

# DÁIL ÉIREANN

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

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

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*Déardaoin, 28 Meitheamh 2018*

*Thursday, 28 June 2018*

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The Joint Committee met at 9.30 a.m.

#### MEMBERS PRESENT:

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| Deputy Pearse Doherty,  | Senator Paddy Burke,       |
| Deputy Michael McGrath, | Senator Rose Conway-Walsh, |
| Deputy Paul Murphy,     | Senator Gerry Horkan,      |
|                         | Senator Kieran O'Donnell.  |

In attendance: Deputies Declan Breathnach and Joan Collins.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

*The joint committee met in private session until 10.18 a.m.*

### **Scrutiny of EU Legislative Proposals**

**Chairman:** I will begin by dealing with No. 7, which is scrutiny of EU legislative proposals. Before the committee proceeds with the business listed, I will record the decisions that were made. The committee agreed that EU proposals COM (2018) 287, COM (2018) 234, COM (2018) 298, COM (2018) 307, COM (2018) 334 do not warrant further scrutiny. Full details will be published on the committee's website.

### **Sale of Promissory Note Bonds: Discussion**

**Chairman:** We will now deal with matters relating to the sale of the promissory note bonds with Mr. Diarmuid O'Flynn of the Ballyhea campaign group. He is joined by Deputy Joan Collins and other colleagues.

Before Mr. O'Flynn makes his opening statement I will brief him on privilege.

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 committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or 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. O'Flynn to make his opening statement.

**Mr. Diarmuid O'Flynn:** On behalf of the Ballyhea Says Know group, I thank the committee for this opportunity. We have had many significant days since this began. This is probably the most significant one because it allows us to ask the committee directly to finish what we have started and to at least challenge the ECB on the injustice that has been done to Ireland and on the injustice that is still being inflicted on us. I also pay tribute to the work of Fiona Fitzpatrick in securing this date for us. Unfortunately, due to circumstances beyond her control, she cannot be with us.

There has been much coverage in the past few weeks of Anglo Irish Bank and events in the build-up to the banking crisis in Ireland. There has been no coverage of the ongoing consequences of those events. I am not only speaking about the billions in interest we will pay every year for many decades on the loans taken out to repair that damage; I am speaking about the promissory notes and Anglo Irish Bank debt legacy - €500 million destroyed by our Central Bank in 2014; €2 billion in 2015, €3 billion in 2016; €4 billion in 2017; and the €1 billion that we know of destroyed so far this year. That is €10.5 billion destroyed by the Central Bank of Ireland since 2014 and a further €3 billion in both 2011 and 2012, which is €16.5 billion in total,

with another €14.5 billion still to go, giving €31 billion in all.

Ballyhea Says Know began in March 2011 simply as a protest against this socialisation of private bank debt, that is, the massive bill presented to the people for the greed and excesses of so many in the private financial sector. We realised quickly we were going to get nowhere simply through protest so we morphed into a campaign group. We went to Brussels three times and met senior officials from all three major EU institutions - the Commission, the Council and the Parliament. We went to Frankfurt to the ECB headquarters and presented a petition to a meeting of the governing council. We nailed our list of protests to the door in the manner of Martin Luther more than 300 years earlier. We sat down and spoke directly to senior ECB officials in Dublin, met the Governor of the Irish Central Bank on three separate occasions and had a Private Members' motion introduced in the Dáil. All this was backboned by a weekly march in Ballyhea and Charleville, joined by others in Ratoath, Dublin, Tralee, and Clonmel.

Through all those actions, we learned two outstanding lessons. First, there is a willingness on the part of the institutions to engage with Ireland on this issue. Second, willing as we are, that engagement will not be with the Ballyhea Says Know campaign. It has to be at official level, which is principally why we are here today. We ask the Oireachtas to set up a cross-party committee and to take this fight to Europe on behalf of the Irish people. It will be a fight; we are under no illusions on that score.

I refer to the background to the crisis. A currency requires many fundamental structural elements to enable it to withstand the shocks it will inevitably face. When the euro was being designed in the 1990s and as politics took over from monetary common sense, member states understandably point blank refused to make the kind of sovereignty concessions such a common currency requires. One by one, many of the critical supports were removed to such an extent that when the inevitable shocks came the currency inevitably collapsed. This is not coming just from the Ballyhea Says Know campaign; this comes directly from those who were up close and personal to the euro design.

In the early 1990s, Bernard Connolly was head of the European Commission unit responsible for the European monetary system and protecting the euro. In his book "The Rotten Heart of Europe: The Dirty War for Europe's Money", published in 1995, Connolly warned at length of the potential consequences of what was happening. For his pains he lost his job. Though his professional credentials and expertise in the area cannot be questioned - he now operates successfully in New York - it has been argued that Connolly is a sceptic and that it colours his views. No such accusation could be levelled at Paul De Grauwe. Highly respected and often used by the European Commission, a professor at the London School of Economics, De Grauwe also warned of the disastrous potential consequences if the euro was launched with those in-built flaws. In an article published in the *Financial Times* in 1998 headlined, "The euro and financial crises", he predicted almost to the letter what happened in Spain and Ireland. He said:

Suppose a country, which we arbitrarily call Spain, experiences a boom which is stronger than in the rest of the euro-area. As a result of the boom, output and prices grow faster in Spain than in the other euro-countries. This also leads to a real estate boom and a general asset inflation in Spain. Since the ECB looks at euro-wide data, it cannot do anything to restrain the booming conditions in Spain. In fact the existence of a monetary union is likely to intensify the asset inflation in Spain. Unhindered by exchange risk vast amounts of capital are attracted from the rest of the euro-area. Spanish banks that still dominate the Spanish markets, are pulled into the game and increase their lending. They are driven by the high rates of return produced by ever increasing Spanish asset prices, and by the fact that

in a monetary union, they can borrow funds at the same interest rate as banks in Germany, France etc. After the boom comes the bust. Asset prices collapse, creating a crisis in the Spanish banking system.

In 2013, he published a paper entitled, “Design Failures in the Eurozone: Can they be fixed?”, and, in 2015, he published “Design failures of the Eurozone”. Others such as Milton Friedman in August 1997 and Martin Feldstein in November 1997 argued likewise that the design was fatally flawed from the outset. This is all proof the euro as designed should never have been launched. When it was, all that was predicted by De Grauwe and warned by Connolly happened and Ireland, as we know only too well, was particularly hard hit. Billions of euro poured into the country. Banks, trying to keep up with each other, with Anglo Irish Bank to the fore very early on, lowered their lending standards. Regulators and central bankers lowered their guard. Property prices ballooned until eventually it all exploded.

According to its website, the ECB manages the euro and frames and implements EU economic and monetary policy. Its main aim is to keep prices stable, thereby supporting economic growth and job creation. What was it doing as the various banking crises developed all across the eurozone? What was it doing on keeping prices stable as property prices inflated to ludicrous levels in Ireland especially and in Spain? While regulators and central bankers ignored the kind of major breaches of legislation such as those reported by Jonathan Sugarman here, where was the ECB? It was neither seen nor heard. That all changed after the crash as the ECB suddenly appeared front and centre as the Commission’s enforcer as the troika came to town.

One of the first measures taken to address the banking crisis was the establishment of the emergency liquidity assistance, ELA, funds, the clue for which is in the name. The ECB website states that ELA aims to provide Central Bank money to solvent financial institutions that are facing temporary liquidity problems. The Irish banks did not meet this criteria but came up with a way around it. Using the Asset Covered Securities Act 2001 and the Asset Covered Securities (Amendment) 2007, they applied pre-crash historic valuations to the assets they held on their books. This is in direct conflict with the most fundamental of accounting laws, which require that a true and fair reflection of the state of affairs must be presented. An *Accountancy-Age* article in June 2014 said:

The true and fair accounting concept should be used to override compliance with reporting standards in exceptional circumstances, the UK’s reporting watchdog has said.

In a statement, the FRC [which is the Financial Reporting Council] reconfirmed that the presentation of a true and fair view remains a fundamental requirement of financial reporting and said that, in the “vast majority” of cases, a true and fair view will be achieved by compliance with accounting standards.

However, where compliance with an accounting standard would result in accounts being so misleading that they would conflict with the objectives of financial statements, the standard should be overridden, the FRC said.

“The requirement to present a true and fair view in financial statements is enshrined in EU and UK law ...” said Stephen Haddrill ... chief executive of the FRC.

Those hugely inflated values hid the true position of the Irish banks in the lead-up to the infamous blanket bank guarantee. They hid that position again when applications were made for funding to the tune of billions of euro from the ELA funds. As we were to finally discover in late 2008, those banks were not suffering temporary liquidity problems. Had the true and fair

valuations been used for the property collateral, they were, in fact, insolvent.

The most reckless of all the Irish banks throughout this period was Anglo Irish Bank, a point that was driven home by the publication of the so-called Anglo tapes. The eventual cost to the country is enormous; €35 billion was poured into the bank, €25.5 billion by way of promissory notes and a further €5.5 billion for INBS. They were notes signed by the then Minister for Finance, the late Brian Lenihan, offering a guarantee to the ECB on behalf of the Government if Anglo should fail to repay those billions of euro. Given how Anglo was disguising its true financial situation, those guarantees were offered under false pretences. Given that the ECB, as the central bank of central banks in the eurozone, should have been aware of this misreporting, those guarantees are null and void. Under enormous pressure from the ECB, however, that is the €31 billion currently being borrowed by the NTMA, given to the Central Bank in exchange for the promissory note bonds, and then destroyed, taken out of circulation. This ongoing obscenity must end or at the very least it must be challenged. That brings me back to the start.

The troika's intervention in Ireland in 2011 has been presented as a bailout for Ireland. It was not. It was a bailout by Ireland of the eurozone, a bailout in which successive Governments were strong-armed by the EU, with Germany and France in particular abusing their combined political and economic muscle. Including the €5.5 billion from NAMA, we poured a mind-boggling total of €69.7 billion into our banks – a world record of the undesirable kind. Against that we got loans, not gifts, of €67.5 billion from the troika at inflated interest rates.

We are told that Germany is a rock of financial sense. All those interventions by the ECB were not to save Irish banks – it was to save the megabanks in the bigger EU countries. A Bloomberg article from May 2012 quotes a report of the Bank of International Settlements, which outlines how:

German banks had amassed claims of \$704 billion on Greece, Ireland, Italy, Portugal and Spain, much more than the German banks' aggregate capital. In other words, they lent more than they could afford.

When the European Union and the European Central Bank stepped in to bail out the struggling countries, they made it possible for German banks to bring their money home. [That is exactly what has happened]. As a result, they bailed out Germany's banks as well as the [German] taxpayers who might otherwise have had to support those banks if the loans were not repaid. Unlike much of the aid provided to Greece, the support to Germany's banks happened automatically, as a function of the currency union's structure.

They were in over their heads in Wall Street as well. This was exposed by Mr. Michael Lewis in his brilliant book, later a film, which I recommend to everybody, *The Big Short*.

We accept that when the bank crisis hit, the ECB and everyone else involved faced an emergency situation and took emergency measures to save the eurozone's banks, some of which meant a very loose interpretation of rules and regulations. We accept also that as a full member of the eurozone from day one, Ireland must share the cost of what happened. What we do not accept is that the banking collapse was Ireland's own fault, and it was most certainly not the fault of the people. We also do not accept that Ireland's own bankers acted any worse than bankers elsewhere and certainly were no worse than bankers in Germany. What we will not accept, now or ever, is that we should be forced by the EU, and by the ECB in particular, to bear a disproportionate cost for that banking collapse across the eurozone. That cost has a direct impact on all the current crises being suffered in this country, from homelessness to housing, and to what is happening in our health service and all points in between. We have taken this as far as we can and it has not been easy. Today, we are asking the elected representatives of the



Irish people, as a cross-party committee, to step forward, take over this campaign from us and right a wrong that has been done to all of us in this country. Those promissory notes must be challenged.

