



Tithe an
Oireachtais
Houses of the
Oireachtas

Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Michael Ahern

Strictly Private & Confidential

As indicated on its cover page, the document(s) contained within are confidential unless and until the Joint Committee decides otherwise including where the Joint Committee publishes such document(s). For the avoidance of doubt, “documents” include witness statements in this context. Further to section 37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (“the Act”), while the documents remain confidential, you must not disclose the document(s) or divulge in any way that you have been given the document(s), other than:

- “(a) with the prior consent in writing of the committee,
- (b) to the extent necessary for the purposes of an application to the Court, or in any proceedings of the Part 2 inquiry, or
- (c) to his or her legal practitioner.”¹

Serious sanctions apply for breach of this section. In particular, your attention is drawn to section 41(4) of the Act, which makes breach of section 37(1) a criminal offence.

¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

**STATEMENT IN WRITING PURSUANT TO
SECTION 67(1) OF THE
HOUSES OF THE OIREACHTAS (INQUIRIES, PRIVILEGES AND
PROCEDURES) ACT 2013**

BY MICHAEL AHERN

Background

The General Election took place on May 24th 2007. On 20 June 2007 I was appointed Minister of State at the Department of Enterprise, Trade and Employment and at the Department of Education and Science. I joined the Committee when I replaced Deputy Michael Finneran (he was appointed Minister of State at the Department of the Environment on 13 May 2008) by order of the Dáil on 5 June 2008 and was elected Chairman on 18 June 2008. It was, therefore, over a year after the 2007 General Election before I became involved as either a member or Chairman of the Joint Committee.

The Committee was established on 23 October 2007, almost 5 months to the day after the General Election (see appendix 1 where I have set out the role and primary function of the Joint Committee) and met for the first time on 1 November 2007 where Michael Finneran was elected as Chairman and Martin Mansergh was elected vice-Chairman. I was not a member of the Joint Committee, let alone Chairman until June 2008.

R1a: What was the role of your Committee in relation to the operation of the Department of Finance?

Reply:

I would suggest that right from the start, the Committee's work was not proactive but rather reactive and driven by the Government, the Minister and the Department, but not necessarily in that order.

I also make the observation that there may have been confusion in regard to who had 'operational oversight' of the Department of Finance. The Joint Committee on Finance and Public Service was a Sectoral Committee and through the Dáil Select Committee it dealt with Motions, Legislation and Estimates whereas the remit of the Joint Committee on Economic Regulatory Affairs was to consider the operational efficiency, value for money and the effectiveness of consultation and accountability procedures; the Statements of Strategy, Annual Output Statements, Public Interest Statements and such other reports as it may select, of regulatory bodies in the following sectors — Communications, Energy, Financial Services, Health and Safety and Transport. However, this Committee was precluded from (a) enquiring into in public session, or publishing confidential information regarding, any related matter if so requested either by the body or by the relevant Minister and (b) enquiring into the merits of specific sectoral policy or policies of the Government or the merits of the objectives of such policies.

To get a better perspective on the question asked "*What was the role of your Committee in relation to the operation of the Department of Finance*" I looked back

at the transcripts of the Committee meetings and Annual Reports and this illustrates the primary issue I encountered on joining the Committee – the crisis forced the Committee to be reactive not proactive as that ‘space’ for the Committee to be proactive was negated. As if to underscore this point, reactive -v- proactive, the Joint Committee was established by Order of the Dáil on 23 October 2007. The next day, 24 October 2007 a Motion was moved and a “*Supplementary Estimate referred to the Select Committee on Finance and the Public Service ...which shall report back to the Dáil by no later than 7th November*”.¹ The Committee was only one day old and the work of the Committee was being driven by forces outside the Committee.

To illustrate this point about how the space for the Committee to choose the issues/topics it wanted to pursue was limited I looked back at the Committee’s Annual Report for 2007/8 and found that

“On the 14 occasions the Joint Committee met, it dealt with the following matters:

- *The Election of the Chairman and Vice-Chairman;*
- *Work Programme 2008;*
- *Financial Stability Report 2007;*
- *The Role of the Financial Services Ombudsman;*
- *The Irish Banking Industry;*
- *Lending policy and money supply in the current economic climate;*
- *Current state of the economy including the banking and financial services sector;*
- *The Taxes Consolidation Act, 1997;*
- *Credit flow, credit costs and conditionality of loans within the Irish banking sector and its effects on Irish businesses at present.*

On the 12 occasions the Select Committee met, it dealt with the following matters:

Bills

- *Finance Bill 2008;*
- *Finance (No. 2) Bill 2008.*

Estimates for Public Services

- *2007 Supplementary Estimate for Public Services – Vote 6 (Office of the Minister for Finance);*
- *2008 Revised Estimates for Public Services - Vote 10 (Office of Public Works) and 2008 Annual Output Statement for the Office of Public Works;*
- *2008 Revised Estimates for Public Services and 2008 Annual Output Statement for the Department of Finance;*
 - *Vote 1 (President’s Establishment) (Revised Estimate)*
 - *Vote 5 (Office of the Comptroller and Auditor General) (Revised Estimate)*
 - *Vote 6 (Office of the Minister for Finance) (Revised Estimate)*
 - *Vote 7 (Superannuation and Retired Allowances) (Revised Estimate)*
 - *Vote 8 (Office of the Appeal Commissioners) (Revised Estimate)*
 - *Vote 9 (Office of the Revenue Commissioners) (Revised Estimate)*
 - *Vote 11 (State Laboratory) (Revised Estimate)*
 - *Vote 12 (Secret Service) (Revised Estimate)*

