

DÁIL ÉIREANN

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

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

Dé Máirt, 9 Márta 2021

Tuesday, 9 March 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Mick Barry,	Pat Casey,
Pearse Doherty,	Aidan Davitt,
Bernard J. Durkan,	Alice-Mary Higgins,
Mairéad Farrell,	Marie Sherlock.
Steven Matthews,	
Jim O'Callaghan,	
Neale Richmond,	
Peadar Tóibín.	

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

Central Bank of Ireland: Discussion

Chairman: I remind members and those attending to please turn off their mobile phones and to identify themselves when contributing to the meeting. I am sure everybody is aware of the note on privilege, namely, those in attendance here and in the parliamentary precincts have privilege, but those outside may have limited privilege.

Today, we are engaging with the Central Bank of Ireland on a number of issues. I welcome Mr. Ed Sibley and Ms Derville Rowland. We have received an opening statement such that witnesses need only make some general comments on it rather than read it fully. However, the statement will form part of the record of the meeting.

I invite Ms Rowland to make her opening statement.

Ms Derville Rowland: My colleague, Ed Sibley, and I welcome the opportunity to meet with the committee. In our opening statement, we sought to touch on the issues highlighted as of concern to the committee, including the effects of Covid-19 on borrowers and in insurance, wider developments in the banking sector in Ireland and, of course, the most recent outcome of an enforcement investigation into the Davy Group. We see our engagement with this committee as very important in informing how we deliver on our mandate and demonstrate accountability for the work we do in the public interest. We are always open to exploring how we can enhance our engagement with this committee.

In reference to Covid-19, I acknowledge that first and foremost it is a cause of human tragedy which has had a devastating impact on families and individuals. The necessary measures to address the health emergency have had a negative effect on many businesses and household incomes due to the associated economic disruption. At national and European levels, as part of the Eurosystem and Single Supervisory Mechanism, SSM, the Central Bank has taken action seeking to ensure that the financial system absorbs the shock and is better placed to support households and businesses in this crisis. The work over the last decade has sought to ensure banks and other firms are financially and operationally resilient. This has been important to allowing those firms to extend financial support and continue to lend when the shock hit.

During 2020, Covid-19 payment breaks supported a significant number of borrowers. Lenders granted payment breaks to more than 172,000 Irish accounts, representing more than €23 billion of lending. The majority of those payment breaks have ended, with approximately 90% of borrowers returning to full repayment on either existing or extended terms. The remaining 10% of borrowers have indicated they need further financial support. Support to borrowers continues now on a case-by-case basis and through more regular forbearance measures. Despite the reduction in distressed debt over the past decade, a sizeable number of borrowers were in distress before the onset of the pandemic. Therefore, distressed debt remains a key priority for us. Our focus is to ensure lenders have suitable supports in place to help borrowers. We are supervising lenders to ensure they have appropriate strategies, the necessary financial and operational resources and a suite of appropriate and sustainable solutions to resolve distressed debt, whether it arose before or as a result of the pandemic. We prioritise effective engagement between lenders and distressed borrowers, noting that such an approach will prevent the build-up of arrears and the successful restructuring of loans where debt-servicing capability has been reduced. In this context, it is important to apply the lessons of the last crisis. I refer the committee to the further details set out in the statement, to which I do not propose to refer now.

The Central Bank of Ireland has also prioritised the issue of business interruption insurance since the onset of the pandemic. We have conducted a system-wide examination. From the outset, we have been clear on expectations of firms that they treat their customers fairly and pay valid claims. We have been intrusive and assertive in our work for customers and this remains a key area of our focus. Through the examination, we have focused on identifying all groups of impacted policies where, in our view, the relevant contractual provisions provide cover for Covid-19 related interruption. Our aim is to drive a system-wide response so that all customers are identified and valid claims are paid. We have analysed more than 250 different policy types across more than 30 insurers, determined that they will meet their obligations to their customers. As a result of our supervisory interventions, a number of insurers had already accepted and commenced settling claims. This occurred before the recent High Court judgment, which is significant and welcome and reinforces our system-wide supervisory action. We can confirm to the committee that all firms in scope have accepted the outcome of the judgment and we, therefore, expect that all valid claims will be handled and paid by the firms in accordance with their claims handling obligations and in compliance with their legal and regulatory obligations. Where there is a wider impact of a court judgment to the benefit of customers, the Central Bank has instructed firms to re-review previously declined claims and to identify customers who have insurance policies with cover and who may have a valid claim and those who have not yet made a claim. We have instructed insurers to communicate with their customers to inform them of the insurer's updated position in relation to claims and to invite their customers to submit a claim if they have suffered losses due to Covid-19 related business interruptions. We understand the concerns of customers, staff, committee members and others regarding NatWest Group's decision to close Ulster Bank in the Republic of Ireland. There are clear implications for the competitiveness of the Irish banking market, particularly for business lending. We also understand the concerns regarding Bank of Ireland's decision to close bank branches across Ireland, including societal concerns about the impacts and effects on rural communities. These decisions are being made in an environment of significant change in retail banking across Europe and beyond. New technology is having an effect, and I am sure these matters will be discussed further.

Banks will continue to have an important role in the functioning of the economy and the supply of credit and services to businesses and consumers, and that role is changing. It is important the discussion on the future of banking starts from the basis of the current and future financial services needs of businesses, households and individuals. In that way, the discussion will allow the role of other financial service providers, from payment institutions to credit unions, in meeting the needs of our community to be considered.

Decisions relating to the strategic direction and business models of firms are decisions for the boards of those firms. The Central Bank cannot require firms to keep operating in the State if they do not wish to do so. However, we can ensure that changes are done in an orderly manner, impact assessments are done in respect of the impact on customers, an appropriate level of care is taken and adherence to the consumer protection code provisions are complied with.

We have previously provided detailed responses to questions from the committee on bank capital. I will not detail that information again, but it is important to note that appropriately capitalised banks are fundamental to protecting consumers, maintaining the supply of credit to businesses and households and ensuring financial stability.

The reprimand and fine imposed on Davy reflect the serious regulatory breaches and aggravating factors in that investigation, including the firm's lack of candour when first reporting the matter to the Central Bank. As we have detailed in the statement, Davy prioritised facilitating

an opportunity for a consortium of 16 employees to make personal financial gain over ensuring it was complying with its regulatory obligations.

Enforcement action supports and runs alongside our supervisory interventions. This assists in driving remediation of risk and issues in governance, risk management and control frameworks of the firms we supervise. When the enforcement actions conclude, we insist on a detailed public statement because we believe sunlight is the best disinfectant and it is important to be transparent where we can. The Central Bank has a strong enforcement record, having concluded more than 140 enforcement actions and imposed financial penalties in excess of €128 million, with a number of individual disqualifications and prohibitions imposed.

Notwithstanding our strong enforcement powers, we believe the regulatory framework requires further strengthening with regard to individual accountability. We regard the individual accountability framework, including the introduction of conduct standards for individuals, and the senior executive accountability regime, SEAR, as a necessary enhancement.

I thank committee members for their attention. My colleague and I are happy to answer any questions they may have.

Deputy Jim O’Callaghan: I thank both Central Bank of Ireland representatives for appearing before the committee this afternoon. I will ask Ms Rowland questions about the Davy transaction and her report. If possible, can her answers be concise as well as complete? I am operating under pressure of time, as are my colleagues.

Ms Rowland stated in the report on the Davy transaction that from her first engagement with Davy, it provided vague and misleading details and wilfully withheld information. In what way did Davy try to mislead the Central Bank?

Ms Derville Rowland: In the course of our supervisory engagements with regulated firms, there is a considerable amount of information exchanged. In early recourse, when the transaction became public, there was contact from Davy that sought, in our view, to minimise the transaction and mischaracterise the seriousness of the events. That was at the first engagement. Further information was provided in the course of the early supervisory engagement. It subsequently transpired, in the aftermath of a very forensic and diligent investigation, that the initial characterisation of the events that occurred lacked the candour the Central Bank of Ireland expects from the regulated firms we supervise.

Deputy Jim O’Callaghan: What information did they wilfully withhold from the Central Bank?

Ms Derville Rowland: I am confined to the details we have agreed in the outcome of the enforcement case. The matters are referred to there and I cannot go beyond that detail. I am trying to be as straightforward as possible with the Deputy in telling him that in the early stages of the description of the events that occurred, we formed a view that the information provided mischaracterised the gravity and seriousness of the matter and what had in fact occurred. It lacked candour, in our view, with respect to the very serious events we excavated in the course of a forensic and detailed enforcement investigation.

Deputy Jim O’Callaghan: Ms Rowland said the information Davy provided sought to present the involvement of certain individuals as appearing more central to the transaction. I am not looking for names, but what individuals were they trying to present as being more central to the transaction?

Ms Derville Rowland: I am confined to the detail that has been put into the public domain with respect to the enforcement investigation. The contact was to mischaracterise it, in our view. It subsequently transpired, in the course of a very detailed and forensic investigation, the facts of which are laid bare in more than 4,000 words in the public outcome we published, that Davy did not characterise it as we subsequently detected it to be. This was, in our view, a transaction that sought to put the profit and gain of senior people in Davy and their staff above their duties which are very explicitly laid down in the requirements for investor protection and market transparency in the markets in financial instruments directive, MiFID, regulations.