**Chairman:** I thank Mr. O’Flynn for that opening statement, and before I go to members, I acknowledge, in the Public Gallery, Dr. Chang Po-ya, President of the Control Yuan in Taiwan, Dr. Bau Tzong-ho, who is here with us, and their colleague, director general, planning office, Ms Doris Wang. They are behind us and accompanied by Senator Wilson and colleagues from the representative office of Taiwan in Dublin. The Control Yuan is a very powerful body within government in Taiwan and does work similar to this committee and the work of the Office of the Comptroller and Auditor General etc. They are here to meet their colleagues in Ireland. I wish them well with all of those meetings and thank them for their attendance. I also acknowledge the work done by the Taiwanese representative in Ireland, Mr. Simon Tu, over the last number of years. His engagement with members here has been positive and helpful and he has grown a great relationship in respect of trade, commerce and cultural links with Taiwan. Long may that be the case. They are very welcome and I hope they enjoy their stay in Ireland. I call Deputy Paul Murphy.

**Deputy Paul Murphy:** I thank the witnesses for their presentation. I pay tribute to all of them, and Ms Fiona Fitzpatrick, for the work they have done against the powerful forces they are up against. It is a community and a campaign fighting for debt justice for people in this country. I agree with the call for a cross-party committee but I also warn that I do not think they will be able to wind up their campaign. It will be necessary to keep pushing because if they were not pushing from the outside then the pressure will not be there. Even if a cross-party committee is set up, and I support that, I encourage the witnesses to keep going with their campaign because they have got to this point but it will take more to do it.

The work Ballyhea Says Know has done is valuable in two broad respects educationally. One is the myth busting that this was a bailout for Ireland. I agree it was not - it was a bailout for the European banking system, paid for by ordinary people through years of austerity and the misery that caused. Less than 1% of Europe’s population took on more than 40% of Europe’s banking debt. The second point, and the one I want to home in on, is the other even more dangerous myth. That is the idea that we are where we are - this is all very unfortunate, it is something that happened in the past, we were pressured into, maybe we should not have done it back then but we are where we are, it is done and there is nothing that can be done about it. I want to focus on that. Will Mr. O’Flynn explain what is happening now regarding the destruction of money by the Central Bank? There has been €10.5 billion destroyed since 2014 and there is another €14.5 billion to go. Will Mr. O’Flynn explain how that works, why it does not make sense, from the point of view of people in this country, and what the alternative is?

**Mr. Diarmuid O’Flynn:** I thank Deputy Murphy for his support over the last number of years, his support on this and his support in the European Parliament as well because he got us hearings there. It is difficult to get information on what is happening at the moment. Deputy Michael McGrath asked a parliamentary question last year which uncovered how much had been destroyed up to now. We were speculating because sometimes one misses these reports, another €500 million has been destroyed, but one does not know it has happened. The only place where it is reported is on the RTE news website and in *The Irish Times*. That is basically a copy and paste report and it looks to me like something that has been fed out from either the Central Bank or the Department of Finance. Every time something happens, the reports are almost identical to the previous one issued.

They declare it to be almost a good news story - the Central Bank has made a profit on this IBRC wind-up note. It was declared that a profit of €150 billion went to the Exchequer because a €500 million bond was sold for €650 million or whatever. It is presented as a good news story because the country has made €150 million. What is not told is the full story and that is why I have a major problem with some media here. They talk about fake news but there is also incomplete news and that is almost as bad as fake news - in fact it can be worse. We are not told what happened to the €500 million. Let us say that the Central Bank got €650 million and it gave €150 million to the Exchequer but what happened to the €500 billion? That is never mentioned.

That €500 million is destroyed. I backed the former Governor of the Central Bank, Professor Patrick Honohan, into a corner one day when in the company of two MEPS, namely, Mr. Luke 'Ming' Flanagan - I was not working for him at the time - and Ms Nessa Childers, the late Deputy Peter Mathews, who was a brilliant friend to this campaign, and Deputy Stephen Donnelly, who should also know his finance. What Professor Honohan eventually said, when I pressed him on what happens to the money, was that the money was extinguished. That is what is happening with this money. The €31 billion was printed by the Central Bank and given to these banks. The ECB allowed this to happen but because these banks were wound up and were unable to repay that money, the aforementioned €31 billion must be taken back out of circulation.

Under the deal done by Deputy Noonan, there were ten €500 million bonds, five of which were to be sold at a rate of one per year under a new arrangement from 2014. However, with interest rates going down, these bonds were bought by the NTMA, although people are not being told this. The Central Bank is getting €650 million but it is from the NTMA so it is all borrowed money that is buying these bonds. Even the €150 million which is declared as profit is money that was borrowed by the NTMA. The €650 million is given for the €500 million and the latter is destroyed, with the rest declared as a profit for the Exchequer. All that is being reported is that we are making a profit of €150 million. It is not being reported that the transaction is circular. The €650 million becomes new debt which attracts interest and which will have to be repaid in full when the bond matures.

This country has been crying out for money over the past four years. When people such as Deputy Paul Murphy suggested that money was needed for Irish Water or to fix the hospital system, highly-paid radio presenters were asking, "Where would we get the money from?" Our Central Bank has destroyed €10.5 billion in the past four years with borrowed money. The NTMA could have used this money for other things but it, along with this Government, chose to accelerate the destruction process. People say this is computerised money but the debt is real and the interest we are paying is real, as are the suffering and deprivation of services. There is €10.5 billion or €14.4 billion still to go but this is an obscenity at a time when our services are struggling for finance.

**Deputy Paul Murphy:** Can Mr. O'Flynn explain what the alternative is?

**Mr. Diarmuid O'Flynn:** I will not pretend that we are experts because we are not. We did not have much of a clue when this started. We went to the ECB and to all the various officials, including the most senior that work for the Commission. We met the official responsible for Ireland's finances at the time of its intervention, and who had responsibility for the macrofinances of three countries. He was one of the most senior economists and had a string of letters after his name. We sat and debated with him for an hour but he could not show us how what they were doing was right. We met senior officials from the troika for nearly two hours, hav-

ing met Patrick Honohan of the Central Bank. I have never been so depressed coming out of a meeting because that guy just patronised us. He almost patted my colleague on the head and suggested it was way over our heads. We laid out our case to the ECB and they said it could be tackled. They said it would be very difficult but that is was not impossible. I come from a small parish and we have teams trying to get to the under-14 final, the junior final and the senior final. They are all difficult but just because they are difficult does not mean it should not be attempted. One picks one's best team and trains to the nth degree to go into battle. This battle can be won. The ECB said things could not be done - such as quantitative easing - when we were at the beginning of the crisis before going on to print €80 billion per month.

**Deputy Paul Murphy:** Is it not the case that the burning of real money contradicts the general policy of quantitative easing? In reality, the fact that we are burning money means what is happening is quantitative squeezing. If we froze the sale of the bonds and wrote down the debt, would there be any negative implication in terms of inflation across the eurozone? What other negative implications might there be?

**Mr. Diarmuid O'Flynn:** "Quantitative squeezing" was a term that was coined by Luke "Ming" Flanagan in the European Parliament and that is what it is because €30 billion is massive for us. It is difficult to take on the ECB but that is what we should do. It is not just on the basis of morality that this can be challenged - and it is immoral - but it can also be challenged in terms of legality. We have commissioned reports suggesting other avenues that can be explored, which I can send to members. The ECB must be challenged and we must stop the sale of further bonds now. As members will know, if a person owes another person money, once the money has changed hands it is a lot more difficult to get it back. We should also be fighting to get back what has been lost. All the ECB would have to do is reprint the €14.5 billion as it would be a drop in the ocean for the ECB.

**Senator Rose Conway-Walsh:** I commend the witnesses for the work they have done over the years. What is Mr. O'Flynn's background?

**Mr. Diarmuid O'Flynn:** It is fairly chequered.

**Senator Rose Conway-Walsh:** I do not want to go into every detail. Is it in finance or economics?

**Mr. Diarmuid O'Flynn:** No. I finished school in 1970 at 16. I went to London and did accountancy for a year and a half but I could not take London because the weather was like this. I came back and was involved in construction for over 20 years as an engineer and subcontractor. Then I got into sports journalism and worked in the cartoon section of the *Irish Examiner*, where I was for over 20 years before being recruited by Luke "Ming" Flanagan to advise him on economic matters in Brussels after this issue emerged. I have no qualifications in this area.

We know what we know but there is an awful lot we do not know. This is not just a question of economics, there is also a question of right and wrong. That is the bigger question for me. What was done to us was wrong and even the guy from the IMF accepts this.

We did not have the support structures in place for a new currency when it was launched and they are trying to put them in now, with the Single Supervisory Mechanism, the Single Resolution Mechanism and the ESM. They were needed at the very beginning. If they had been in place when the banking crisis hit Ireland, the shock would have been absorbed across the entire eurozone and we would not have been landed with that bill.



**Senator Rose Conway-Walsh:** I completely agree with Mr. O’Flynn on that. His campaign is a demonstration of what people achieve when they have passion and purpose. I commend Mr. O’Flynn in that regard. The European Central Bank has stated this issue could be tackled, but that it would be very difficult to do so. Does Mr. O’Flynn have that in writing? Did he say he had a report?

**Mr. Diarmuid O’Flynn:** No. We produced a report on it afterwards. I am not the most diplomatic of people. We had been due to meet Mr. Rodriguez, the head of ECB delegation here. I believe his father died that week. When we went to meet the two men, I expressed my disappointment that we were not meeting the senior person, which, to me, reflected bad manners on their part. One of the men who did most of the talking explained to us that he was senior to the other fellow. He was the most senior official. We have not lied about anything, but they did not want their names to be used. I explained that we were producing a report on the meeting with both the Central Bank and them and he said it was okay, that, by all means, we could do so, but he asked that we not mention their names. Ms Fiona Fitzpatrick was there with me. That is a significant point. When he said it would be very difficult, we mentioned that it would not be impossible.

**Senator Rose Conway-Walsh:** It was within the ECB that the official asked that their names not be mentioned.

**Mr. Diarmuid O’Flynn:** He was a senior official in the ECB here when the troika was still in Dublin. It was in 2012 or 2013. It was a long meeting and he knew what we were there for.

**Senator Rose Conway-Walsh:** Was the meeting minuted? Does Mr. O’Flynn have a note on it?

**Mr. Diarmuid O’Flynn:** No. The two of them were sitting on one side of a big table and Ms Fitzpatrick and I were sitting on the other.

**Senator Rose Conway-Walsh:** Does Mr. O’Flynn have the minutes of any of the meetings either with the Central Bank or-----

**Mr. Diarmuid O’Flynn:** I had a blog at the time, thechatteringmagie14. Our position was set out in black and white and I used to play at full forward.

**Senator Rose Conway-Walsh:** Yes.

**Mr. Diarmuid O’Flynn:** I wrote the blog afterwards and it would have been detailed because I would have done it immediately afterwards. They were not contemporaneous notes but what had happened at the meeting would have been fresh in our minds.

**Senator Rose Conway-Walsh:** Mr. O’Flynn has a note of it. We are completely supportive as a cross-party committee on the issue, something Mr. O’Flynn has sought. He has said he obtained legal advice on it and believes it can be challenged in terms of the legalities. From where did he receive that legal advice?

**Mr. Diarmuid O’Flynn:** It was from not the Ballyhea group. A case has been heard before the Supreme Court, but a verdict on the point I mentioned about the use of historical valuations for their assets has not yet been delivered. There is a major difference in that respect. Accounting standards were changed and international accounting standard, IAS, 39 was introduced here in 2005. Under the accounting standards, it allowed bodies to use historical valuations. If one

had a property, one could have used a mortgage valuation from two or three years previously. That is a standard, but there is major difference between a standard and the law. Where there is a difference between a professional accounting standard and the law, the law takes precedence. The official said that in Britain in 95% of cases - Deputy Michael McGrath is an accountant and will understand this - if one went by the standards, one would also be complying with the law. If one was to give a lower value to one's house which had appreciated in value, one would not be misrepresenting it in the sense that somebody might be investing in it. However, in this case they were overstating the value of what they had on their books by a ratio of almost 2:1.

