.

The Senator is worried because there may be a tariff problem on steel, etc., and there is concern that it might bring about a trade war. However, basically the tax reform moves more in the direction of what the Senator is saying, rather than against it. I think we are generally moving

in the right direction.

On property tax, what is the trend in the world? It is less tax on companies; less tax on labour; more tax on property; and more taxes on carbon emissions. There is more tax on consumption, such as VAT. This is the trend in the world. Not everybody is moving at the same speed and not everybody uses the same tax mix, but this is the mix. This means making it more attractive to make a new investment or to create a new job, rather than making it more expensive.

The Senator asked about Japan and its debt. Japan has 240% debt to GDP. The OECD average is 100%. Italy has 130% and Greece has 170%, moving to 180%. Ireland has 75%. Does that mean it has to use that other 25%? No way. It should keep it coming down. As I have said repeatedly, Ireland belongs to the Avis club. Remember when one wanted to rent a car from Avis, the employee at the counter had a sign around his neck saying: "We are No. 2; we try harder". We have to try harder, those of us in countries which are in second place. That includes everybody, except the USA and perhaps Japan and Germany. The threshold of tolerance of rating agencies and banks is very low and we cannot make too many mistakes. It is not the absolute number, but the trend. Frankly, there is a good story here. Ireland has said it wants to go to 45% and the Taoiseach mentioned that if 15% infrastructure were added, that could go to 60%. That is more like an investment than just a debt and it is going to be recovered. Around those levels, one is safe but it should always be coming down because one may need it again for a rainy day. Rather than to put a lot of money in a rainy day fund, albeit that is a good idea, Ireland should pay down the debt to the greatest extent possible because that is its best umbrella.

Chairman: Before Mr. Gurría goes, I note that we have had a number of EU Commissioners here over the last week or so. Like Mr. Gurría, they referred to the financial crisis and how well we are doing. They talk up the story of Ireland, which is fair enough. However, while the financial crisis may be over, the effect it has had on our individual citizens and businesses in this country is far from over. The banking system brought us to this place and was partly the cause of austerity but it was the people who bore the burden of that austerity and helped us back. While there were some policies from Government, the people carried the can at the end of the day. These very same banks - Mr. Gurría refers to some of this in his report today - have still not learned their lesson. They still need the extreme regulation, which is called for, because their culture has not changed. The indebtedness of businesses to the banks is such that if they do not begin properly to write down debt and allow businesses to be freed up to trade and provide employment, the country will suffer for even longer than it has suffered already. This will continue for longer than we expected.

When the IMF came in, the country responded by saying it would bring about the reform of local government, central government and administration. We said we will comply and we will be great. We have not seen the reform of local and national government that places the citizen at the centre of our work. That is regrettable. Therefore, I place what Mr. Gurría said in the context of the Ireland we live in. While the boats in the bigger centres have risen and people are moving on, there is a very large part of rural Ireland which still finds it extremely difficult to respond. That is due mainly to debt and poor policy implementation in rural Ireland. I am delighted we have had the opportunity to have this exchange and I appreciate Mr. Gurría's visit. I wish him well on his journey. I thank his officials also.

Mr. Angel Gurría: If it does not translate into well-being, it is not worth it.

Chairman: Exactly.

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Mr. Angel Gurría: We should stick with it.

Chairman: Keep it simple.

Mr. Angel Gurría: Stay the course and keep it simple, yes. I thank the Chairman.

The joint committee adjourned at 4.25 p.m. until 9.30 a.m. on Thursday, 22 March 2018.