Deputy Jim O’Callaghan: Ms Rowland reports that Davy compliance was misled by a committee member. When did that happen?

Ms Derville Rowland: I am again confined to giving the Deputy the detail and the information in the public domain, but we have sought to be as explicit and as clear as possible with him. This is a story of Davy-----

Deputy Jim O’Callaghan: I am sorry to cut Ms Rowland off, but I am limited in my time. She has answered on a number of occasions that she is confined in the answers she gives. What is confining her? Is there an agreement between the Central Bank and Davy?

Ms Derville Rowland: This enforcement outcome was concluded pursuant to the administrative sanctions procedure. There are two possibilities in making the outcome of these enforcement actions public. The first possibility is by way of resolving the matter to conclusion against the firm in a settlement agreement. As part of that, the information put into the public domain is by way of agreement with the firm. That is the permission under which the detailed public statement is put into the public domain. We do not, in the normal course, ever conclude a settlement agreement unless there is very detailed information put into the public domain.

The second option is by way of the findings of an inquiry hearing into the matters, if they are fully disputed. It is only after the conclusion of that hearing that inquiry details can be publicised pursuant to statutory commission.

Deputy Jim O’Callaghan: Was Ms Rowland’s investigation pursuant to the appointment of an authorised officer or bank-appointed inspector, or was it otherwise?

Ms Derville Rowland: The enforcement investigation is conducted by staff in the enforcement division of the Central Bank of Ireland who, along with many of our staff, will have authorised officer powers given to them which they use in the course of investigations. I can tell the Deputy how the mechanism works for enforcement investigations if he wishes.

Deputy Jim O’Callaghan: I hope Ms Rowland does not think I am rude, but I am conscious I have a limited amount of time and my colleagues want to get in. I asked specifically whether this was an investigation conducted pursuant to the bank appointing an authorised officer?

Ms Derville Rowland: Many Central Bank of Ireland staff are authorised officers and have authorised officer powers. Statutory powers of the Central Bank were used in the course of this investigation. This was a very contentious investigation and, because of that, the Central Bank of Ireland had to have recourse to its statutory toolkit for compelled powers to compel large quantities of data and information from the firm. In that regard, what I am telling the Deputy is that the teams in enforcement make use of statutory powers and they did so on this occasion.

Deputy Jim O’Callaghan: The Central Bank’s report records findings that Davy contravened six regulations, Nos. 33, 35, two parts of No. 39, 74 and 75. Is that correct?

Ms Derville Rowland: I do not have that ----

Deputy Jim O’Callaghan: I think it is.

Ms Derville Rowland: I do not have it specifically in front of me but I can get it.

Deputy Jim O’Callaghan: It is. Are they also criminal offences?

Ms Derville Rowland: These provisions in the markets in financial instruments directive, MiFID, are not designated as criminal offences. They are very serious regulatory obligations and they have been pursued by the Central Bank of Ireland in the course of this investigation, the outcome of which the Deputy has seen the details.

Deputy Jim O’Callaghan: Regulation 188 in MiFID says that a person is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or a term not exceeding 12 months if the person contravenes a provision of these regulations. Why then does Ms Rowland tell me that a breach of these regulations is not a criminal offence?

Ms Derville Rowland: It may be that I can follow this up comprehensively to the Deputy’s satisfaction with precision in writing but I am telling him that there may be two statutory instruments to which he refers. I am specifying that these provisions are not designated as criminal provisions in the legislative scheme in Ireland. They are regulatory obligations imposed on firms and they are designated under schedule 2 of the 1942 Act as actionable matters under the administrative sanctions scheme. Of course, many provisions are designated as a civil provision as well as a criminal provision; these provisions that form the subject of this investigation are not.

Deputy Jim O’Callaghan: Okay. Perhaps Ms Rowland would follow up with an answer in writing.

Is the Central Bank satisfied that other Davy investors have not been victims of other similar types of transactions? If so, how has Ms Rowland satisfied herself as to that?

Ms Derville Rowland: I understand the legitimate concern of all parties of the conduct of Davy because the enforcement investigation has caused a day of reckoning for Davy with respect to its governance conduct and culture, but this is not our first engagement with the firm.

In terms of our very inclusive supervision, Davy itself has confirmed that there has already been significant change in respect of its governance, risk management, compliance and controls. It has confirmed that external parties have reviewed that. That did not happen by accident. The Central Bank of Ireland uses the enforcement tool to complement our intrusive supervision. We have taken very strong action in respect of Davy but, of course, it will be a matter for it to account for its conduct and answer the questions here. We do not conclude enforcement actions until or unless we are satisfied that the issues complained of have been repaired. Davy has made a further announcement today where it has confirmed that further external review will be undertaken to resolve any matters. It appears to have put the trust in the firm in issue and it will have to take the actions to address that.

Deputy Jim O’Callaghan: Is Ms Rowland saying that the Central Bank does not have within its statutory toolkit a power to prosecute offences under MiFID?

Ms Derville Rowland: I am saying that we have a vast array of regulatory responsibility across very many legal frameworks. Some of those legal frameworks are designated as civil matters, some are designated as criminal and some are designated as both. It depends on which legislation one is looking at whether the statutory designation is civil, criminal or both. One needs to take a very specific look at that. The Central Bank has powers to prosecute summarily with respect to some matters but each legislative scheme is slightly different.

Deputy Pearse Doherty: I thank Ms Rowland for her presentation to the committee. The story of Davy is one of personal greed in which 16 employees short-changed their client to the benefit of themselves, including some of the most senior executives within Davy, and in doing so resulted in a record-breaking fine issued against the firm by the Central Bank. At the heart of this was 16 individuals. Is it the Central Bank's view that investigations will be opened in respect of those individuals or have any investigations been opened?

Ms Derville Rowland: The Deputy will appreciate that even today, further announcements from Davy itself about the staff no longer working there are being made. It has confirmed that the senior individuals who were associated with this are not working in the firm. As we speak, the Central Bank is engaged in very dynamic and significant regulatory engagement with Davy. It is an evolving situation. These are live regulatory issues. It is not that I do not wish to be helpful but I cannot be drawn in commenting on future regulatory actions against individuals. I want to say that we hard fought this enforcement outcome with the firm. The outcome has caused Davy a moment of reckoning. It causes it to have questions to answer with respect to its conduct and culture. It is right that it does. However, it is also right that the Central Bank of Ireland keeps all its options open and does not prejudice any actions with commentary.

Deputy Pearse Doherty: That is fair enough. The last thing that we would want to do is prejudice the actions or potential actions of the Central Bank, however, when taxpayers and members of the public see a fine being issued of €4.1 million yet the CEO who was involved was able to continue in his position for many years and individuals profiting as a result of this, we want to know whether the Central Bank has concluded its enforcement action or whether there is potential for individual sanctions in respect of this. Will Ms Rowland clarify to the committee whether resignation from J&E Davy prevents the Central Bank from pursuing individual accountability in relation to these matters, if it so wished?

Ms Derville Rowland: There are a number of component parts to answer the Deputy's question. He must forgive me, I do not wish to be unhelpful but I will repeat that this is very much a live supervisory matter. I appreciate and understand the legitimate concern he has about some of these issues but I cannot be drawn on possible regulatory actions. What I can say is that the administrative sanctions procedure is a punishment-based procedure. It is about imposing punitive measures on firms where they have broken the rules. We have taken a case against Davy, the firm, in this enforcement outcome. They are the penalties that people see and the detail of the course of conduct. The way the scheme is set up is that the obligations of regulation are obligations that rest on the firm. Once that is done, one can turn to considering participation cases, which is the route through to individual accountability. I have said previously in other cases the Central Bank has a track record of going to the High Court and other courts to vindicate our right to take those cases and we have a track record of bringing those cases even in the face of complex information and complex litigation. We are committed to doing that where possible to do so.

The Central Bank has another option, as the Deputy will be aware, namely, the fitness and probity option. That is a protective scheme; it is not a punishment-based scheme. It is about

ensuring that those who hold senior roles in financial services have the requisite degree of skill, competence and integrity, etc. There is a challenge when people are not in the system that they will face when they come back in, or seek to come back into the system, where any information adverse to their integrity, competence, or capability will be used against them or where people are *in situ* there is an option to remove it. Another very important option is section 21, the third pillar of that scheme, where the firms themselves are held accountable and responsible for ensuring that the people who work for them are fit and proper. That is an important part. We do say that Davy has come out and said that none of the persons associated with this transaction are now working for it.

Deputy Pearse Doherty: On that point, that was well over a week after the sanction was announced by the Central Bank. Did it encourage Davy to enact that third pillar to ensure that nobody who was involved in the consortium of 16 was currently working because following the Central Bank's announcement, the CEO of Davy, Brian McKiernan, was still in his position?

Ms Derville Rowland: I cannot be drawn on specifics with firms. These are firm-specific conversations. The Deputy will appreciate from our many appearances before this committee and his diligent questioning of us that I cannot be drawn into these details. What I can say is that I believe the Central Bank of Ireland's resolute pursuit of this action, our diligent investigation, our laying bare of the details, our dealing with very highly able litigious challenges throughout this investigation and our resolute pursuit of it to the end demonstrate our commitment to holding firms to account. This, associated with our concurrent assertive supervision to demand change that Davy has already publicly cited as having occurred, is part of our ongoing work and we are already focused on these issues in a very live and dynamic environment.