**Senator Rose Conway-Walsh:** Mr. O'Flynn mentioned a Supreme Court case.

**Mr. Diarmuid O'Flynn:** It has not yet given its verdict.

**Senator Rose Conway-Walsh:** Which Supreme Court is it?

**Mr. Diarmuid O'Flynn:** The Irish Supreme Court. The person who took the case was Mr. Ed Heavey, a banker in Cork.

**Senator Rose Conway-Walsh:** Does Mr. O'Flynn believe the same could happen again? Has any mechanism been put in place to prevent the same thing from happening again in the issuing of promissory notes? There are major external threats in the case of Italy, in respect of a trade war and Brexit, while there is over-inflation when it comes to property. Could we find ourselves in a similar position again?

**Mr. Diarmuid O'Flynn:** I do not think we would have it again, as many of the support structures required have been put in place. Not all of them are in place in that we do not have a European-wide deposit assurance scheme. However, where we are susceptible to a major shock is if interest rates go up. The national debt is still astronomical. We talk about the debt-to-gross domestic product, GDP ratio, but, for Ireland, GDP is not a good measure.

**Senator Rose Conway-Walsh:** Exactly.

**Mr. Diarmuid O'Flynn:** Rather, we should use the debt-to-gross national income, GNI, ratio, by which measure the national debt is still off the Richter scale.

**Senator Rose Conway-Walsh:** Does Mr. O'Flynn believe anything has changed in the culture of the banks?

**Mr. Diarmuid O'Flynn:** No, nothing. We bailed them out once by pouring money into them, but in Ireland we are bailing them out a second time because they get their money through the ECB at a zero percentage rate and then lend it. They have a licence to print money. They charge an interest rate of 4% or 5%. Our interest rates are way above what they are elsewhere in Europe. In Ireland we are bailing out the banks a second time through the interest rates at which we are paying.

**Senator Rose Conway-Walsh:** They have had tax free concessions for decades.

**Mr. Diarmuid O'Flynn:** They are now talking again about the bonus culture because they are making profits, but they do not think they have to work for them.

**Deputy Pearse Doherty:** Fáilte roimh an gcoiste. I thank the delegates for appearing before the joint committee and the work they have been doing for many years. There is no doubt that the actions of Mr. O'Flynn's group were instrumental. The blog he wrote in the early

stages which showed, on a weekly basis, the guaranteed and unguaranteed debt being paid by the State was instrumental in shaping the debate at the time. Information is power and by putting it into the public domain it forced the then Government to deal with some of the challenges from groups such as his and others within the Houses.

It important to hear again the fact that we are continuing to pay Anglo Irish Bank's debt on a month by month and year by year basis and that that will continue to be the case for many years to come. There is much debate about the state of the economy and the upcoming budget, reducing debt and not borrowing to deal with other social crises, but, as Mr. O'Flynn has made clear, we are continuing to borrow money to nullify the promissory note given to Anglo Irish Bank in 2010 and that will continue to be the case.

Mr. O'Flynn has made the point that it is not just about economics, it is also about the rights and wrongs of this. I could not agree more with him. There is not anything in his presentation with which I do not agree, except in the case of the some of the bankers. On the jailing of Mr. David Drumm and the fraud he perpetrated within Anglo Irish Bank-----

**Chairman:** There may be an appeal in that case. The time in which an appeal could be made has not expired. Therefore, it would be wrong for us to name individuals.

**Deputy Pearse Doherty:** Okay.

**Chairman:** I do not want the Deputy to get into trouble.

**Deputy Pearse Doherty:** I am not going to say he is guilty of anything else for which he has not already been convicted. He has been found guilty.

**Chairman:** He may appeal his sentence. That is the point I am making.

**Deputy Pearse Doherty:** Regarding Anglo Irish Bank, bearing in mind that there may be an appeal of the sentence, clearly, the conviction was for providing false information for shareholders, but it could be argued that it affected the then Minister's decision at the time because the books of the bank showed that it was in better shape than it was. Does Mr. O'Flynn believe that provides additional scope for a more robust challenge in that regard? For example, if I was to enter into a contract with him based on information he had provided for me that was proved to be fraudulent, it would nullify my contract with him. Is there an argument in that regard?

The sin of all this is that it is occurring nearly every six months. The Central Bank is selling off at an accelerated rate what are now the Government bonds. When the Government liquidated IBRC, it did a terrible thing. It changed the promissory note into State-owned bonds. This was absolutely appalling. Worse, it presented it as a victory for the Irish people. While there was an important reduction in regard to how we dealt with this on a year-by-year basis, the debt still remained and the bill still existed.

Of the €34 billion that was in the promissory note, only €14.5 billion has not been paid back so far. Does the argument now centre only on what remains? That question is on the strategy. Some €14.5 billion in bonds are now held by the Central Bank of Ireland. The other bonds do not exist anymore. As the delegates said, the money has been destroyed. Alternatively, does the delegation argue we should revisit the issue of the €34 billion?

**Mr. Diarmuid O'Flynn:** We have never concerned ourselves with the conviction, or otherwise, of any individual. For us, this has just been about getting bank debt justice for Ireland.

With regard to justice on foot of the actions of individuals who did whatever they did, we never got involved. That is an issue for the courts and the people here. We know white-collar crime in this country is not punished anyway. Our view is that jailing somebody only costs us money. Where people are found to have committed white-collar crime, especially on this scale, the fitting punishment is to strip them of all their assets and put them on a Government pension if they are of an age and in a council house, just as they did to an awful lot of people in this country. Jailing them costs us money. The only way to teach manners and lessons regarding white-collar crime is to hit people where it hurts. Since greed is the cause, they should be hit where it hurts, namely, their pockets.

On the issue of whether fraudulent behaviour is a ground for appeal, of course it is. We are talking about the declaration used not only by Anglo Irish Bank but also by all the other Irish banks. In the lead-up to the blanket bank guarantee, the banks deliberately and knowingly misrepresented the true and fair value of what they had in their books. They were actually insolvent at that time. They were not suffering from liquidity problems; they were insolvent. This would have been revealed had they declared the true and fair value, which they were legally obliged to do. I am not referring to standards because they were complying with the standards. Standards comprise one thing; the law is another. They were not complying with the law. Therefore, they completely and deliberately misled the Government in the lead-up to the blanket bank guarantee. They also misled the European Central Bank. I do not believe the European Central Bank was fully aware of what was happening. It should have been but I do not know whether it was. That is why Mr. Trichet clamped down so hard on the Irish banks. They were using a standard that no other country in Europe was using to misrepresent their true circumstances. It was on that basis that they were getting money from the emergency liquidity assistance fund. On those grounds, the promissory notes are invalidated.

Our fight now is not just for the €14.5 billion. In fact, it is not just for the €31 billion. Thirty-five billion euro was put into Anglo Irish Bank. People forget that a lot of money was taken out of our National Pensions Reserve Fund. Nearly €20 billion was taken out of the fund to be put into banks. It was not just what was borrowed. We took this out of our own pockets and put it into the banks. It is not just a question of that money because one should also consider the interest lost on that money over the years.

A conservative estimate with regard to the National Pensions Reserve Fund is that €25 million to €30 million was lost. We should ask the European Central Bank and perhaps the Council not just for the €31 billion. Some €69.7 billion is involved. It would not take a genius or actuary to calculate what we got back from the sale of the AIB shares lately and what we got back from Bank of Ireland. The relevant figures should be offset against one another to determine the figure we were forced to put in and what we believe we should have put in proportionate to our population in the eurozone. This is what we are arguing about.

**Deputy Pearse Doherty:** May I ask one final question? It is very short.

The promissory note has caused serious damage, as Mr. O'Flynn said. The Government does not intend to reclaim a penny of the €34.7 billion. As the injections went in, starting at figures of 12,000 in 2010, up to 34,000, not one debate or vote was required in this House regarding any of the promissory notes signed by the Minister. As we approach the tenth anniversary of the guarantee, does Mr. O'Flynn believe it would be appropriate to repeal the legislation that allows for a Minister solely to provide that type of financial commitment to financial institutions? This committee scrutinises every line of expenditure from Departments but the provision to which I refer allows a Minister to commit billions upon billions of euro of Irish

taxpayers' money without any scrutiny or recourse to a vote within the House. Is legislative repeal something the delegates call for or support?

**Mr. Diarmuid O'Flynn:** It is certainly something we support. We elect people to look after these matters. It is not something we get involved in. Personally, I find it absolutely extraordinary that it could happen. As the Deputy said, the Dáil can examine line by line what is proposed to be spent in a budget but a Minister for Finance can still do what the Deputy described. It does not stop at €31 billion because no limit or figure is set, which means any amount can be committed by a Minister. Absolutely, the matter should be examined.

**Deputy Michael McGrath:** I welcome Mr. O'Flynn and his colleagues. I also welcome Deputy Joan Collins. I thank Mr. O'Flynn for his presentation. I join others in commending the group. It is a group of immense conviction. It has stayed the course on this issue. As Deputy Pearse Doherty said, it has helped to shape public debate and has had influence - more than its members might think.

Based on the figures Mr. O'Flynn is presenting, more than half of the debt, as such, has been sold on in the form of Government bonds. Another €14.5 billion, Mr. O'Flynn says, is still resting with the Central Bank. Is his position that we should not advocate that Ireland take any form of unilateral action?

**Mr. Diarmuid O'Flynn:** We should freeze the sales now. I acknowledge the European Central Bank has been pushing this but we have gone way beyond what we committed to sell.

**Deputy Michael McGrath:** Yes.

**Mr. Diarmuid O'Flynn:** It would not take the form of unilateral action because we are way in advance. That must be stated first of all. There are times when unilateral action is necessary but this is not one of them. In this instance, we could just freeze the sale and put an all-party committee together to start the fight and the argument.

**Deputy Michael McGrath:** With regard to the argument of the European Central Bank, that institution would take it back to monetary financing, stating the origin of all of this was the emergency liquidity assistance that Anglo Irish Bank or IBRC was able to access using the promissory notes. Its argument is that this funding was temporary and has to be taken out of the system, as such, because otherwise it would increase the amount of money in supply, resulting in the printing of money and so on. Who should pay this bill ultimately? The senior bondholders were repaid. The junior bondholders took losses of approximately €15 billion across the banks but the senior ones were all paid in full. More than half of the money is now Government debt, which is sovereign debt. The balance is debt also but it is with the Central Bank of Ireland as opposed to being held by third parties. Ultimately, who should share this burden?

**Mr. Diarmuid O'Flynn:** The €31 billion is already in circulation so nobody would actually be paying the debt. It is already out there; it is in circulation. What the Central Bank is doing is taking it back out of circulation. That is what the destruction of the money is about. Nobody would actually be paying for this. It is just money that is in circulation.

On the use of the emergency liquidity funds and the ECB's responsibility in that area, the argument we are putting forward is that the grounds on which the emergency liquidity assistance was granted were wrong. Its granting broke the ECB's rules and regulations. This assistance was for banks suffering from liquidity problems. It was specifically not for insolvent banks. Those banks presented a false picture of their true state of affairs. It was a false picture of which



the ECB should have been aware. They were using accounting standards as opposed to the law in order to get around those EU rules and regulations. I have the actual promissory note; it is literally just a note. The ECB must have known then that these banks were not suffering liquidity problems. There were insolvent banks. That money should never have been issued. That is the argument we have made. It should never have been issued. As the bank of last resort and as the central bank of all the central banks of Europe, the ECB should have said "No".

The ECB at the time feared that if any bank in the eurozone failed, even one of the smaller Irish banks, the system would break down because of the domino effect. This is on the record. It felt that it would bring down the entire eurozone banking system. It was right. As I have shown in my presentation, the Bank for International Settlements calculated that, at that time, the German banks alone were exposed to the banks of the periphery to the value of more than \$700 billion. If they went down, the big banks across Europe - Deutsche Bank, Bank BPS and so on - were also going to come down. There was a study done late last year by a German university on where the so-called Greek bailout funds went. I can send the Deputy the link. It found that 91% of the €240 billion or €250 billion that supposedly went to Greece actually went straight out the back door to the German, French and other banks that were exposed to Greece. I have read that in there as well. The ECB was right in its fears. That is why it demanded that the Irish banks pay everything and would not let them to fail on anything. That is also why it allowed the use of the emergency liquidity assistance fund for insolvent banks. It wanted them to keep their doors open.

**Deputy Michael McGrath:** I have final question and then I will have to leave because I tabled a question to the Minister for Health and it is due to be taken in the Dáil. The members of the committee are meeting the ECB in September. There will be an opportunity to follow up on this in Frankfurt at that stage. I hope to be there. I will also raise the issue with colleagues. We can liaise with Mr. O'Flynn prior to that. What would he say to the argument we are likely to hear back, namely, that the general political narrative across Europe is that Ireland is doing exceptionally well? The economy is one of the fastest growing in Europe. While our debt, at €200 billion or so, is large, in nominal terms it is falling quickly as a proportion of the size of our economy. It will also be said that there are far bigger priorities including the migration crisis and Brexit and that there is really no justification for making an exception to policy for Ireland because we have recovered well and the model worked. We are likely to hear that we should move on. That could well be the response.

**Mr. Diarmuid O'Flynn:** The first thing I would say is that none of that is relevant to what happened. It would not matter whether Ireland was still in the very depths of despair - which an awful lot of people are and a huge proportion of this country still is - what happened was wrong and has to be challenged. It is that simple. The argument members are more likely to hear is that which the Deputy presented earlier, namely, that it was a Government guarantee so it is the responsibility of the Government and our banks and bankers. The main thing here is that German banks and German bankers were the most irresponsible. I can send the Deputy another link. Much like the big short on Wall Street, the German banks were reckless beyond belief, even more so than their Irish counterparts. They exposed themselves and they are still exposed. Danske Bank is still massively exposed and in massive danger even now. People have this notion about the responsible Germans. We bailed them out. The committee should make no mistake about that. We bailed them out, as did the Greeks, the Spanish and the Portuguese. The money that came into these countries in the form of loans, which are now being repaid by the people, went to German, French, Dutch and other banks. That is where it went. It did not go to bailing out the people. This is what the socialisation of debt has meant. It means

that we are carrying the can not only for the Irish banks. A few of them should have just been let go. There is an argument that the entire system had to be saved, but we have been presented with a disproportionate and much larger part of the bill than we should have been. That should be our argument.

**Chairman:** I have two Senators offering. I will ask them to be brief because we have another group waiting. We will take Senator Kieran O'Donnell and then Senator Paddy Burke. We will then ask Mr. O'Flynn to answer their questions. We will take the two questions first.

**Deputy Joan Collins:** Can I also come in on the-----

**Chairman:** Yes, but I will take the two Senators first.

**Senator Kieran O'Donnell:** I welcome Mr. O'Flynn, Ms Queally-Moloney, Mr. Ryan and everyone else. I just have a couple of questions. Apart from anything else, the witnesses have obviously made study of the promissory note. They have probably studied it more than anyone. Did the design of the promissory note come from the Government of the day or did it come from Europe? Did Mr. O'Flynn examine from where it emanated?

**Mr. Diarmuid O'Flynn:** We got a copy of the promissory note through a freedom of information request. I will read it out. It was from December 2010. The promissory notes were issued over the period 2009-2010. It was not just suddenly €31 billion. It was done stage by stage and step by step. The note is addressed to Professor Patrick Honohan, Governor of the Central Bank of Ireland. It states:

Dear Patrick

I am advised that the Central Bank (the Bank) may decide-----

**Senator Kieran O'Donnell:** Who was this written to?

**Mr. Diarmuid O'Flynn:** It was addressed to Professor Patrick Honohan.

**Senator Kieran O'Donnell:** Who sent it?

**Mr. Diarmuid O'Flynn:** It was written by Brian Lenihan and signed by him.

**Senator Kieran O'Donnell:** What was the date of the note?

**Mr. Diarmuid O'Flynn:** It is dated December 2010 and it states:

I am advised that the Central Bank (the Bank) may decide that it is appropriate to provide liquidity assistance to the EBS Building Society. The amount to be advanced and the terms and conditions of any lending are to be decided by the Bank.

It is the policy of the Government that the Bank should not incur a loss in the provision of emergency liquidity assistance to support Irish credit institutions. Accordingly, if any such loss is in prospect the Government will [there is a redacted element and then the note continues] provide for the Bank to receive payment to make good any shortfall.

That is quite literally the promissory note. It was based on the premise of emergency liquidity assistance.

**Senator Kieran O'Donnell:** Does that not emanate from the fact that under EU treaties, the ECB cannot fund the national debt of states?

**Mr. Diarmuid O'Flynn:** We understand that.

**Senator Kieran O'Donnell:** I have two very quick questions following on from that. Was the restructuring of the promissory note just as important as the promissory note? Prior to the restructuring of the promissory note, the State paid €3.1 billion in 2011, which came out of current spending and had a drastic effect on the resources available. I know that there is interest on the moneys being borrowed but did the restructuring in 2013 not remove the need for that draconian measure and alleviate the pressure on the State in the context of what it could allocate per annum regarding day-to-day expenditure for services for ordinary citizens?

**Mr. Diarmuid O'Flynn:** Is the Senator referring to the annual budget?

**Senator Kieran O'Donnell:** Yes.

**Mr. Diarmuid O'Flynn:** Yes.

**Senator Kieran O'Donnell:** Did it not have a dramatic impact on the impact the promissory note was having on the day-to-day lives of people in terms of Government spending?

**Mr. Diarmuid O'Flynn:** Yes.

**Senator Kieran O'Donnell:** Would Mr. O'Flynn accept that?

**Mr. Diarmuid O'Flynn:** No, the-----

**Chairman:** We are going way over time.

**Senator Kieran O'Donnell:** Finally, does Mr. O'Flynn believe that Anglo Irish Bank was a systemic bank and that it needed to be saved?

**Mr. Diarmuid O'Flynn:** No.

**Senator Kieran O'Donnell:** Mr. O'Flynn referred to a European context.

**Mr. Diarmuid O'Flynn:** It was absolutely not a systemic bank.

**Chairman:** Hold on for a second. I call on Senator Paddy Burke.

**Senator Paddy Burke:** I welcome everybody. The then Minister for Finance, the late Brian Lenihan, said on numerous occasions that it was a liquidity problem. He did not think that up himself. He was going on advice from the Department of Finance. How complicit were the Central Bank and the Department of Finance in the negotiations that went on behind the scenes to give that advice to Brian Lenihan, who wrote the document? He was not going on his own advice, he was advised. Behind the scenes, there must have been a great deal happening.

**Mr. Diarmuid O'Flynn:** The Senator's final question goes back to what I said already. The reason they thought it was a liquidity problem was because that was what was presented to them by the auditors and accountants of the banks. They did this because they were using historic valuations. They were not using the true and fair valuations. They were presented with a false picture. That is why they thought it was a liquidity problem when actually the banks were insolvent. We cannot blame them because they were presented with a false picture, because of the accounting standards that were used, but they did not comply with the law.

On the other issue, Deputy Pearse Doherty already referred to the changeover in 2012 by

the then Minister, Deputy Noonan. That is when this could and should have been challenged, because at that stage it was not actual Government debt. It was on the basis of a promissory note. It was at that stage the ECB should have been challenged and told we are not doing this and that we would simply not destroy €3.1 billion every March. The ECB should have been challenged at that point because Ireland had the high moral ground. In addition, the ECB was very vulnerable at that time. It was still in panic mode and searching all over. It was blindly reaching all over the place. Ireland was in a very strong position at that stage. Instead, what the then Minister, Deputy Noonan, did to alleviate his own financial position - he was taking €3.1 billion out of the spending every year simply to alleviate his own position as Minister for Finance - was that he restructured. The value was not dropped by 1 cent. He restructured what remained of the entire promissory note and kicked it out to be paid by future generations. It was a sell-out of future generations of massive proportions. He did not have the bottle to take on the ECB, which he should have done. He was in a strong position to do so.

**Deputy Joan Collins:** I want to make two points. I support the call from Ballyhea Says Know on a cross-party motion. However, I do not know whether the Chairman will make a decision in that regard today.

**Chairman:** No, we will take the submission and then we will come back to it.

**Deputy Joan Collins:** What should also be looked at - this was mentioned by Deputy Pearse Doherty - is the Credit Institutions (Financial support) Act 2008, which gave the Minister for Finance absolute power without coming to the Dáil for a vote. Whether that should remain in place should be investigated. In the case I took the Supreme Court, the court stated that the time was exceptional and that it was an exceptional measure in exceptional circumstances. The court backed the Constitution. That has to be changed. The law has to be changed or there should be a discussion on whether it should be changed. That proposal should be put forward by the committee.

**Chairman:** I thank Mr. O'Flynn and his colleagues for coming before the committee. I also thank Deputy Joan Collins. On the two questions she raised just now - they were also raised by other members during proceedings - we will revisit the submission and the two queries members had and we will make a decision on them at a later stage. I thank the witnesses for taking the time to come here. I compliment them on their work. It will form part of our consideration at our next meeting.

*Sitting suspended at 11.25 a.m. and resumed at 11.30 a.m.*

### **EBS Tied Agents: Discussion**

**Chairman:** We will now resume our meeting and deal with item No. 9 which is matters relating to the EBS tied agents. I welcome Mr. Shane Kavanagh and Mr. Cormac Butler here this morning and before calling on the witnesses to give their opening statements I want to advise the witnesses that by virtue of section 17(2)(I) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to so do, they are entitled thereafter only to a 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 are asked to respect the parliamentary practice to the effect that,

where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded that under longstanding parliamentary practice members 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 them identifiable.

I thank Mr. Kavanagh and Mr. Butler for coming here today and invite them to make their opening statements please.

**Mr. Shane Kavanagh:** Go raibh maith agat, a Chathaoirligh. First I want to thank the committee for the opportunity to speak here today. I represent a number of former EBS agents, many of whom have given up to 33 years committed service to EBS Limited, formerly EBS Building Society. All have suffered financial and personal stress as a result of the difficulties experienced by EBS itself. Our reputations were also impaired even though we were committed to an honest service and recognised the importance of the duty of care we owed to members.

The EBS tied agency business model is unique to EBS in the Irish market. The tied agent is an independent business entity exclusively tied to EBS. Tied agents sell the full suite of EBS products, operate on a licence agreement with EBS and are regulated by the Central Bank of Ireland. The customer experience is the same as that from an EBS branch outlet. The branding, look and feel and back-office operations are all the same as with the branch, and the business is run by a local agent and staff. Beginning in 1935 the Educational Building Society built up a very positive reputation among its members. Agents, including myself, were paid commission for the mortgages and investment products that were sold. We had no control over whether mortgages were approved or not. From this commission from the mortgages that were executed, however, we covered the costs of running the agency including office rental, staff and all of the usual costs associated with any small SME.

In January the management surprised the agents and the network in general by introducing an incentive scheme which focused on maximising sales. There is potential for incentive schemes to encourage mis-selling. Potential investors may buy unsuitable products without fully realising the risks. Under the new structure the survival of agents depended heavily on the commissions they generated instead of focusing on ensuring that the needs of the member were actually met. In our view the incentive scheme was far too short-term in focus, at the expense of the long-term reputation of EBS and their agents. After expressing our concerns, one non-executive director offered to support us. An independent investigation was proposed. Sadly both the report that was concluded and the terms of reference were not made available to us, so this initiative was of limited use.

A second underlying but equally important problem was the inability of EBS to provide mortgages that agents could sell. This resulted in a considerable loss of commission and put the agents under pressure to make up the shortfall by selling investment products. This is a very unsatisfactory situation to be in, as the desperate desire to earn commission from investment products may weaken the fiduciary duty that agents owe to their members. As Mr. Cormac Butler will explain, there were a few policy decisions taken by EBS which, in hindsight, contributed significantly to the avoidable problems that EBS and their agents faced.

We spoke to the officials from the Central Bank and we note the comments from a member of the Irish Bank Officials Association, now known as the Financial Services Union. The problem is widespread. The Central Bank is now attempting to examine and change the culture of Irish banking, but there are considerable hurdles in their approach. We have attempted to



engage with EBS on this matter but, after seven years trying, a solution seems unlikely. I thank the committee for listening and will pass over to Mr. Butler now.

**Mr. Cormac Butler:** Good afternoon. I am a risk consultant based mainly in the UK, and cover issues like the Basel Accords and the international financial reporting standards, IFRS. Previously I have given evidence to the UK House of Lords on the UK banking crisis.