Deputy Pearse Doherty: During the Central Bank's six-year investigation into this issue, did it uncover anything it felt it needed to refer to An Garda Síochána or the Office of the Director of Corporate Enforcement and has it done so?

Ms Derville Rowland: During the course of this investigation, the Central Bank's mixed competence teams of lawyers, accountants and investigators in enforcement acquired the evidence, considered the rule breaches and looked to see if our reporting obligations - and those of our supervisors - to report suspicions of criminal offences to other agencies were engaged. During the course of this investigation, we did not form views that there were criminal reports to be made to other agencies. Now that the full details of the investigation and the facts upon which they are based are in the public domain, we are very satisfied to engage with other agencies that may see a relevant role for themselves. We have already had tentative engagements with some and will make sure there is a very fulsome engagement in the near term.

Deputy Pearse Doherty: Ms Rowland made the point that Davy has stated that none of the 16 employees are currently with J&E Davy. This comment was echoed by the Minister for Finance this morning. However, Ms Rowland will be aware that a number of individuals involved in this consortium are with other companies within this group. Brian McKiernan, the former CEO; the deputy chairman, Kyran McLaughlin; and the head of bonds, Barry Nangle, who were all central to this issue, are also directors of White Note Limited, which holds the majority shareholding in J&E Davy Holdings, which is the parent company of J&E Davy; Amber Note Unlimited Company; and Ailmount Investments, which holds voting rights in White Note Limited. This confers a significant say in and power over the activities of Davy on those individuals involved in the transaction. This has been mapped out quite excellently by the The Currency News over the past 24 hours. Does the Central Bank regulate any of those structures, which are located in this State, in the Isle of Man and in Gibraltar? Ms Rowland spoke about

fitness and probity. Is the Central Bank satisfied that these individuals, who are involved in this transaction, should continue to operate as directors in those holding companies with voting rights and influence in respect of J&E Davy?

Ms Derville Rowland: The Deputy listed a number of companies, the list of which I do not have in front of me. What I can tell him in general terms, because, again, I cannot be drawn into specifics, is that the Central Bank of Ireland has very serious rules about authoring firms. It also has very serious powers with regard to the fitness and probity of individuals who have senior roles in those firms influencing the conduct of those firms and the way they run their business. We take those obligations very seriously. As a general comment, we also have roles scrutinising shareholding at certain thresholds against certain specified criteria for regulated entities. That is the general position. I cannot be drawn on specifics save to say that we are highly focused on this issue and will look at doing our job effectively and with diligence considering all that.

Deputy Pearse Doherty: I appreciate that but Ms Rowland made the comment that the 16 individuals have left J&E Davy when J&E Davy is only one company. There are holding companies and companies above that where the key players in this transaction - the deputy chairperson, the head of bonds and the former CEO, all former positions within Davy - are the directors of those companies with voting rights in respect of those companies. Has the Central Bank looked at the structure? It cannot satisfy itself that these individuals are no longer in Davy when they are running the mother ship. Has the Central Bank satisfied itself? Is there a competence here in terms of the Central Bank with regard to fitness and probity regarding those individuals continuing to participate at that level and within the command structure of that organisation?

Ms Derville Rowland: Again, fitness and probity specifically attach to pre-approved control functions and control function holders in the firms we regulate. That is separate and distinct from shareholdings. The shareholding structure will be associated with the regulated firm and certain levels and thresholds. I do not have the details of that to hand but I am undertaking that the Central Bank is looking at all regulatory issues in this regard.

Deputy Pearse Doherty: I appreciate that and I understand that this is still ongoing. Now we know that at least none of the 16 individuals is in J&E Davy. I am not suggesting there is anything inappropriate about the individuals who transferred from different places in respect of J&E Davy but the current CEO is now the former CEO of AIB while there have been transfers of people from the Department of Finance to Davy and from Davy to the Department. People from the NTMA have moved to Davy. I am not suggesting that any individual who has made those transfers has done anything inappropriate but can Ms Rowland assure us that the 16 individuals, whose names I assume are known to the Central Bank, are not operating in any senior roles in any other regulated entities, for example in banks of which the State has ownership or in the Department of Finance? Are any of these individuals in the NTMA or other regulatory bodies having moved on from Davy?

Ms Derville Rowland: I wish to answer the Deputy's question and I understand his concerns but I cannot be drawn into comments about individuals at this stage. The Deputy will appreciate that this is a live supervisory issue and I am being asked significant numbers of questions. I understand the questions perfectly but I cannot be drawn on any of these matters save to say that we are focused on this and all options are being looked at.

Deputy Pearse Doherty: I appreciate that. If we are not going to get the information, we are not going to get the information. When did the lack of candour, the frustration and the litigiousness regarding Davy, which was mentioned by Ms Rowland, stop? Did that occur right up

until 2021 or was there co-operation with the investigation at board level after a certain point?

Ms Derville Rowland: We certainly experienced a very challenging approach to this investigation throughout the entirety of the investigation. I can speak for the Central Bank in saying that we were preparing to expect this matter to go to a contested hearing at inquiry.

Deputy Pearse Doherty: Ms Rowland said that this was contested and difficult throughout the period. The current CEO of Davy is Bernard Byrne, who was a board member in 2019 and obviously would have some knowledge of the investigation and the interaction with the Central Bank. Regarding the challenges and frustration experienced by the Central Bank during this period, is there now a question for Mr. Byrne to answer regarding his role in, knowledge of and experience regarding the challenges to the Central Bank in respect of its investigation?

We cannot understand how after what Ms Rowland has said and a six-year investigation, Davy gets a reduction of the fine of 30%. The fine was supposed to be €5.9 million but was reduced to €4.13 million in accordance with an early settlement discount scheme that promotes the early resolution of matters. Six years, challenges, a lack of candour, misleading and threatening to go to court is not an early settlement under the discount scheme in anyone's book and should not be rewarded with a 30% reduction. Perhaps Ms Rowland will explain this issue to the committee.

Ms Derville Rowland: I propose to answer the Deputy's second question first and ask my colleague, Mr. Sibley, to address the first question in respect of the interim CEO.

Similar to criminal law schemes where discounts are applied for guilty pleas to avoid court hearings, the Central Bank has applied a 30% discount scheme for cases that settle and avoid the necessity of an inquiry that would take time, expense and, most important, the precious application of skilled enforcement resources that can be better utilised in, for example, pursuing individual accountability in tracker mortgages or any number of our enforcement division's serious and complex cases against firms. There is a well-founded public good in an incentive that sees firms accepting the matter through a settlement procedure, puts a transparent statement into the public domain for reasons of accountability and avoids the need to go to another complex hearing phase, which is part of due process and is the right of firms. Notwithstanding that, it is a significant public good if the enforcement staff of the Central Bank can better apply their time pursuing other important cases. It was for this reason the scheme's 30% discount was applied. That was in line with what criminal courts do with guilty pleas that avoid the need for a trial, which would add another burden.

Mr. Ed Sibley: There are significant issues in terms of Davy Stockbrokers. Some of them are historical, some are evident in our ongoing discussions and what has happened even in the past week. We have a robust fitness and probity regime under which we expect anyone appointed to a senior position in a significantly sized firm such as Davy Stockbrokers to be assessed on his or her fitness and propriety for that role. I will not comment on the specifics of the individual, but I would expect anyone being put forward for the CEO role in Davy Stockbrokers to be able to demonstrate that he or she is fit and proper for it. Where the appointee is coming from within a firm that has had difficulties, that person will have to account for his or her role in those difficulties.

Deputy Neale Richmond: I thank the witnesses for appearing before us. It feels like we could be engaging with the Central Bank every second day right now, there is so much happening. Like other members, I will keep my questions to the investigation into J & E Davy.

My first question is for Ms Rowland. How many people does the Central Bank employ in its enforcement division?

Ms Derville Rowland: I do not know the number precisely, but it is circa 120 to 130. I apologise for not being precise, but I can follow up and provide the figure in writing.

Deputy Neale Richmond: The more relevant question is how many of the Central Bank's employees were working on this investigation. Does Ms Rowland feel that the Central Bank had enough resources to carry out the investigation?

Ms Derville Rowland: I apologise, but I did not prepare those data before I came to the committee. I am happy to follow up on it. We had enough resources to carry out the investigation. The line supervisors, who are very active, engaged in Davy Stockbrokers and had a specific team allocated to them. Issues will arise in supervision. We take at least a two-handed approach to firms that present issues. Firm-level engagement by a supervisor involves a great deal of work to ensure that-----

Deputy Neale Richmond: Okay. The reason I am asking these questions-----

Ms Derville Rowland: -----the investigators are supported in their enforcement.

Deputy Neale Richmond: I am aware I am pressed for time. The Davy consortium was formed in November 2014 and was subject to media reports four months later. In that light, we can only assume that the Central Bank discovered this transaction in March 2015. We have been waiting six years for this investigation to conclude. That strikes me as being an extremely long time. The witnesses spoke about needing extra powers, but do they have sufficient staff to carry out such investigations in future? Will Ms Rowland provide an explanation for the time this investigation took before we got a finding?