The failure of EBS to originate new mortgages has put considerable pressure on the tied agents. Many were not able to meet the commission targets from investment products and risked compromising their reputation through aggressive sales in order to make up for the commission lost on mortgages.

A number of weak policy decisions taken by EBS may have contributed to this problem. EBS faced closure from the capital markets when it came to raising funds and in the end had to receive Government bailouts, as well as cutting back considerably on the amount of mortgages it offered, a factor that caused considerable distress to the tied agents.

One matter that contributed to the banking crisis, that is not yet corrected, is the obligation to reveal the financial position of the society to existing and potential investors and depositors. According to some, building societies are not allowed to reveal their solvency position, with the result that it will be very difficult for them to attract investors and fund mortgages. The cost of capital for Irish banks is unusually high, and this is because investors do not find Irish banks a safe and attractive proposition. The result is that tied agents cannot sell mortgages as they once did.

EBS received a State bailout of about €2.3 billion and suffered a 57% discount on assets sold to NAMA. Its failure to attract funds forced it into a firesale of assets which in turn led to further losses. Tied agents were naturally unready for this change in circumstance and in my view would have benefited considerably if the correct financial position was disclosed.

I am convinced that the difficulties of the tied agents could have been avoided if the directors were permitted to reveal their financial position correctly at an earlier stage. There is a lot of misleading information on this matter which I believe the committee should look into. In the UK there are the same concerns. Thames Valley Police Commissioner, Mr. Anthony Stansfeld, has suggested examining how banks measure their solvency and believes that many financial transactions may be overturned unless this matter is corrected. Thank you.

**Chairman:** Mr. Kavanagh referred to an independent investigation being proposed and stated that sadly both the report and terms of reference were not made available with the result that the initiative was therefore of limited use. Did the witness engage with the EBS in the context of that comment and that report?

**Mr. Shane Kavanagh:** We engaged with an outside agency that was hired by EBS to facilitate the report but we never saw the report or the final terms of reference.

**Chairman:** The outside agency was to examine the complaints that the tied agents were making and the issues that they had. Before the witness's group entered into that process they were not shown the terms of reference.

**Mr. Shane Kavanagh:** No.

**Chairman:** After that process the group was not given the report.

**Mr. Shane Kavanagh:** No.

**Chairman:** Did the group not have a meeting with EBS after that?

**Mr. Shane Kavanagh:** We tried but there was no engagement. To be honest, we were told there was nothing to see.

**Chairman:** The now CEO of AIB - I did ask him about this - said he had met the witness or the witness's group.

**Mr. Shane Kavanagh:** Yes, he met with two of my colleagues, he did not meet me personally. At the time I was not allowed to meet him; he felt it was inappropriate that I would meet him because it was a legal matter. He would not meet me but he did meet two of my colleagues with a representative from EBS. We did put this to him but we, that is the two representatives, were told that there was nothing to see.

**Chairman:** How long ago was that meeting, by the way, roughly?

**Mr. Shane Kavanagh:** That meeting was about three or four years ago. I do not have a date here exactly.

**Mr. Shane Kavanagh:** Yes, we engaged with an outside agency that was hired by EBS to facilitate the report but we never saw the report or the final terms of reference.

**Chairman:** They met him as CEO of AIB.

**Mr. Shane Kavanagh:** No, at that time he was a board director of AIB.

**Chairman:** In what capacity did he meet Mr. Kavanagh's colleagues at that time?

**Mr. Shane Kavanagh:** As board director of AIB.

**Chairman:** Was he appointed to attempt to resolve this matter?

**Mr. Shane Kavanagh:** No, he just decided to call a meeting to hear what we had to say.

**Chairman:** Were Mr. Kavanagh's colleagues shown the report at that meeting?

**Mr. Shane Kavanagh:** No.

**Chairman:** Was the content of the report discussed?

**Mr. Shane Kavanagh:** No.

**Chairman:** Mr. Kavanagh's group has been making complaints but nothing has happened in terms of address of the issue.

**Mr. Shane Kavanagh:** Correct.

**Chairman:** Mr. Kavanagh has not had a productive meeting with the bank since then.

**Mr. Shane Kavanagh:** Correct.

**Chairman:** Has Mr. Kavanagh attempted in recent times to meet AIB?

**Mr. Shane Kavanagh:** I will not lie. I have trees burned down at this stage from writing

letters to AIB and the Central Bank to try to get resolution of this matter.

**Chairman:** Mr. Kavanagh has had no response.

**Mr. Shane Kavanagh:** Just the usual response from the Central Bank that it is reviewing the matter as part of its day-to-day supervision.

**Chairman:** Is that the current position?

**Mr. Shane Kavanagh:** Yes. We have not had any response.

**Chairman:** What legal challenges are under way?

**Mr. Shane Kavanagh:** There are legal challenges under way by a number of agents.

**Chairman:** Individual cases.

**Mr. Shane Kavanagh:** Correct. To be honest, they are going nowhere because we do not have the same backing as does the bank as regards financial clout.

**Chairman:** What does Mr. Kavanagh believe needs to be done to resolve the matter?

**Mr. Shane Kavanagh:** To be honest, proper meaningful engagement would resolve it. In one particular case, the judge recommended mediation but the case has not progressed.

**Chairman:** I note some of the agents are in the Public Gallery. How many agents are affected?

**Mr. Shane Kavanagh:** Approximately 15 agents across the country, many of whom have young families.

**Chairman:** There are 15 agents across the country who have given fair service to the EBS and have taken up their issues with the ESB and, presumably, of late with the AIB and the Central Bank and they are being ignored in the hope that they will go away.

**Mr. Shane Kavanagh:** Correct.

**Chairman:** That is astonishing. If Mr. Kavanagh has documentation relevant to the efforts he has made to meet the banks, which met with no reply, he should forward it to the committee.

**Mr. Shane Kavanagh:** Yes.

**Chairman:** For example, the response from the Central Bank would be helpful to us. I encourage Mr. Kavanagh to do this as soon as possible.

**Mr. Shane Kavanagh:** That is no problem.

**Chairman:** As it is the intention of the committee to examine the matter and to pursue it further with the banks, it would help us to fully understand the background to the issue if Mr. Kavanagh made that information available to the committee.

**Mr. Shane Kavanagh:** I can do that.

**Chairman:** I call Senator Conway-Walsh.

**Senator Rose Conway-Walsh:** I thank Mr. Kavanagh for his presentation. I agree with

the Chairman that to do further scrutiny we would need supporting documentation. When did the agents move to commission work? Was it prior to EBS becoming State owned or previous to that?

**Mr. Shane Kavanagh:** On becoming agents we became eligible for commission in respect of any business we executed as regards mortgages and savings. In 2011 we were told that lending had dried up and we were asked to focus on bank assurance sales, which is investment model selling. As agents, we had a number of concerns. We were a mutual building society and as such we did not have customers, we had members and we had a duty of care to them. We were previously told that approximately 10% of our client base were suitable for this kind of product but then that changed and we were told if the EBS was to survive we needed to sell more and ramp up customer numbers.

**Senator Rose Conway-Walsh:** Does Mr. Kavanagh have documentation to support that instruction and his response to it?

**Mr. Shane Kavanagh:** I do. We have plenty of documentation. At the management meetings the name of the game was selling. It was all about sales. We were not allowed to engage with mortgages or people in financial difficulty. We were told to leave them alone, that they would be only wasting our time and we would not make money on them. We were told to focus on sales. It was awful. We had built up trust with our members at local level. People had trusted us for years. We were told not to engage with people whom we had helped to get mortgages and were now in trouble and to direct them to head office or a particular helpline. Given our culture, this did not sit right with us. It upset us that we had to turn our backs on our customers. We were located in local communities and towns and these were people and families for whom we had processed mortgages and other financial products throughout their life cycle and we were told not to engage with them and to direct them to head office in Dublin. We did not like that and we raised concerns about it. It is not that we were being negative; we just felt it was not the right approach.

**Senator Rose Conway-Walsh:** On the incentive schemes, am I correct that Mr. Kavanagh is saying pressure was put on the agents to sell consumers products that were not suitable for them?

**Mr. Shane Kavanagh:** To be clear on the products that were being sold, for the right customer there was no difficulty with them but they did not suit everybody. We would have known our customer base for years and we would have known who would be happy to buy these products. This was in 2011, when there was a lot of fear in terms of the bank guarantee and the safety of savings and so on. We were told deposits were guaranteed but we need to sell bank assurance products. We knew they would not be suitable for everybody and we raised concerns in that regard. It was a case of comply or good luck. That was the reality.

**Senator Rose Conway-Walsh:** Did everybody comply?

**Mr. Shane Kavanagh:** I do not mind saying agents were intimidated.

**Senator Rose Conway-Walsh:** In what way were they intimidated?

**Mr. Shane Kavanagh:** I do not-----

**Chairman:** We should not get into that now.

**Senator Rose Conway-Walsh:** I understand. What Mr. Kavanagh has outlined paints a worrying picture from a number of perspectives. We will need to examine the additional documentation.

**Mr. Shane Kavanagh:** When a number of agents are shown the door, it appears as though they did something wrong or they put their hands in the till but we did not. Like a bucket of dirty water, we were thrown down the gully.

**Senator Rose Conway-Walsh:** Mr. Kavanagh referenced the need for meaningful engagement. What does he hope will be the outcome of that meaningful engagement?

**Mr. Shane Kavanagh:** The bottom line would be vindication for how we were treated, especially with the people in our local communities, and appropriate redress.

**Deputy Paul Murphy:** This is a unique business model for EBS from the point of view of the banking sector. Would it make sense if Mr. Kavanagh and the other agents and staff could be brought into the fold of EBS and employed as managers and staff on union agreed salaries etc. as opposed to the continuation of this franchise-type EBS model?

**Mr. Shane Kavanagh:** It should have been up for consideration and discussed. I know from talking to other agents that they certainly would have engaged with management on it at the time if it had been put on the table, but it was not put on the table.

**Deputy Paul Murphy:** It was never put on the table as an option.

**Mr. Shane Kavanagh:** No.

**Deputy Paul Murphy:** Okay.

**Senator Paddy Burke:** I welcome Mr. Kavanagh and Mr. Butler. I assume we are talking about commercial ventures that were entered into between the EBS and the agents.

**Mr. Shane Kavanagh:** Yes. I do not know the exact year when the model itself started. I joined the EBS in 1999. It was sometime before then that the model itself started or came to fruition. It started to be rolled out in or around 1999. It seemed to work very well for a lot of people.

**Senator Paddy Burke:** I assume the agreements were negotiated at various stages over different periods.

**Mr. Shane Kavanagh:** There was an original agreement. The agreement was changed in 2007. That caused a bit of controversy.

**Senator Paddy Burke:** Did Mr. Kavanagh's group have an input into the changing of the agreement?

**Mr. Shane Kavanagh:** The only input we had was to say we did not like the terms.

**Senator Paddy Burke:** Yes.

**Mr. Shane Kavanagh:** There was no consultation. It is important to note that a clause in the original agreement provided that it could not be changed without the consent of both parties. A new agreement came out all of a sudden in 2007 without the consent of both parties - it was a case of, "Sign it or go".



**Senator Paddy Burke:** The chief executive of the EBS dictated to the agents.

**Mr. Shane Kavanagh:** Yes, absolutely, although “dictated” is the Senator’s word.

**Senator Paddy Burke:** When were the aggressive sales brought in?

**Mr. Shane Kavanagh:** I suppose it kicked off in 2011. They had been working up to it gradually, but it kicked off in 2011. The lending that had been going on was pretty much stopped then. The name of the game was bank insurance and investment product sales.

**Senator Paddy Burke:** Have the agents set out how much they might be entitled to or what they have missed out on?

**Mr. Shane Kavanagh:** We all know that individually.

**Senator Paddy Burke:** Each case is individual.

**Mr. Shane Kavanagh:** Exactly, yes.

**Senator Paddy Burke:** Okay. All right.

**Mr. Shane Kavanagh:** All of the agents I represent are reasonable people.

**Senator Paddy Burke:** Yes.

**Mr. Shane Kavanagh:** It is not going to break the bank.

**Senator Paddy Burke:** I agree with the Chairman that the EBS should send further documentation to the committee and we will take it from there.