Ms Derville Rowland: I accept that enforcement investigations in Ireland and every other jurisdiction take longer than people would wish, as do bringing the cases through to conclusion and producing a public outcome. This particular investigation required a multiskilled team of lawyers and investigators and was highly complex. The fact pattern already involves more than 16 individuals and we had to engage in document acquisition. Unfortunately, the kind of work we do involves a large volume of data and information-based cases, necessitating the team acquiring information from systems, making repeated statutory requests for data, investigating those and dealing with privilege issues and contentions in the course of that. It is not just a matter of investigating, acquiring information and using the regulatory framework to map that against breaches and issues that arose. It is also about dealing with very able legal advisers who are seeking to curtail the requests. That is their right, but it adds to the time and requirements. There was very vigorous legal analysis activity in this case. It meant that we had to be diligent, resolute and precise. We have to get cases like this right. If the Central Bank does not get cases right, no one will come out with their hands up and admit the offences. Instead, we will have to prove them, which is a long slog. In that light, we have to go slowly in forensically turning the page on enormous volumes of data. That can take time. I appreciate that this is not to anyone's satisfaction, but enforcement cases take time because they have to be done right. In this case, it was done right, given that people will not settle with the Central Bank unless they are caught bang to rights. We put a seminal fine on Davy Stockbrokers and the enforcement outcome has delivered a day of reckoning for it in terms of answering for its conduct and culture.

Deputy Neale Richmond: While I respect Ms Rowland's points, she must agree that this

investigation has taken an exceptional length of time, considering how long the matter has been in the media. The Central Bank has repeatedly made the point, including today, that its powers to hold individuals to account require strengthening. However, the Central Bank already has certain powers to hold individuals to account, which have been touched on by Deputy O’Callaghan. They involve the imposition of a reprimand, a fine and a prohibition notice. If people are seeking extra powers and responsibilities, why have the existing powers not been exercised fully by this point?

Ms Derville Rowland: We chose to take this case through the enforcement power of the Central Bank, that being, the administrative sanctions procedure, which is one of the toughest powers that we have. Under it, we must first prove the breaches against the firm. That is a prerequisite in the legal framework and we did it in this case. I stand behind the enforcement outcome. We have used our powers and imposed a fine and a reprimand, as the Deputy commended us. As part of that, one must first prove the breach against the firm. That is part of the legal framework. Only if the Central Bank can demonstrate obligation on an individual to have executed that task and participated in it can we move forward.

A number of years ago, informed by our insights in this investigation and some of the other complex large-scale investigations we have undertaken over the past decade, we observed that there is a very good case for improvements, which is often the position, to our enforcement powers in the form of direct enforceable conduct standards, directly enforceable against individuals, requiring them to have integrity or to operate within the requisite standards expected. A breach of those would be directly enforceable against the individual. We would not have to go against the firm. We have also asked to break the participation link and for a senior executive accountability regime, SEAR, where all of the roles and responsibilities of the firm are specified and ascribed to individuals right across the firm so there will be no ambiguity or gaps. In large-scale firms with complex numbers and situations this will be very helpful. I am glad we are working with the Department of Finance to bring those improvements into place. The Government has supported that in the programme for Government.

Deputy Neale Richmond: I have two further points, if the Chair allows me the time. The Central Bank issued a press statement announcing the imposition of a fine on Davy. However, the public impression was that the company was fined but no individual was being held to account. No individuals have been labelled with fines and, as Ms Rowland said to other Deputies, she cannot go into the detail of any further cases being pursued at this stage. There was no indication that individuals were being pursued in the initial announcement. This sent the wrong message to the public, the financial services sector and, indeed, the wider world.

Ms Rowland correctly referred to incoming legislation in regard to SEAR. We all hope and expect to see the heads of that Bill very soon and will have key discussions on that. The 2018 report talks about the initial scope of SEAR. Does she hope there will be no limitation on all sectors of financial services being included in the initial scope? To what extent does she think SEAR can be fully rolled out once the legislation is enacted?

Ms Derville Rowland: Perhaps the Deputy and I are at cross purposes. If we are, I am sure the fault is with me and I apologise. To be absolutely clear, this is a fine on Davy, the firm. I perhaps picked the Deputy up wrong in his questioning if he was talking about actions other than that. I want to be clear and do not want to misrepresent anything. This is presented as and is action against the firm, and I will make no comment about action against individuals.

Separately, our recommendation for the applicability of SEAR is that it should extend to

banks, the insurance sector and customer facing industries, which would cover Davy. I apologise if the Deputy asked me another question that I have not addressed. If he repeats it, I would be happy to seek to answer it.

Senator Neale Richmond: I refer to actions against individuals. There was and still is an impression that the fine, as Ms Rowland correctly said, is only being applied to Davy. The concern out there, as detailed by every speaker so far in this committee hearing, is that the initial impression was that no action would be taken against individuals. As Deputy Doherty laid out in great detail, there are concerns over particulars. The concern is that the Central Bank, in its initial announcement on this investigation – we had to wait a considerable amount of time for Davy’s response in the form of a statement – never made it clear that individuals could and would be pursued. People want to know about because they are concerned.

I will repeat my question regarding SEAR. She mentioned certain areas she thinks should be covered. Does she believe it should cover every area of financial services?

Ms Derville Rowland: It may be that it will not necessarily cover absolutely every area of financial services. SEAR should cover all areas with customer facing financial services with a big impact on customers. My colleague, Mr. Sibley, may wish to add something to that.

Deputy Peadar Tóibín: Enormous reputational damage has been caused to the country, especially the internationally traded financial services sector. What has happened over the past number of years has come at a significant cost. One of the sentences that hopped off the page when I read the report was about sunlight acting as a disinfectant against malpractice. To be honest, I have not seen much sunlight here. That may not be the responsibility of the Central Bank; it may be the legislation that governs the actions of the Central Bank.

I am struck by the sentence that: “Information made public is in accordance with an agreement with the firm”. I struggle to think of any space in the rest of our society where such a level of malpractice and law-breaking would involve a non-disclosure agreement, to a certain extent.

Ms Derville Rowland: I might deal with that because that is fundamentally the opposite of what happened. This is absolutely not the case and could not be further from what is the position. A non-disclosure agreement-----

Deputy Peadar Tóibín: The reason I brought that up is because a question was asked about the identity of the individuals involved in this malpractice. Those names are not known. That has a serious implication for society because those individuals could well be involved in very responsible roles in other organisations. We do not know the influence they have or whether they work for the State or other banks. We, the representatives of the people, are blind to the identity of these individuals. If a young person was caught robbing a toaster from a shop, his or her identity would be known to everybody. It is very hard for people to understand how the identity of these individuals is not known.

I apologise if I have understood the situation incorrectly. I am not saying that the Central Bank is in any way acting outside of the law. We as legislators have to understand the law and make provision in future for what happens in this way.

Ms Derville Rowland: I apologise if I had a reaction to the statement regarding non-disclosure. On a personal level, I set up enforcement in the Central Bank of Ireland and took the very first enforcement case. As a matter of absolute public interest we, in a post-crisis environment, knew we were charged with a very precious public duty to act in the public interest for the Irish

people and to hold wrongdoing to account.

The only way that can be done is through the legal frameworks which require legally compliant investigations, operated to due diligence, that successfully hold firms and individuals to account. We are only permitted to put information into the public domain through two routes in the administrative sanctions procedure. The first is through the long, slow slog of an inquiry that could perhaps double the length of time it would take to bring the information into the public domain. The second is through a challenging and demanding approach, whereby one resolves the case on the absolutely correct basis, does not let anybody off scot free, makes sure people are held to account and puts as much information as possible into the public domain to shine a light on what happened.

In fact, by insisting on transparent detailed statements like this, one makes the information accessible, insofar as financial services can ever be accessible to people. One seeks to make what is going on understood by the public at large. Such action shines a light. We do that because although the fines on firms are punitive, I, like the Deputy, can recognise that they can be seen as something to be paid. Putting this detailed information into the public domain may not answer all of the Deputy's concerns and needs, which I can appreciate, but it puts the public representatives, public and media in possession of the full facts of the case. It is not a short statement or inaccessible; it is clear and complete. It is the most that we can do within the legal permissions.

In terms of putting people's names in the public domain, those people are entitled to the protections of the law and the Central Bank is obliged to obey that. We do not shy away from holding individuals or firms to account where it is possible to do so. We do not shy away from holding individuals or firms to account where it is possible to do so. I make that as a general comment. We have published disqualification information and prohibition notices. We are committed to doing it because we understand the trust we have been given to act in the public good and we seek to do this.

Deputy Peadar Tóibín: I am a firm believer that individual accountability is a significant motivator of behaviour. We will not get the accountability we need unless the legislation is changed to ensure individual accountability for the behaviour of individuals in this type of role.

Is the Central Bank's responsibility for fitness and probity carried out in retrospect? If some of the 16 are in roles in other banks, institutions or departments will their fitness to work in them be affected by action by the Central Bank?

Ms Derville Rowland: I will give the Deputy a general answer on how the fitness and probity system works. There are three pillars to that system. It is a protective system not a punitive one. By that I mean that it only attaches to people who are applying for jobs in financial services. If one leaves, one does not have to face fitness and probity challenges. However, if the Central Bank has information that gives rise to concern, a system in the bank will record that information, we will flag it and it will be waiting for anyone who applies for a role so he or she will be challenged. My colleague, Mr. Sibley identified this system previously. Somebody who has a case to answer or issues of concern will be met in a challenge interview and the enforcement lawyers will support the relevant supervisors in taking the decision. If people hold roles in financial services and they give rise to concern, there is an option to consider that and take a procedure against them in respect of that.

The three pillar concerns a message I would like to get out to everybody so they understand

that firms run their own business. They run their own culture. Regulators can comment on culture but cannot set culture. It can only be done by the businesses and firms are totally responsible for ensuring the people who run their business are fit and proper. It is one of the pillars of the fitness and probity regime.

I emphasise that responsibility and accountability for operating a business rest with the business.

Deputy Peadar Tóibín: Is it possible the second pillar will be rolled out in relation to one of the 16?

Ms Derville Rowland: I will give the Deputy a more general answer. The Central Bank of Ireland has demonstrated its challenging work, demanding issues be addressed in enforcement and supervision and, of course, as is-----

Chairman: We have lost Ms Rowland's sound. We will have to return to Deputy Tóibín's question. We will go to Senator Sherlock.

Senator Marie Sherlock: I thank Ms Rowland and Mr. Sibley for attending today. My question relates to the investigation process. We have heard much about the administration sanction procedure and how individuals cannot be investigated until the investigation of the firm is completed. I ask Ms Rowland about her view on the design of the administration sanction procedure. Why could the fitness and probity regime not be used investigate individuals in parallel with the administration sanction procedure?

Ms Derville Rowland: It is not that the enforcement team cannot investigate an individual at the same time as looking at the firm but the Central Bank of Ireland operates under a number of legal frameworks. The fitness and probity framework, as we have heard, is a protective framework and it is one set of rules and requirements. The administrative sanctions framework has another set of rules and requirements.

The team operates by considering the issues and then doing an investigation. It keeps the options open in terms of avenues to take. An issue for the Central Bank in litigious or contested issues is when the choice is to use the administrative sanctions procedure, the law sets out the obligations rest with the firm. In order to pursue individuals, one has to demonstrate that the firm committed a breach. It is written in the legislation. One then has to show an individual participated in the breach committed by the firm and demonstrate his or her participation.

The approach in the investigations is to acquire the relevant facts and information, do the data trawl and get the information. The Senator will appreciate the Central Bank regulates from small firms to highly complex organisations with large scale operations and systems or complicated issues which is time consuming and meticulous. When I started as a lawyer, quite often the information we had only ran to hundreds of pages and sometimes thousands but it is normal for us to operate at large scale. It is the scale of the investigation and drilling down through all of those to acquire the relevant facts. The teams run open consideration-----

Senator Marie Sherlock: I hope Ms Rowland will appreciate we are under tight time constraints. Is it not possible to prosecute under the fitness and probity regime until the administration sanction procedure is completed? It seems there are clear breaches of the fitness and probity regime. Under the Criminal Justice (Theft and Fraud Offences) Act 2001 making a gain or causing a loss by deception is an offence. That appears to be what is in question with J & E Davy. Why has there not been a prosecution under that Act? Why has action not been taken

under the fitness and probity regime and the clear standards it sets out?

Ms Derville Rowland: It is possible to consider all regimes and options open to us. We have held the firm to account. The Central Bank of Ireland considered the theft and fraud offences Act. The public statement referenced an agreement in respect of the underlying bond and the civil litigation about this is in the public domain. Others can tell the Senator more about the outcome but the background to this lead us not to form that suspicion she considers apparent. Of course, we considered it.

I have already said that now all the detail is in the public domain we have engaged with relevant authorities and can discuss it with them but it is not a clear cut matter.

Senator Marie Sherlock: I note a call on six separate occasions between October 2018 and October 2019, and it was noted in Ms Rowland's comments today, for the introduction of a senior executive accountability regime. We have seen no action by the Government since the first call two and a half years ago. Is it a source of huge frustration to the Central Bank of Ireland?

Ms Derville Rowland: We welcome the inclusion of the senior executive accountability regime in the programme for Government. We welcome the inclusion of SEAR in the programme for Government. It is our request that enforcement is strengthened and SEAR is brought into being, together with universal conduct standards for all, which are very important. We are working with the Department of Finance to bring those measures to fruition. We believe they will considerably strengthen the standards of conduct by the participants in financial services which, after all, is exactly what we all want to see. These measures will drive up standards and conduct.

Senator Marie Sherlock: A number of committee members have already referenced the length of time that this investigation took. It took seven years from when the original action took place and five years since the High Court case. We know that the staff count within the Central Bank has almost doubled over the past ten years. Is it the case that within the enforcement section, all energies were devoted to the tracker mortgage scandal and investigation over the past number of years, and the Central Bank was almost overwhelmed by that and unable to take on additional investigations such as this important one? There is real alarm at the length of this investigation and concern over what other breaches may have taken place during the period of time it took before the Central Bank issued its report and announced the fine last week. I would like our guests to comment on the average length of time that investigations take and, indeed, whether the enforcement section has been overwhelmed by the tracker mortgage scandal.

Ms Derville Rowland: The enforcement team is diligent in its work and it would be unfair to criticise its members for their lack of progress in this case. I am absolutely clear that we are running a number of important and significant investigations. This Davy investigation is one of those. It was properly progressed by the team. The team is also taking serious action right across a portfolio of cases, including in respect of tracker mortgages. Significant outcomes were delivered last year in the insurance sector and action was taken against individuals. The team is well able and capable of moving significant cases forward, as its track record demonstrates. We have taken, as I said, more than 141 cases to date with seminal fines delivered regularly. The Central Bank of Ireland progressed this complicated and challenging case with diligence, as it does with its enforcement work and the other complex cases it is discharging.

Senator Aidan Davitt: I thank Ms Rowland. She is busy there. She sounds like a politician, giving many answers, and the details are probably in front of us already. I am going to

bring her away from Davy, she might be delighted to hear, for a brief moment. I will ask about Ulster Bank and its imminent departure from the Irish market. There has been a lot of talk around the levels of capital-----

Chairman: I will interrupt the Senator. We want to stay on the issue of Davy to have it concluded.

Senator Aidan Davitt: Okay. I have just one query about Davy and do not want to go around in circles and ask the same questions again. I will ask about the level of qualifications required to sit on an Irish board. As we know, board membership is bound by age. That seems to be the only great marker for board membership. Does Ms Rowland feel there should be some minimum standard of corporate governance qualification? I am sure that there are ongoing reviews and whatever else in certain financial systems. I would be curious about the qualifications in corporate governance that the guys in Davy were exposed to. If they were doing a certain amount of corporate governance every year, questions would surely occur to them about whether what they were doing was right and where they were going.

Ms Derville Rowland: The Senator has asked an important question about the competence, capability and skills of individuals who sit on boards. The Central Bank of Ireland has specific criteria about fitness and probity for role holders in specific jobs. Coupled with that, it is important that a firm is run to the standards expected, with appropriate governance, risk management frameworks and compliance. I will bring in my colleague, Mr. Sibley, on this matter because I am sure he wants to articulate his views.

(Interruptions).

Chairman: Mr. Sibley's sound quality is not good.

Senator Aidan Davitt: By the sound of it, I would say Ms Rowland is on again.

Chairman: We will move on to Deputy Barry.

Senator Aidan Davitt: Can we let Ms Rowland answer the question? She did not answer it.

Chairman: We will go back to Ms Rowland for that answer and then we will move on.

Senator Aidan Davitt: Thank you, Chair.

Ms Derville Rowland: I am happy to answer the question. I thought I should be fair to my colleague, who has well-developed and particular views on the matter, and allow the two of us to discuss some of the matters with the Senator. I am happy to answer the question. It is important that the skills and capabilities of individuals are looked at when they join a board. It is an onerous job and it is important that they discharge it well. There is a specific set of roles and expectations of role holders on boards and, on top of that, I also referenced the need for a firm to be governed well, with appropriate decision-making and with well-developed risk and compliance frameworks commensurate with the complexity of the business. There is a need for effective and sustainable business models. Firms need to ensure proper standards of risk governance, particularly with investor protection. One can see how impactful and wrong the lack of risk management frameworks, proper conflicts of interest management and controls over staff dealing has been in instances such as the Davy case.

Another dimension to the composition of a board is the balance, composition and skill sets

of the aggregate group. I know that if Mr. Sibley's IT was working better at the moment, he would want me to make the point that the Central Bank of Ireland this week issued data on the diversity in the composition of role holders in financial services. We have not made the kind of progress that we need to make. One could look at the Davy case or a number of other instances in Irish financial services and make a cultural comment that we are dealing with groupthink because there is not a sufficient diversity of skills, experience, attitude, gender, ethnicity, educational background and socioeconomic background on the boards. People from different echelons of society with different experiences and educational insights can bring a wide, diverse and challenging set of views to a board. That would strengthen the governance, decision-making and oversight so that a business is run to the standards expected with competence and capability but also with diversity of thought. That would mean no cosy groups who are not challenged by diverse compositions of people with the right skill sets. I hope that gives the Senator some considerations in reply to his question.