**Deputy Michael McGrath:** I apologise for being late. I was speaking in the Chamber. I welcome Mr. Kavanagh, Mr. Butler and the people in the Gallery. I ask the Chairman to cut me off if any of my questions have been asked.

**Chairman:** I would not do that to the Deputy.

**Deputy Michael McGrath:** The Chairman would, and he would be justified. That would be okay. I have been aware of this issue for some time. I raised it in the past, for example during Deputy Michael Noonan’s time as Minister for Finance. The response from the Department and the Minister then and now has been that the EBS is at arm’s length and has nothing to do with the Department, and that all commercial and operational decisions are matters for the institution. There does not seem to be any political will to become involved in this dispute. I have an understanding of what the issues are. I ask Mr. Kavanagh to clarify what he thinks would justify redress and engagement from the EBS side. Does he think the treatment of the agents was unjust and unfair? Does he think there were legal breaches of the contract that was in place? How would Mr. Kavanagh characterise that?

**Mr. Shane Kavanagh:** I would characterise it as unjust and unfair, and certainly as unethical. The chief executive officer made a point about shareholders at the last meeting. From a fiduciary point of view, as agents we have the same responsibility to our members. All we were doing was bringing that to the attention of the EBS. The contract side of things has yet to be sorted out properly. The EBS has always maintained that it has acted within its legal rights, but that has never been proven before the courts. As far as I am concerned, it is easy to make such a statement until it is proven not to be the case. Our primary concern at the time was to

act in an ethical and professional manner. We raised issues that were of concern to our clients. Rather than being facilitated with meaningful engagement and having our concerns heard, for our troubles we were told, “You are not team players so you are gone”. That is how ruthless it was. The suggestion was that those who were no longer willing to play the game were no longer considered to be team players and were therefore gone. When we asked why we were gone and whether we had done anything wrong, we were simply told that this was happening on a no-fault basis. When we asked why this was being done, the simple and callous answer we received was, “Because we can”.

**Deputy Michael McGrath:** Was it legally permissible for the EBS to take that approach under the contract?

**Mr. Shane Kavanagh:** It has not been proven otherwise. As I have said, it has not been tested before the courts.

**Deputy Michael McGrath:** Okay.

**Mr. Shane Kavanagh:** The EBS has taken a very legalistic approach.

**Mr. Cormac Butler:** At the time the tied agents signed into the contracts, approximately 80% of their commission came from mortgages and approximately 20% came from investment products. As we know, the EBS got into liquidity and solvency difficulties. As a result, the mortgage commission went down to close to zero. That was a decrease of close to 80%. My view is that if this was not expressly stated in the contract, the EBS should have alerted the tied agents as far back as 2005 that there were potential liquidity problems on the basis that if the EBS was unable to fund the mortgages, the agents’ entire income would come from investment income. Apart from putting a strain on the tied agents, there was a risk that if their income depended solely on investment income, they would be tempted to sell products which were unsuitable to customers. This would have put the tied agents into a difficult situation. If they went along with this and kept their heads down low, they might have kept their jobs, but they would have been risking their reputations and creating damage for potential customers with this new approach. My view is that the EBS should have said in 2005, and certainly in 2008, that it would have to deal with potential liquidity difficulties. It should have consulted the agents in that context to say that the contracts which had been signed would have to change considerably.

**Deputy Michael McGrath:** Are legal cases being taken in the system?

**Mr. Shane Kavanagh:** There are, but they are going nowhere.

**Deputy Michael McGrath:** Have they got a hearing?

**Mr. Shane Kavanagh:** One or two of them have got an initial hearing. The only way I can describe it is to say that the process is being pushed out, for example by playing games with stuff like discovery.

**Deputy Michael McGrath:** Okay. Does Mr. Kavanagh think the former agents will get justice through legal actions?

**Mr. Shane Kavanagh:** I do not have the financial ability to-----

**Deputy Michael McGrath:** Yes, I understand.

**Mr. Shane Kavanagh:** None of us does.

**Deputy Michael McGrath:** I would like to ask about the selection process that was used by the EBS to enter into new tied agency arrangements after Mr. Kavanagh and the other former agents had been removed. How was that process conducted, in Mr. Kavanagh's view? Is there a suggestion that the EBS had certain preferred people in mind to take on the role?

**Mr. Shane Kavanagh:** I will elaborate briefly on the background as my initial response to the Deputy's very good question. The culture we came from has to be understood. Over the years, there was a very strong relationship between the agents and the management of the EBS. When we raised issues about the new agreement, we were told we should not worry because there was nothing of concern in it. The reaction we were getting from management was that because we had been with the EBS for years, everything would be fine. Nobody predicted that the rug would be pulled from underneath us. I would say that the spirit of the agreement was withheld from us. We were hoodwinked into believing everything would be okay. We did not think the EBS would do anything to us because we had been working with it for years. That is an important point about the way the contracts were dealt with at the time. Was there a second question?

**Deputy Michael McGrath:** I asked about the selection of replacement agents.

**Mr. Shane Kavanagh:** Yes. It is very interesting. We raised our concerns when we met the non-executive director. We have seen a copy of a memorandum that was issued to the board of the EBS at the time. I cannot share it with the committee. The memorandum clearly stated that the board had decided that 20 underperforming offices would be closed as part of the EBS restructuring plan for the EU. We understand that. It is business. The reality is that many offices of agents who lost their contracts are still open, are still running and there are still people in them. We vehemently deny that we were underperforming and we have proof of that. We were not underperforming. Some 20 offices were going to be closed and we were used as an example to cut offices. As I have said, many of those offices are still open so the underperformance argument does not stand up. I would question it, and we believe there was a personal side to the determinations.

**Deputy Michael McGrath:** I would support the committee doing more work on this issue. We need to hear directly from EBS and have its representatives in front of us. The note we received from EBS is unsigned and there is no name next to it. Each time we engage with AIB to ask about EBS we are told that AIB speaks for EBS but EBS is a separate legal entity within the AIB structure. They should be here to answer questions on this directly. I support that.

**Senator Kieran O'Donnell:** I welcome Mr. Kavanagh and Mr. Butler. AIB has taken over. Now that AIB owns EBS and it is part of the AIB family, have the witnesses found a change or improvement in the relationship?

**Mr. Shane Kavanagh:** I could not answer, that as I am no longer part of the network.

**Mr. Cormac Butler:** I am not directly involved with EBS.

**Senator Kieran O'Donnell:** Mr. Kavanagh said he was not here in January. To which January was he referring?

**Mr. Shane Kavanagh:** It was January 2011.

**Senator Kieran O'Donnell:** Mr. Kavanagh said the "problem was the inability of EBS to provide mortgages that agents could sell". He also spoke of the non-executive directors. Who

were the non-executive directors? What type of products was EBS not providing? Mr. Kavanagh also said “there were a few policy decisions taken by EBS which, in hindsight, contributed significantly to the avoidable problems that EBS and their agents faced”. Will the witness tell us what those policy decisions were? Mr. Kavanagh has spoken about his own situation from his business’ perspective. Perhaps he could explain how long was he a tied agent with EBS and how he built up the business. Did he operate from a town, a city or a village? Over the years - for example the period from 2002 onwards - what happened and what were the changes? He was at the coalface. People were coming in and Mr. Kavanagh’s business was processing mortgage applications through EBS. I was in practice at the time and we had a lot of people who came to us through a person they knew, such as auctioneers in the towns and so on. Will Mr. Kavanagh give the committee his personal perspective on looking through the prism of those years?

**Chairman:** I suggest that Mr. Kavanagh takes a general view on this and does not mention names.

**Mr. Shane Kavanagh:** Yes that will be no problem at all. I started working as a branch official for EBS directly, at the front counter, in 1999.

**Senator Kieran O’Donnell:** Was this as an employee of EBS?

**Mr. Shane Kavanagh:** Correct, in 1999. I worked in customer service also and a number of other different offices. I was on the relief panel at one stage where I would go to different offices if they were short a staff member. That was my starting point. I am not exactly sure of the time but it was around 2002 or 2003 when I began to work for an agent of EBS who then asked me to work for him as his assistant manager in a local office. From there I grew my own reputation within EBS for being a good employee and a good worker. In 2006 there was a call to the network with regard to growing the offices and the businesses and they were looking at other opportunities. At the time, in my wisdom, I saw a greenfield site and I went to EBS with a plan for an opportunity to open an office in that growing, affluent area. EBS listened and agreed we should go for it

**Senator Kieran O’Donnell:** Was that in 2006?

**Mr. Shane Kavanagh:** The process started in 2006 and the EBS agreed it around 2007.

**Senator Kieran O’Donnell:** So it was at the peak.

**Mr. Shane Kavanagh:** Yes. It was going into a shopping centre that was not properly constructed so-----

**Senator Kieran O’Donnell:** With regard to the structure within EBS, was Mr. Kavanagh an employee of the EBS or was he self-employed?

**Mr. Shane Kavanagh:** Initially I was an employee, then I worked for an agent and then I was self-employed.

**Senator Kieran O’Donnell:** Did Mr. Kavanagh rent the building? Was the lease in his name and were the overheads part of Mr. Kavanagh’s business?

**Mr. Shane Kavanagh:** No. The lease was in the name of the EBS. I was the licensee of that lease so the costs still came to me.

**Senator Kieran O'Donnell:** Mr. Kavanagh was in the cockpit when things went over the cliff.

**Mr. Shane Kavanagh:** Yes.

**Senator Kieran O'Donnell:** Will he explain how the relationship changed with EBS from the set-up?

**Mr. Shane Kavanagh:** Yes. I elaborated on this earlier. We came from a mutual building society background. We did not have customers - we had members. It was all about care for the member, proper customer service and growing the membership locally. One was using trust and building on trust to build a proper steady business based on proper fiduciary rights and duties, as a person in a proper financial position to do that. Our members were made up of people who were great clients and we had a great business with them. There was nothing to stop that business continuing to this very day, but EBS wanted to change the structure and convert the business from safe products into what I regard as non-safe products. The products were okay if they were sold correctly and to the right people, but the products did not suit everybody. We were not selling shoes, we were selling complex financial products. That is the bottom line. We were not selling shoes. EBS wanted sales, sales, sales. We did not like that much.

**Senator Kieran O'Donnell:** Were targets set for Mr. Kavanagh?

**Mr. Shane Kavanagh:** We absolutely were set targets.

**Senator Kieran O'Donnell:** Mr. Kavanagh said that incorrect products was being sold to the customer. Will he define this? Can he give an example?

**Mr. Shane Kavanagh:** I will give the committee a real-life example and I will not use names. There was one situation where we were supervised to make sure we were actively selling. If a client had a lump sum investment but very much wanted his or her money kept safe, we were actively told to try to get some of that money into a protected bond. In the sale of protected bonds, with the word "protected" one would assume that the money is protected. The small print, however, indicates that the money is only protected after five years. If the person wants the money before that date, then it is not protected. We were given instructions to make sure our paperwork was right. The paperwork included a freetext box, which is the piece we put in, where the wording was inserted in such a way that "you" decided. This is even though I tell a person to put his or her money into the product, and the person trusts me because he or she always has dealt with me. They may say that Shane was a nice fellow, that they trusted him and that they would do whatever he said. Some customers were like that; they trusted one. While I do not state that people did this, the opportunity was there to do it because people were under pressure to get their sales. They might put somebody into one of these products and the forms stated that "you" chose it and "you" were made aware of the charges and have been told that after five years, the capital is protected etc. That part of the paperwork is in the freetext box but this is manipulation. If the client decides suddenly, two or three years down the road that he or she did not want that and goes to the financial services ombudsman, the ombudsman will then look for a copy of the paperwork, where everything will be in favour of the bank. I felt it was very underhanded and so did the rest of the agents. When we queried it we were basically thrown out.

**Senator Kieran O'Donnell:** Can I support Mr. Kavanagh on this? There is a body of work to be done here.



**Chairman:** During the exchanges Mr. Kavanagh had with members, he referred to the terms and conditions, an incentive scheme and that his position was terminated. Perhaps Mr. Kavanagh will give the committee a note, without accusations, with some further information. Will Mr. Kavanagh let us know, as he was doing with Senator O'Donnell, exactly how the general body of people who were tied agents were affected overall? An overall note on that would be useful. He gave us the number of legal cases. How many tied agents are there now? How many are now taking cases? We would like the information on it when we deal with the banks.