Senator Aidan Davitt: Should we have more regulation in the make-up of boards, if that is the case?

Ms Derville Rowland: It is a question of driving diverse, skilful compositions of boards. Certainly there may be something to be thought about in terms of demanding or mandating more diverse composition of boards.

Deputy Mick Barry: The Davy case is an example of casino capitalism. Ms Rowland talked about groupthink and if there is groupthink, it applies to a culture of greed and entitlement. I think what is displayed is a sense of being untouchable, which is a sense that needs, in my opinion, to be really shaken. For me, the long arm of the law needs to feel a few white collars here.

On that, Ms Rowland has indicated fairly clearly that she does not intend to call the gardaí in. If I heard her correctly, she indicated that should other agencies wish to discuss the report with her that she would be "satisfied" to do so. She has also indicated that she has "had tentative engagement with some", which implies more than one. With whom has the Central Bank had these tentative engagements? Did they include An Garda Síochána?

Ms Derville Rowland: I apologise if the Deputy got an impression of passive conduct, on my part. That does a disservice to our actions. I confirm that, in the course of this very meticulous and careful investigation, we did not form suspicion to support reports to other agencies. We have published a very detailed enforcement outcome only last week and following on that, which put the information into the public domain, we have been in contact with various agencies that I will not name. They would not wish me to do so and I will not. I absolutely intend to have a proactive discussion with a number of agencies about this, including An Garda Síochána and the Office of the Director of Corporate Enforcement, to sit down with them in the full facts of the information so that, from their perspective, they could consider this matter.

I want to make an observation at a general level. We are in regular and excellent contact, for example, with An Garda Síochána right across a number of issues. We find them proactive and responsive. I would like them to report of us in the same way. We are both part of the Hamilton Group, which is a group that has been put in place to make recommendations about the improvement, if I call it in my language, in white-collar crime issues with a number of recommendations about an expert advisory committee.

Deputy Mick Barry: To be clear, since the publication of the report Ms Rowland has had

tentative engagements with more than one agency, and also she intends to sit down and to discuss with the Office of the Director of Corporate Enforcement, and with An Garda Síochána, not issues right across the financial sector but the specifics of this particular report into Davy. Am I correct in that?

Ms Derville Rowland: Yes.

Deputy Mick Barry: The deal involved goes back to 2014 or thereabouts and it is now 2021. So, the 16 individuals have been involved here for a period of seven years since then. The question arises as to whether this was an exceptional case or whether there might have been other cases in the course of those seven years. That would seem to me to be a strong argument for opening up the books and for going through the Davy books for the last seven years at least with a fine tooth comb. Has the Central Bank done that and, if not, why not?

Ms Derville Rowland: The enforcement outcome is the conclusion of a meticulous enforcement investigation that runs in parallel to inclusive supervision. The Central Bank of Ireland cannot usually comment on our actions in supervision but because Davy themselves have publicly confirmed that significant changes have already happened in terms of their own actions, in terms of governance, risk management, addressing these issues, I can tell for the Deputy that the Central Bank of Ireland it is not by an accident that those issues have occurred. As is usual in supervision, we demand that these matters are addressed and I cannot get into detail around specifics more than that. In fact, we have provided a significant amount of detail about this case in the course of this focused series of questions. I am happy to confirm that this is a high priority for us. It is a dynamic regulatory context. We have put out only last week the details and supervision is intrusive.

Deputy Mick Barry: I understand. I merely seek clarification on one point. The Central Bank has conducted an exhaustive investigation over a whole number of years into a particular deal or case. Has there been an investigation, not by Davy, but by the Central Bank into the possibility of other such deals perhaps involving those 16 individuals perhaps within the company over the last seven years or has the Central Bank left that to Davy to check into?

Ms Derville Rowland: The enforcement case only reports on the breaches that we have found. That is how that is dealt with and we put that into the public domain. Our supervisory work that the separate supervision team does, alongside of these issues, is not something we can report on in the public domain.

Deputy Mick Barry: I understand.

Ms Derville Rowland: What I can tell the Deputy is generally, when we find issues in firms, we engage with them in a very challenging way to look at the issue and to demand that they fix the issue. The staff of the Central Bank will use their own skilfulness to scrutinise those issues and even do things like appoint, for example, external persons to look at those issues, and demand that they are looked at.

Deputy Mick Barry: I understand.

Ms Derville Rowland: The enforcement case only reports on these specific narrow breaches of issues. Perhaps my colleague, Ed Sibley, might give the Deputy a bit more information about the supervisory approach.

Deputy Mick Barry: I want to ask my next question because my time is limited. Ms

Rowland has made it clear in the course of the engagements that she is not prepared to name the 16 individuals and she has kind of indicated that there might be legal issues with her doing so as well. She has indicated that if, and when, they leave Davy that their new employers have a responsibility in that situation. Do the clients who are served by such a financial institution not have rights as well? To bring it down to brass tacks, I have an investment in a pension fund, for argument's sake; that pension fund is with a financial institution and one of these 16 individuals transfer over and gets new employment in that institution. Should I not have a right to know that that is the person who is managing my pension fund or is it solely a matter for the CEO or board of the company to take care over who they are employing? Should I not have a right to know who is in charge of my money?

Ms Derville Rowland: Because people are entrusted to run financial services firms, it really matters. It matters to the consumers and the investors. There is a very careful system of pre-approval, under which one is not entitled or permitted to take up a senior role in a financial services company unless the firm itself proposes one but then it has to be approved by the Central Bank of Ireland. So it is not simply a decision of a firm or chief operations officer, COO. Of course, it is very important to recognise their obligations that anybody who is running a business must take the responsibility for making sure that the people that they employ are fit to do the work to serve investors and consumers but there are additional safeguards. Nobody is allowed to take up a position of a senior role in financial services - there is a list of those positions and roles - without approval from the Central Bank precisely because, as the Deputy said, it is very important that the investors are protected from individuals. So the system is designed with that in mind.

Deputy, we can only name people where the law allows us to do so. Otherwise we, ourselves, would be breaking the law if we ignored those safeguards that are in place.

Deputy Mick Barry: It seems to me that it is possible that one of those people could end up managing my pension fund. It is not in my hands; it is the hands of the Central Bank and the heads of the financial services company. These 16 individuals held, and I presume still hold, a large number of shares in Davy - in fact, probably a controlling share. They may be forced to move on to other companies, but is the Central Bank in a position to compel them to get rid of those shares? Could it be the case that those 16 individuals will still have a controlling share in this company? Is that theoretically possible?

Ms Derville Rowland: The Central Bank takes its responsibilities seriously and we are engaged in very live supervisory work on this case. We will discharge all of our proper responsibilities. As a general matter, the Central Bank takes very seriously its responsibilities in regard to ensuring that people who work in firms are fit and proper. In the authorisation of firms, there are certain criteria we have to consider and certain criteria in respect of shareholding ownership that reach thresholds with specific factors. All of that is set out in a legislative scheme and the Central Bank will discharge its obligations fully and properly.

There can be cases where firms are part of a wider group structure, some parts of which might not be regulated in financial services. It might have unregulated business and there may be shareholdings to do with that. That is outside of our scope, but we will take our obligations seriously, as we do and as we have demonstrated by following through on this action and holding Davy to account in public.

Mr. Ed Sibley: There are very clear responsibilities, notwithstanding what has been said about the shareholding, for the board and the executive in running any company. We are very

clear about their responsibilities to ensure they run it effectively, in line with our expectations and in compliance with the necessary regulations. Clearly, there is further strengthening to be done there but, notwithstanding the shareholding, there are very specific obligations on the board and the executive of the firm.

Deputy Bernard J. Durkan: I welcome the witnesses. How did it come to pass that executives, junior or senior, of a stockbroking company might feel it possible to engage in the kind of dealing in which they became involved? I understand there are strict regulations for how employees, executives or shareholders within such companies are allowed to operate. How did they feel they could operate with impunity?

Ms Derville Rowland: That is a legitimate question because this issue clearly has presented Davy, as detailed in the enforcement outcome, with a significant question to answer with respect to its own culture. The investigation uncovered a group of senior people who did not adhere to the serious obligations to manage conflicts of interest. That is a fundamental obligation in financial services, particularly where investors are served, some of whom will ultimately be consumers as well. In this case, there was a total disregard for any serious consideration of conflict of interest management. It seemed to be a conflict-free environment where no consideration was given, no minutes were taken, no oversight was exercised and they absolved themselves from any kind of adherence to the serious obligations. Even pre-approval for trading appeared to be given to others, even though the others had not been identified.

Moreover, there was an avoidance of the staff personal account dealing framework. A separate framework was in place in the firm that staff were meant to use for personal accounts that could have been overseen by compliance. The dealing happened on the firm account, which drove a coach and horses through the protection of having the separate deal framework, and that was absolved as well. The compliance function could not do its job because it was bypassed in that way.

There are serious questions for Davy to answer. The details of the public statement have given it that moment of reckoning that it clearly did not recognise it should have recognised.

Deputy Bernard J. Durkan: When was this departure from the rules first brought to the attention of the Central Bank or of Davy?

Ms Derville Rowland: This matter became public a number of months after the deal was entered into. I think Davy knew about it from the get-go, given that it was its conduct that was complained of to us, and it was known about at senior levels. The Central Bank of Ireland became aware of it a number of months later, after it entered the public domain. As we detailed in our statement, our view is there was a lack of candour on the part of those who contacted the Central Bank to try to characterise the deal as something different from what it was. It was only subsequently, through the diligent digging in the detailed investigation, that the full details that are in the statement came to light.

Deputy Bernard J. Durkan: What prompted the Central Bank to become involved in such an investigation? Was there a disclosure by somebody from inside the firm or was a complaint made by an outside person or entity? If so, was it acted on? Seven years have elapsed, although it became public knowledge when the matter was brought to court. Financial services operate under licence from the Central Bank, and when they depart from the rules, presumably that licence should be withdrawn. If that is not the case, why? Did somebody at the Central Bank notify Davy to say it was out the window and it needed to explain what had gone on?

Ms Derville Rowland: I think Davy was aware of it because the investigation focuses on conduct it was engaged in. The information came into the public domain a number of months later. Davy contacted the Central Bank and, in that initial contact, we formed the view that it had a distinct lack of candour and transparency about the real characterisation of the deal. The Central Bank of Ireland responded to the information it had. As I set out for some of the Deputy's colleagues, we have taken that issue seriously. We have been engaged in very assertive supervision with Davy over a number of issues. As part of that, there was sufficient concern about the issue that an enforcement case was opened alongside that supervision. The Central Bank of Ireland had contact from Davy, we were very concerned about that, and we have been taking and continue to take assertive supervisory action. Alongside that, we opened the enforcement investigation precisely because we had a high degree of concern about the set of facts. We had to dig long, hard and deep to get to the bottom of the matter and uncover this, which we have done.

The Deputy asked about licence revocation. The Central Bank has a number of powers and we have to use them in a proportionate and commensurate way. We have taken the action against Davy - the firm - and determined that the appropriate course of action is to impose on it a very significant fine in the sum of approximately €4 million. We also issued a detailed public statement, which is right because where we can do so, we should put the information into the public domain. The criteria for revoking a licence are specific and need to be applied in a proportionate way. It was our judgment that the appropriate course of action here was an enforcement fine to mark the gravity and seriousness of the matter and for the public information to accompany that so that Davy Stockbrokers could be held to account. That acts as a deterrent against the conduct in the firm. It sends a message to all other market participants that this kind of conduct will not be tolerated and that we seek to deter them from engaging in this type of conduct. The third reason is that it seeks to support public accountability in the oversight system through holding individuals to account.

Deputy Bernard J. Durkan: May I ask one last question?

Chairman: Yes. We are running into time difficulties but the Deputy may go ahead.

Deputy Bernard J. Durkan: I am sorry, but I do not agree with Ms Rowland. I presume that the captions stating that an organisation has the right to operate under licence from the Central Bank of Ireland are an advertisement to everybody that these are safe organisations with which to do business. Clients can be absolutely assured that they are dealing with a safe house. The activities in question went on for seven years and it was not possible for the client to come to that conclusion. At any stage in the past seven years or before that, did the Central Bank receive a complaint about the activities going on in Davy Stockbrokers? Did any clients complain? Did anyone complain about a client? Was that complaint received in the Central Bank? My last question is on whether there are any particular groups of shareholders or investors with Davy Stockbrokers who might be particularly affected in one way or another by what went on. I am referring to being beneficially affected, of course.

Chairman: Before Ms Rowland replies, I wish to take up the point made by Deputy Durkan. It seems from what Ms Rowland is saying that this issue came to light not through the Central Bank, but because people fell out, it became public and then the Central Bank was informed and the investigation ensued. That seems to be the way it happened.

My second question relates to the individuals to whom the Central Bank has spoken in the course of its investigation. Ms Rowland referred to the challenges the Central Bank experi-

enced in dealing with these individuals and the culture within the bank and so on. Does she have confidence in Davy Stockbrokers undertaking what it deems to be an independent investigation or would she prefer the Central Bank to randomly select a number of accounts or transactions that it could examine to ensure that it can verify just what is going on? The attitude that this is the business of Davy Stockbrokers does not wash any more. The public are tired and fed up with it and want to see some action in this regard. Are these characters in Davy Stockbrokers capable of allowing an independent investigation to take place or does Ms Rowland think that in the interests of the State, the Minister or the Central Bank should engage in an investigation wider than that which it has conducted already?

Ms Derville Rowland: My colleague, Mr. Sibley, would like to come in. I will answer some of Deputy Durkan's questions first and then perhaps Mr. Sibley will join in. Deputy Durkan asked a range of specific questions about complaints data in respect of Davy Stockbrokers. I do not have all of that information to hand but I am happy to follow up in writing if that is acceptable. I am happy for my colleague, Mr. Sibley, to come in.

Mr. Ed Sibley: Just to follow up on that point, we certainly receive information on a reasonably regular basis but we can follow up in that regard. I am certainly not aware of any other specific complaints that are in any way similar to the matter with which we are dealing here today. It is clear that Davy Stockbrokers has a job of work to do to restore trust in its business and performance and what it is doing in terms of the business that it runs. It has stated that it will do an independent review. I think it would certainly be welcome if it were to do an independent review where the scope of that review and the findings of that review would be made clear. If it is serious about restoring that trust, I absolutely think its representatives should appear before the committee, as I think they have been invited to do, to explain what has happened in the firm. It can speak to what is really-----

Chairman: The sound quality is very bad, Mr. Sibley. The question is about whether the Central Bank has confidence in Davy Stockbrokers in terms of there being no other issues that will come out of the woodwork. Does it have confidence in these characters who delayed this investigation for so long carrying out Davy's own independent investigation? I want the representatives of the Central Bank who are present to understand that the Irish public is fed up with insiders looking at themselves. They are fed up with the insider trading that is going on, the arrangements and the bypassing of regulation. They are sick to the teeth of it. They see that the Central Bank, as regulator, is doing a job on this occasion, but I am afraid that there are many other questions that have to be answered in the context of building up trust. One has to build up the trust of the Irish public as well. Is the Central Bank confident about Davy Stockbrokers carrying out the independent investigation? Is it confident that this is the only glitch?

Mr. Ed Sibley: I totally understand the point the Chairman is making in respect of trust and I totally understand the concerns he has highlighted, but this is an egregious case in which Davy Stockbrokers breached the trust of clients and, more broadly, of all its customers. I completely understand and agree with the concerns that have been raised by the Chairman and committee members. We are doing our job in terms of holding Davy Stockbrokers to account both in terms of the public action through the enforcement notice publication and also what we are doing in an ongoing supervisory perspective. What we have seen publicly in the past week is that Davy Stockbrokers still has a journey to go on in terms of change; changing the culture and the individuals who are responsible for leading Davy Stockbrokers. That work is ongoing. We can see it in the public domain. I think Davy needs to do further work, including, as I stated, appearing before the committee to explain what it is doing. It would be helpful if it were to publish the

scope of any kind of follow-on report or review it is undertaking as well as discussing it with the committee.

Chairman: Mr. Sibley is not going to comment on whether he has confidence in Davy Stockbrokers to do the business in the interests of truth and transparency.

Ms Derville Rowland: May I comment? To answer the Chairman's question, it will be a very important component of any independent review that the individual selected has credibility and can demonstrate his or her independence so that there is confidence in the work.

Chairman: I want to bring in Senator Casey.

Senator Pat Casey: Most of what needs to be said on this issue has been covered. I was hoping that we would get to the issue of business interruption insurance because there are thousands of small-----

Chairman: So was I, but I ask the Senator to ask a question on this matter.

Senator Pat Casey: There are only ten minutes left in this meeting. Will we get to the issue of business interruption insurance today?

Chairman: No, we will not.

Senator Pat Casey: The questions I wished to ask on this matter have probably already been asked. There are thousands of small firms that are struggling and hanging on by their fingernails to stay afloat and a critical part of that is business interruption insurance that is not being paid out. We need to get to this issue. I know the issue of Davy Stockbrokers is important. I am not denying that, but the committee has spent nearly an hour and 50 minutes on it now.

Chairman: Does the Senator have a question for the Central Bank regarding Davy Stockbrokers?

Senator Pat Casey: On the issue of the settlement of €4.13 million that was reduced from €5.9 million, was anything else negotiated at that time other than a financial settlement?

Ms Derville Rowland: I am finding it difficult to understand the question. I am sorry if I am being a bit obtuse; I do not mean to be. I ask the Senator to help me to understand his question.

Senator Pat Casey: The financial settlement against Davy Stockbrokers was the sum of €4.13 million. It was originally €5.9 million but Davy got a 30% discount because it had acted in good faith. Was anything discussed apart from the financial settlement? Did any negotiations relating to matters other than the financial settlement take place in the context of the settlement?