Will Mr. Butler fill out a little bit on the three paragraphs that he gave us on the decision taken by EBS? He went on to talk about the banking crisis and so on, and then he addressed the €2.3 billion. Will he give us a deeper sense of the points he is making there?

What I suggest to the members this morning, arising from what they asked, is that we give a right of reply to EBS and AIB, that we talk to the Central Bank and send it transcripts of this meeting, and that we arrange an appropriate engagement with each one, EBS, AIB and the Central Bank, to determine how we can move forward from where we are right now. This is a first meeting to get agreement from members. We have that agreement. They are the steps we will take.

In everything that has been said, I find it extraordinary that neither the terms of reference or the final report ever emerged in the process entered into. In terms of the legal cases and challenges that are there, I cannot help but think that those on the other side of this argument have legal muscle and money, and that might be a way of dealing with it, which is unfair. A bank which has got €2.3 billion is answerable to this committee. The Central Bank and the regulator need to be more accountable than they have been to date. That is my view. The members are anxious that we see more information and that we engage as soon as possible with the Central Bank and AIB.

I thank the witnesses for coming to the meeting today and opening this paragraph of the investigation. I also thank their colleagues, all the tied agents and all the families affected. I appreciate them coming here. We look forward to engaging with them again.

*Sitting suspended at 12.13 p.m. and resumed at 12.16 p.m.*

### **Discussion Paper on Taxation: Deputy Marc MacSharry**

**Chairman:** I welcome Deputy MacSharry to the meeting. We will go directly to him for his opening statement.

**Deputy Marc MacSharry:** I thank the Chairman and members for the opportunity to discuss this matter. The introduction and implementation of a child tax credit or allowance of up to €1,654 per annum for each child up to a maximum of four, even where a worker does not have any tax liability, as is the case for many low-income workers, would be very progressive. A minimum wage worker with three children earning €18,958 from working 39 hours per week would receive a tax credit or allowance of €4,962 which would in turn increase his or her net income by 26% to €23,920. An identical family with a gross income of €70,000 would gain only 10%.

I set about compiling this analysis based on the experience of dealing with many families depending on social welfare and many more who are depending on low-income employment.

Many here will have had similar a experience to me through their own constituency work. Through the years it has become clear that many issues exist which must be addressed to eliminate discriminatory quirks in both our welfare and taxation systems while incentivising work and also providing the necessary supports to families, whether working or not.

As the committee will be aware, in Ireland wages and our taxation system do not differentiate between workers with or without children. This is in contrast to the welfare system where there is an increase paid for every qualified child in addition to a personal payment and an increase for a qualified adult dependant if applicable.

The costs associated with raising a child as having a significant impact on the ability of a worker to bear the burden of taxation were acknowledged as far back as 1799 when a tax on income was first introduced. Any working parent of a child was consequently entitled to relief. The method varied through the years but working families with children continued to pay less than those without until 1986 when the then child allowance was abolished. As things stand our taxation system provides a tax credit for an adult dependant but gives no recognition to children or the associated costs of raising a family. Our welfare system, on the other hand, provides €1,654 in additional support per year per child for no fewer than 27 different welfare schemes together with likely qualification for a number of other benefits such as medical card and housing support among others.

This paper outlines some of the many anomalies that exist in both our tax and welfare systems. The analysis shows clearly, for example, that a low-income worker, such as a worker on the minimum wage, is better off choosing not to work and claiming jobseeker's benefit or allowance if he or she has a number of children. Clearly, such a situation is unsustainable. One such example is a married couple with three children. If they are on jobseeker's allowance of €17,129, it is further supplemented by €1,654 for each child, a total of €4,962, giving an overall total income of €22,091. They would also qualify for secondary benefits in terms of the medical card, housing support, etc. If we looked at the equivalent family working on the minimum wage for 39 hours per week, its income would be €18,958. The family gets no allowances of any description for their children, as with the welfare system, and so €18,958 is the family's total income. This indicates to me - I am sure many of us have come across it - that it incentivises people in those circumstances not to work as opposed to seeking out gainful employment. The research outlines much of the detail regarding existing welfare supports, anomalies therein relative to working families and the clear need for tangible action to address the problem in a way which is fair and supportive to those often referred to as the working poor - in other words, low and middle-income workers.

On foot of the research reflected in this paper, my conclusion is to propose the introduction of a child tax credit or allowance thus ensuring that our taxation system treats children in the same way as our welfare system. For the purposes of preparing a paper only, I pitched the child tax allowance or credit at the same level as the child social welfare qualifying payment of €1,654 per child. However, to seek to do so at that level in one year or in a short period of years would, in light of the enormous cost of more than €1 billion per annum, be reckless. It is worth considering that if we accept the principle, which is what I am seeking to promote, of the need to introduce such a child tax credit or allowance, we could build towards it over time. The research carried out by my team and me included a detailed analysis of the cost of such a child tax credit or allowance with the use of excellent support by way of data provision from the Department of Employment Affairs and Social Protection, which I would like to acknowledge. Our estimate is that 638,000 children under 18 will benefit at a total cost at just over €1 billion

per annum with the credit set at €1,654 per child. A start might be a Government committing to €100 million to €150 million per annum to such a measure, which, subject to sustainable resources, could be built to mirror the child qualifying social welfare allowance over the lifetimes of two to four Administrations, namely, ten to 20 years.

Working families are the bedrock of our nation. The removal of existing anomalies and the provision of adequate support through the reform and reorganisation of parts of our taxation and welfare systems are essential. The *status quo* should not and cannot be allowed to continue. Following research, it is my considered opinion that this group should be given a level of priority and should benefit from changes to tax bands and tax rates over the coming period via the introduction of the proposed child tax credit or allowance. As the language of surplus slowly begins to replace that of deficit and given the emergence of growing fiscal space, the time is right to consider the implementation of such measures. I very much hope that this paper can act as a catalyst to commence a meaningful discussion and can lead to the necessary and overdue acknowledgement of working families with children in our society.

I again thank the committee for its invitation. I hope it can concur with the merit of this proposal and advise the Departments of Finance, Public Expenditure and Employment Affairs and Social Protection of its support for the adoption, in principle, of the need to incentivise work while supporting those who cannot work with an appropriate child tax credit or allowance.

**Deputy Michael McGrath:** I welcome my colleague, Deputy MacSharry, and thank him for his opening statement. Everyone has had sight of the discussion paper prepared by Deputy MacSharry. I genuinely commend him on this initiative. It is very evident to anyone that a huge amount of work has gone into this proposal. The research is excellent. It certainly contains innovative thinking and is very well presented. This is what a mature parliament does. Proposals should come from parties and individuals within parties. What the Deputy has asked for is that we engage in an open and honest discussion about the merits of what he has proposed and I am happy to do that.

The Deputy has chosen the tax credit model. If the issue we are seeking to resolve is the trap whereby people on social welfare chose not to work because it is not worth their while - an issue we have all come across in the course of our constituency work - why is Deputy MacSharry proposing this model as opposed to, for example, one involving secondary benefits, such as helping people to keep their medical cards, tackling child care costs and the issue of people losing the housing assistance payment if they attain a certain level of income from employment? Could Deputy MacSharry set out the rationale for opting for a tax credit-based approach in respect of each child as opposed to dealing with secondary benefits to make it worth somebody's while to work?

**Deputy Marc MacSharry:** In the first instance, it is because this works in other countries. It is in place in the UK, the US, Canada and some other countries. In addition, we would be giving people the money directly by way of savings in terms of taxation or because, due to the structure of it, if somebody had no tax liability, it would in effect be a payment. This happens in Northern Ireland. We would be giving the money directly to the people who need it. While we all acknowledge that there are issues with child care and the cost of education, which was raised in the Dáil yesterday in terms of parents having to contribute, we would be giving the money directly to the people. As all of us here and those in the committee room next know all too well given the sort of administrative costs involved, if we start saying "Let's deal with the medical card issue, child care and all of that", it will cost us a great deal more. We would be giving the money directly to the people to ensure that it has the maximum impact in terms of

what it is intended for rather than having to redesign the medical card scheme overall. There are anomalies in all of the schemes and these probably need to be addressed. However, putting the money where it needs to be is why I felt that the tax credit or allowance was the way to go. Ultimately, it is about the things it will bring in apart from the secondary benefits anomaly. It is also money. If people feel their brother or neighbour is earning more in cash per week for doing nothing, there is a psychological impact in terms of dignity.

**Deputy Michael McGrath:** In respect of the question of fairness, workers or couples with no children have a high burden as well in terms of income tax.

**Deputy Marc MacSharry:** Sure.

**Deputy Michael McGrath:** They will not benefit from this. One could argue that they do not have the costs associated with child rearing but how would Deputy MacSharry address the question that it is unfair for those people to not get a tax break? What about the argument that this would result in taking far more people out of the tax net? The general view among some international bodies is that it is a mistake to take more and more people out of the tax net completely and that everyone should make some contribution, however small. Would Deputy MacSharry have any concerns on that front?

**Deputy Marc MacSharry:** I would not because it is dealing with an anomaly in society whereby there are increasing costs for families, not just child care but a whole range of issues relating to raising children. The taxation system is used in a variety of different way. For example, one could argue that we are all subsidising the knowledge box in terms of corporation tax but, obviously, Marc MacSharry or Joe Bloggs is not deriving a direct benefit from it. I am not saying we should levy taxation to increase taxation to pay for this. While it is pitched at the high rate of €1,654, I am at pains to point out that it would be reckless to seek to do this in a single year. Rather, it would be dependent on the sort of fiscal space that is available to us. Within the two to one split that is being employed in terms of budgeting, we would seek to ask whether we can afford €100 million or €150 million per year for this within the existing space. Subject to sustainable resources, we would then add to it as time passes.

The fairness model is somewhat of a red herring because there are so many different things within the Taxes Consolidation Act that may be there to benefit different sections of society in quite an honourable way. This is just another one. I certainly would not be seeking to penalise or add to the tax burden of people who do not have children. We would provide a measure like this from our existing revenue base.

**Deputy Michael McGrath:** What level of priority would Deputy MacSharry afford this idea in terms of the reduction in universal social charge, USC, for everyone, with an emphasis on middle-income earners? It must be remembered that our entry point for the marginal rate of tax is quite low by international standards. Where would Deputy MacSharry rank this proposal in terms of priority with those or would he see progress on this being made in parallel with reductions in income tax generally?

**Deputy Marc MacSharry:** As I said in my opening statement, I would like to see this given a level of priority similar to those other matters highlighted. It is the principle I would love to see embraced. That is why the document has no party logo, it was not written in a political context and when I published it in April, I sent it to all Members of the House, all committees and all Departments.

I would love to see general acceptance that this is a route we need to go. It is not that it trumps the need for the abolition of or a reduction in USC or the movement of bands, rather that it exists in parallel and subject to space. Prioritising the taxation system support, in the same way as the welfare system, to the cost of raising children is a basic principle that was embraced from 1799, the beginning of taxation in this country, right up to 1986. We would serve the nation well if we re-embraced that principle.

**Senator Rose Conway-Walsh:** I thank Deputy MacSharry and commend him and his team on the work they have put into this. Obviously, I agree with many of the sentiments in terms of the working poor, as the Deputy referred to them, and families that are really struggling.

**Chairman:** The Senator's phone is interfering.

**Senator Rose Conway-Walsh:** That is it. Blame Sinn Féin again. The Chairman is never one to miss an opportunity.

**Senator Kieran O'Donnell:** Persecution complex.

**Senator Rose Conway-Walsh:** I am sorry about that.

Obviously, a lot of work has gone into this and, as Deputy MacSharry stated, it has worked in other countries. The beauty of child benefit is that it reaches all children on the basis of equality. I am not sure that one can say that Deputy MacSharry's proposal would treat children the same, that one can do that the same in the welfare system as in the tax system. If we look at table C which shows the impact on a family earning €70,000, they would have an extra €5,000 after this charge. I would not call that a progressive change. When we look at the percentages, the minimum wage workers could earn 26% extra and they stand to gain the €5,000. Would that be right, in the case of the person on €70,000 and the person on the much lower wage?

**Deputy Marc MacSharry:** No, it is progressive. The minimum wage worker would have a gross income of €19,367 or, as I mentioned earlier, €18,958 net.

**Senator Rose Conway-Walsh:** Would they both be €5,000 better off?

**Deputy Marc MacSharry:** No. Those on the minimum wage would be 26% better off in terms of their net income. As a proportion of their income, it would be much less for a higher income but they would be getting the same amount.

Let us say a Government was to commit €150 million to this. With 638,000 children, that would equate to approximately €240 per child. If one has three children and one's salary is €70,000, one will have a tax allowance of €240 per child. The person on the minimum wage is likely to pay little or no tax, and will get that in cash. In some countries, it is called a refundable tax credit.

**Senator Rose Conway-Walsh:** Is Deputy MacSharry talking about giving those who do not come into the tax net a payment?

**Deputy Marc MacSharry:** Yes, that occurs in other countries. Maybe it was Senator Conway-Walsh's choice of words, but she mentioned child benefit a minute ago. This is separate to child benefit.

**Senator Rose Conway-Walsh:** I understand that.



**Deputy Marc MacSharry:** I am not proposing abolishing child benefit. That is separate. Everyone gets that, as it is.

**Senator Rose Conway-Walsh:** I suppose what I am trying to get at is whether we would be better off with a targeted measure through the social welfare system.

**Deputy Marc MacSharry:** I do not think so. As the Proclamation with which the Senator would be familiar states, we need to cherish all the children of the nation equally.

**Senator Rose Conway-Walsh:** It would be a bit difficult in how it would apply to the tax system. Would it have any impact on a person's medical card eligibility, the eligibility for SUSI grants or any such matters? Has Deputy MacSharry crosschecked against all of those issues?

**Deputy Marc MacSharry:** I have not. Obviously, there is a range of secondary benefits, especially the medical card, that many of us would argue need to be addressed. We did not include SUSI qualification. Senator Conway-Walsh will see in the other tables we included quite a number of secondary benefits in the analysis. For example, we include FIS. We did not include eligibility for SUSI grants but how SUSI is allocated is something we should focus on in any event. It is a good, reasonable question. I would not like to complicate a support such as this for children with a flaw in the eligibility criteria for SUSI, for example, where I am sure there are issues - we all have come across them.

**Senator Rose Conway-Walsh:** Sometimes we introduce measures with unintended consequences.

**Deputy Marc MacSharry:** Absolutely.

**Senator Rose Conway-Walsh:** I certainly appreciate what Deputy MacSharry is trying to achieve with this paper. My party will have a further look at it, in terms of some of the positive externalities and also the negative ones that might surround it.

I thank Deputy MacSharry for the work that he has put into it. I appreciate that the Deputy is presenting it in a non-party way.

**Deputy Marc MacSharry:** Absolutely. I am not here today in that way. Much of my work might be highly partisan or highly political. This is not here to embarrass the Government or promote Opposition parties or anybody else to put forward particular proposals. It is merely that here is a principle I would love us to collectively embrace. Ideally, I would love to see something in the programme for Government, all parties' manifestos and all Independents' in the future. As a principle, it can assist with many of the issues in terms of costs of raising children.

**Deputy Declan Breathnach:** I thank the Chairman for the opportunity to say a few words.

I have watched this document with interest and I have come today to support what Deputy MacSharry has said, the principle of the concept. There are too many in the squeezed middle we often talk about who are not in a position to educate their family. The struggle of families who do not get SUSI grants and must provide education, particularly up to third level, for their children works out costing between €12,000 and €14,000 annually. Historically, in my own family, there were four of us in college at one time. While there is a perception that some families have good incomes and a reasonable degree of wealth, the reality is, if they are not entitled to some form of tax break, some are struggling.

If we are talking about it as a child tax allowance, it is my firm belief - in the same way child benefit is to help families, particularly to get through the education system - the concept here needs to be seriously looked at. It could be tied into suggestions that we made previously about providing people who are struggling to make savings and are living hand to mouth, with incentives such as an SSIA facility or an incentive for children to save as they grow older. For example, I have mooted to Deputy Michael McGrath previously the issue of not charging DIRT on students' accounts when they go to college. It is a simple measure and it would not cost a great deal. We need to look at the principle. Education, whether in a trade or in a university, is everything. That squeezed middle needs to be considered for some form of incentive in the tax regime; that will be a learning for life for their children, for example, in taking up the badly needed trades. This is one of the hidden problems to a large degree.

As a public representative, I meet people daily who have problems with social welfare and are looking for additional support. We all recognise those people need help. However, there is a middle-income earner out there who needs an incentive. I fully support Deputy MacSharry's principle and it should be thrashed out.

This is a classic issue that should go to the Committee on Budgetary Oversight. I take it Deputy MacSharry cannot be 100% sure that everything outlined in this document is correct but it should be analysed by the Committee on Budgetary Oversight and offered as a suggestion.

**Chairman:** We do not like gnashing our teeth here.

**Deputy Declan Breathnach:** I am not a member of this committee but it would certainly be something good for the budgetary oversight committee to get its teeth into in terms of costing it independently.

**Senator Paddy Burke:** I welcome Deputy MacSharry. This is a very good discussion document and I compliment him on bringing it forward. I am not so sure why he threw in the knowledge box because I believe only a handful of companies have availed of this and only €5 million or €6 million have been paid in corporation tax, so it would not make much of a dent in the €1 billion that this is going to cost.

**Deputy Marc MacSharry:** That was probably a bad example. There are many tax write-offs or incentives available in various areas and it was just to give an analogy.

**Senator Paddy Burke:** This is a very good discussion document but I would not be competent to make too many remarks on it because social welfare and taxation are two very big areas and there are many schemes. I am delighted the Deputy has brought forward a paper for discussion that brings all those together. I would welcome the amalgamation of more of these schemes. When one looks at schemes and brings them forward, there is always somebody who will fall off the wagon. Has the Deputy analysed any areas where there will be people who will fall off the wagon?

**Deputy Marc MacSharry:** We try to avoid that to the extent that is possible. I am not precious about the contents of this, in the sense that if this can be a catalyst to begin a meaningful debate on the tax allowance and credit for working families with children, my ambition will have been realised. This went to all of the committees but this is the only one that came back. I would love if the Committee on Budgetary Oversight ran with this and if the Department of Finance and the Department of Employment Affairs and Social Protection responded. The only Secretary General who wrote back, ironically, was the Secretary General at the Department of

Education and Skills who probably would not have much input into this area at all. However, I would like it to be examined. I would not be caught up in this regard. There is a very significant cost in terms of where we have pitched it, but it would be reckless to set out to do this in a short number of years. It is about embracing the principle and seeing what can be afforded and as resources are freed up or become more available on a sustainable basis, one could then build it at the level of the allowance for the welfare recipients.

**Senator Paddy Burke:** What the Deputy is saying is that with the €1 billion potential cost, and if there was a commitment given of €100 million or €200 million in year one or year two, he would change the whole system over a period of time. Is that what the Deputy is really saying?

**Deputy Marc MacSharry:** One would not be changing the whole system. One would be introducing a tax credit allowance at whatever level was affordable in terms of the Exchequer. I was proposing that €150 million would equate to an allowance or tax credit per child of about €240. That would be the level, if we could afford €150 million on an annual basis. That is a huge amount of money in the context of the budget and what is available. It is not about changing the whole system but introducing a new measure which would channel resources directly to the people who need them, which is cash in hand, in order to meet the bills and costs of raising a child.

**Senator Paddy Burke:** I wish the Deputy well with this and believe it is a very good document for discussion. Where the Deputy goes from here, I do not know.

**Deputy Marc MacSharry:** The question is about where the committee goes from here.

**Chairman:** I call Senator O'Donnell.

**Senator Kieran O'Donnell:** Can I raise an element of due diligence? Is there a danger that this could create a poverty trap and could be abused by employers? What the Deputy is proposing to do might be more correctly dealt with through family income supplement, FIS, and through amending the FIS rules? There is a danger here that if someone has a low-paid job and has children, the employer will use this proposal as a subsidy and continue to pay that person a low wage. It would be better to allow a system where social welfare deals with people who need assistance, where they are fully unemployed or where they are on FIS. Perhaps FIS needs to be amended rather than looking at this solution. The Deputy is differentiating between categories. He is saying that someone who is unemployed can do this through the social welfare system and someone who is working can do it through the tax system. I am asking about the unintended consequences. I am wondering if what the Deputy is looking to do here could be more correctly and efficiently done through reform of the FIS system.

**Deputy Marc MacSharry:** I do not think so. The issue of rogue employers is an issue now, where employers are taking advantage of the fact people are entitled to FIS. That argument will continue regardless. This is not recommending the abolition of FIS. FIS would remain, where necessary. I respectfully disagree with the Senator's point on that. I do not think it would be any more or any less of an incentive to an employer, after the introduction of something like this, to take advantage of employees any more than is already happening. That is an issue of enforcement and an issue for society where unscrupulous employers would price the cost of labour by taking into account what they could take off the State in terms of supports and instead of paying-----

**Senator Kieran O'Donnell:** What other countries are using this model?

**Deputy Marc MacSharry:** The UK, the US and Canada, are using this, to my knowledge.

**Chairman:** Are there any other questions? Does Deputy MacSharry wish to add anything further to this?

**Deputy Marc MacSharry:** Not a thing other than to thank the committee very much for allowing me the space to come in. I am wearing a non-political hat in the context of this proposal. A win for me or a win for children would be if the committee, in its own time, was to decide to refer this to the Department and ask if it could examine the principle of this in the context of budget preparations into the future. Perhaps the Committee on Budgetary Oversight could do so also.

I thank the committee again and hope that members in their work, politically or otherwise, might promote the principle of the introduction of the recognition of the costs of raising a child in our taxation system in the same way as we do in our welfare system.

**Chairman:** The principle of producing a document like this for discussion, without a political tag on it, is one that I would subscribe to. Each one of us, regardless of our politics, must prompt each other to think beyond the box, and not to be controlled either by parties or by bureaucracy in the delivery of that personal message, policy or point of view. Members from other parties are here this morning. I firmly believe the committee structure should allow for this type of examination of policies and then parties can take them on. I refer to Deputy MacSharry's figures and proposals. It is good that he has said that getting the principle of this accepted is something that should be encouraged. I compliment the Deputy on the very professional way this is presented in terms of the analysis provided for us.

With the agreement of members, I recommend that we send this to the relevant Departments - it may be only the Department of Finance but if there is another one, fair enough - for their views, costings and commentary on it. We should also send the transcript of this meeting to the Departments and to the Committee on Budgetary Oversight to encourage them to analyse the document and to support the principle the Deputy has sought support for. The other principle of bringing one's brain inside the gates of Leinster House, that is, that one is not just in a political straitjacket but one has a contribution to make beyond that, should also be supported. I thank the Deputy very much for that.

**Deputy Michael McGrath:** I want to support the proposal of the Chairman. Instead of us writing to several Departments we should write to the Minister for Finance and ask for his Department's assessment and that it consult with the other relevant Departments, namely, the Department of Children and Youth Affairs, the Department of Employment Affairs and Social Protection and the Department of Business, Enterprise and Innovation. Instead of us writing to several Departments, we should write to the Minister for Finance and ask not only for his Department's assessment but that it would consult with the other relevant Departments, namely the Department of Children and Youth Affairs, the Department of Business, Enterprise and Innovation, the Department of Employment Affairs and Social Protection, and for the Minister, Deputy Donohoe, to revert to the committee with the considered response and assessment of the proposals made by Deputy MacSharry.

**Deputy Marc MacSharry:** I ask that the Minister focus on the principle of this. We all could write the Minister's response in terms of anyone looking to spend €1 billion on anything.

**Chairman:** We could highlight that. I propose we send the transcripts as well so that they

DISCUSSION PAPER ON TAXATION: DEPUTY MARC MACSHARRY

clearly understand where the Deputy is coming from. Is that agreed? Agreed. I thank the members for their attendance.

The joint committee adjourned at 12.50 p.m. until 1.30 p.m. on Tuesday, 3 July 2018.