Ms Derville Rowland: I thank the Senator. I was not at the meeting, but it was led by the director of enforcement and the team there. The approach will be that the Central Bank of Ireland will have an evidence-based procedure, which is a very formal and structured procedure, with the firm where the evidence is laid out in front of it and the allegations of breach are put to it. The Central Bank of Ireland puts it up to the firm that it can accept a fine set at a level; in this case the fine that was imposed was in excess of €4 million. The proposals usually made to firms are that, for example, a reprimand, which is one of the penalties in the administrative sanctions procedure, together with a fine, are proposed to the firm. It is the firm's choice to accept or reject that.

The Central Bank of Ireland will not enter into a binding settlement agreement without a very detailed public statement. As a matter of approach, the public statement is often a very serious focus for the firm because it does not want the details of the action to be in the public domain or it does not want too much detail in the public domain. It is often a very significant part of the argument that happens there. The public statement that members have before them is the key piece of information containing the penalties. That is the thrust of that focus.

If the firm chooses not to accept that approach, that is its right but then the case would move on to the next phase, the inquiry phase, which, as I detailed to the Senator's colleagues earlier, could take a significant length of time and elongate the matter even more. The discount is applied because there is a significant value. It is very like the criminal system where discounts are applied for guilty pleas to avoid the necessity, expense, burden and time of a trial because it is a very significant public benefit to the Central Bank of Ireland that our staff can then apply their skills in the pursuit of other cases. Therefore, that is the approach we follow.

Senator Pat Casey: Davy did not seek immunity from criminal prosecution during that negotiation. Is that the case?

Ms Derville Rowland: I was not at the negotiations, but the Central Bank of Ireland would never and could never offer or suggest such a thing. It would be utterly inappropriate for us to get involved in doing a deal like that.

Senator Pat Casey: I am delighted to hear that.

Is the legislation for personal criminal prosecutions strong enough to go after these 16 individuals so that they are held accountable for what they have done?

Ms Derville Rowland: I cannot make a comment on the strength of the criminal law framework in Ireland in general terms. It might be for others to have their own observations. However, I can tell the Senator what I have shared with other members, which is that a very diligent investigation was done here where the investigation teams looked at the conduct in question and they looked at what breaches have arisen as a result of that conduct. Clearly MiFID is very significant European legislation for investor protection and transparency on the market. It is very important that it is adhered to. We did not formulate the view that there were criminal reports to be made.

Senator Pat Casey: I thank Ms Rowland for her response. I am aware that two other people want to get in and I will pass on the time that I have left to the others.

Senator Alice-Mary Higgins: I am happy to ask my questions and for Deputy Mairéad Farrell to ask her questions, and for us to receive combined answers if we are tight for time. Perhaps we have time to go sequentially.

I have two sets of questions. One relates to the supervisory work. Ms Rowland mentioned that is a separate team. Is that supervision of Davy structures overall or would that supervision, for example, have extended during the period of investigation to supervision of the relevant individuals who were the subject of the investigation? Ms Rowland mentioned the intrusive supervision. How detailed is it?

The Central Bank stated that it was striking how easy it was for individuals involved to circumvent the personal account dealing framework. Have any further investigations or examinations taken place into these individuals and their actions in respect of the framework? To

the extent that Ms Rowland can indicate, what further investigations or activities have taken place? I acknowledge the work of Seána Cunningham on this investigation. It is important to understand what has happened in parallel during those seven years. Was the supervisory work forward looking or did it look backwards to examine those?

I share the concern about groupthink. The Ailmount investment body has 30 equal shareholders, five of whom I believe come from Davy. This is what *thecurrency* uncovered about the company structures. My concern is that the investment limited partnership legislation passed by the Oireachtas makes it much easier when we talk about board responsibility. It is now possible for somebody to sit on a board, have influence on the decisions of a board and be a limited partner with relatively little liability. Given those scenarios of groupthink, is it a concern to have a number of members of a board, all of whom are counted as limited partners, working in concert in the way we have seen at Davy? It seems extraordinary that the limited partnership legislation was rushed through while the senior executive accountability regime seems to be stalled. Why is that stalled? Did the Central Bank have concerns over the reduction of board accountability in the investment limited partnership legislation?

Ms Derville Rowland: I might ask Mr. Sibley to respond.

Chairman: Sorry, Ms Rowland. Does Deputy Farrell wish to put her questions?

Deputy Mairéad Farrell: As I am not sure how much time I have for asking these questions, I will keep it short. I thank the witnesses for appearing before the committee, which is very welcome.

This transaction took place in November 2014. It has been reported that the bonds were purchased by the consortium for €5.4 million. The Central Bank enforcement action notice stated that three weeks after the transaction, the consortium sold a large tranche of the bonds to a fund manager. How much was that tranche sold for? Cantor Fitzgerald claimed that they could be sold for 30 cent on the euro. I ask Ms Rowland to confirm that. Was that then distributed to members of the consortium? Were the remaining bonds sold and if so, when were they sold and at what value?

I understand that the Central Bank had to agree with Davy what was put into the public domain. Had the bank planned at any point to put the detail of the individuals' names into the public domain? Are any of the individuals involved in this now working in an entity regulated by the Central Bank? It is extremely important for people to be aware of that.

Did the Central Bank ask if this was an isolated incident relating to this consortium? Will it carry out a review to establish if this did not happen to others? That is a further concern people have.

I also have a question on business interruption insurance, but I take it we are not asking those kinds of questions today. Is that correct?

Chairman: We do not have time. Members have used their time on this matter. I call Ms Rowland.

Senator Alice-Mary Higgins: Did the intrusive supervision also relate to Irish state bonds?

Ms Derville Rowland: Who is asking that question?

Chairman: It was Senator Higgins. I call Ms Rowland.

Ms Derville Rowland: It is quite challenging. I have been asked several questions. Members will forgive me.

Mr. Ed Sibley: I can answer the questions on the supervisory side if that helps.

Ms Derville Rowland: That would be great. Mr. Sibley can start with that and I will try to deal with the rest.

Mr. Ed Sibley: Davy is considered a high-impact firm meaning that it is subject to the most intrusive and intensive supervision of all the firms we supervise. That will look at supervision in a number of aspects. I am thinking about the overall governance of the firm that management controls, the frameworks compliance function, issues such as operational risk, IT risk and, crucially in the case of Davy, client assets. We need to look at how it separates these to ensure that the assets it is managing for clients are separated from its own balance sheet and its own business dealings and so on. That is undertaken by a specific team of supervisors who supervise in an ongoing way, supplemented by inspectors and analysts. We also use what are known as skilled persons-third parties to do further work, looking at issues from a governance and control perspective. We also do sample testing in terms of transactions or, in the case of client assets, particular protections. This covers the full range of the business of the bank. We do not oversee or overlook every transaction for practical reasons but the work covers the full breadth of the business of the organisation. We will have to come back to the committee on the limited liability points. We expect board members to be fully accountable, taking responsibility for the chief direction of the firm and making sure that the risks are understood within the firm and controlled effectively. Clearly, there were shortcomings in Davy in that respect. We have been engaged intensively to address those shortcomings over time. I will ask Ms Rowland to respond to the questions about the specific investigation.

Ms Derville Rowland: The Deputy asked if this was an isolated incident. I have sought to answer in a general way our approach to intrusive supervision, where we have gone in and demanded that issues are looked at and addressed. I cannot be drawn beyond the answers I have previously given and the additional answers that my colleague, Mr. Sibley, has given. We cannot provide the Deputy with the details around the bond, the value of the bond and when it was distributed, but there was a settlement with a private individual, the details of which have not been made public. Davy can answer those questions better than I can and share with the committee the details around that. There is information in the public domain, to which I cannot add. Equally, the Central Bank could never name individuals or suggest that individuals be named without doing so through a legal power and so there was no prospect of being able to name individuals in the course of an action being-----

Chairman: We have lost our sound feed to the Central Bank officials, but we have reached the end of this meeting in any case. I apologise to members that we could not get to the insurance issues, as outlined by Senator Casey, Deputy Mairéad Farrell and others, but we will return to that quickly. In the interests of members, on the insurance issue we may raise a number of questions for immediate answer and, perhaps, set an early for engagement with the sector on the issues.

In regard to today's meeting, there exists still a cosy group that allows seamless transfer from inside to outside, from Government agencies into banks and other entities. They seem to be acting as untouchables, based on the culture we have seen exposed here through the Central Bank report. I would still like the Central Bank to investigate a random sample of transactions to determine what went on in Davy. Earlier, we agreed that we would invite Davy to come

before the committee to explain its position and what it intends to do about it. I ask Davy to consider this invitation and the transcript of this meeting, which will be sent to them. If they wish to respond in any way to the questions asked by members or the issues raised, they should do so. It is time we took down the veil of secrecy around all of these matters and brought them into the public domain. My remarks are not pointed at the Central Bank, but at all of those involved in banking and in Davy.

We have gone over time. I thank the witnesses for attending today.

Senator Alice-Mary Higgins: Would it be possible to get supplementary answers in writing to the questions the witnesses did not get an opportunity to answer, including around the intrusive supervisory work and whether that is continuing?

Chairman: Yes. I will ask the clerk to the committee to contact members to get their questions on the insurance issue and on the issues raised by the Senator. The clerk to the committee will engage with members over the coming days. As of now, the business of this meeting is concluded.

The joint committee adjourned at 5.36 p.m. until 2 p.m. on Tuesday, 23 March 2021.