¹ <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2007102400008?opendocument>

- *Vote 15 (Valuation Office) (Revised Estimate)*
- *Vote 16 (Public Appointments Service) (Revised Estimate)*
- *Vote 17 (Office of the Commission for Public Service Appointments) (Revised Estimate)*
- *Vote 18 (Office of the Ombudsman) (Revised Estimate)*
- *2008 Revised Estimates for Public Services – Taoiseach’s Group and 2008 Output Statement for the Department of the Taoiseach:*
 - *Vote 2 (Department of the Taoiseach) (Revised Estimate)*
 - *Vote 3 (Office of the Attorney General) (Revised Estimate)*
 - *Vote 4 (Central Statistics Office) (Revised Estimate)*
 - *Vote 13 (Office of the Chief State Solicitor) (Revised Estimate)*
 - *Vote 14 (Office of the Director of Public Prosecutions) (Revised Estimate)*

Motions

- *Finance Act 2004 (Section 91)(Deferred Surrender to the Central Fund) Order 2008;*
- *Double Taxation Relief (Taxes on Income) (Socialist Republic of Vietnam) Order 2008;*
- *Double Taxation Relief (Taxes on Income) (Republic of Macedonia) Order 2008;*
- *Exchange of Information relating to tax matters and Double Taxation Relief (Taxes on Income) (Isle of Man) Order 2008;*
- *Double Taxation Relief (Taxes on Income and Capital Gains) (Republic of Turkey) Order 2008;*
- *Double Taxation Relief (Taxes on Income) (Malta) Order 2008.”*

The above shows that the Committee’s role in relation to the operation of the Department was limited, the Committee’s work load was, in the main, predetermined and because of that the Committee had little if no opportunity to be proactive, to select the events, issues or persons it would like or have liked to pursue. I would also suggest that the Committee did not, was not and could not have comprehensive oversight functionality when it was resourced on the basis of one two hour meeting every second week. With the best will in the world 11 Deputies, 4 Senators and an administrative staff of 3 could not oversee an Irish Economy with a fiscal crisis, the Public Service as well as the Financial Sector. As a general point, one of the first things that struck me on being elected Chairman was that the Select Committee had responsibility for half of the 40 Votes under which the Government spends public monies, but the value (monetary) of these Votes was less than 5% of the total Government spend, yet we had to examine these votes in the same manner and with the same care as if scrutinising the Health Vote spending €20 billion. Further, at the request of the then Minister for Finance the Committee had a lead and coordinating role within the Estimates Scrutiny process for dealing with the Annual Output Statements.

R1a: What was the role of your Committee in relation to the operation of the Central Bank and Financial Regulator?

Reply:

As set out in Appendix 1 below, the Committee was established to consider public affairs administered by the Department of the Taoiseach and the Department of Finance, including, in respect of Government policy, bodies under the aegis of those

Departments, The Central Bank was a body under the aegis of the Department of Finance, but as mentioned before; there was the Joint Committee on Economic Regulatory Affairs and they too had a role.

In my response to the question “*What was the role of your Committee in relation to the operation of the Department of Finance?*” the same applies to this question – the work of the Committee, particularly on the Select Committee side with nearly two Finance Bills, two sets of Estimates in some years together with the legislative work load meant that the work of the Committee was predetermined and the scope to be proactive and select the issues that the Committee wanted to look at was, to a certain degree, non-existent. The above shows that the Committee’s role in relation to the operation of the Central Bank was limited.

However, on being elected Chairman, my first Joint Committee meeting was with the Banks, the second was with the Governor of the Central Bank of Ireland. Further, in December 2008 the Committee met with the Irish banking Sector and January 2009 the Committee met with the Financial Regulator and Governor of the Central Bank in regard to the Committee’s decision to hold a series of meetings to consider issues surrounding the enactment of the Credit Institutions (Financial Support) Act 2008 which was a response to the global financial turmoil and how the regulatory environment needed to develop in Ireland in response to this new legislation.

R1b: In your opinion is the current supervisory regime robust enough to prevent another crisis?

e.g. i) in the event of a rapid rise of market interest rates, and its impact on household and commercial debt

e.g. ii) in the case of a Euro-related crisis, such as Greece leaving the Euro

Reply:

In a word no. The introduction in early 2001/2 of what was termed ‘light touch regulation’ has changed for the Regulator and the Central Bank, but the Office of the Financial Ombudsman which was established as part of ‘light touch regulation’ has not been updated. Further, the secrecy provisions of the Central Bank need to be examined and changed. This still remains a major issue and because of this we have a second type of legal/judicial system in place and if sanctions are handed down for certain ‘offences’ criminal proceedings do not take place.

I would also add that I was not re-elected in the General Election of 2011 and therefore I am not fully up to speed on the changes that have occurred since then. Accordingly, I am not in a position to comment, particularly in regard to Greece leaving the Euro as this was not a matter that was germane to the time I was Chairman of the Joint Committee.

R2b: During his Hearing in the Context Phases of this Banking Inquiry, Prof. Fitzgerald said (Volume 1, No 7, page 333); “There was a cultural change in the Department of Finance in the last decade. It became more concerned about the politics of things and less interested in technical

detail. I would have had less interaction.” Would you like to give us your own views on these comments?

Reply:

I neither agree nor disagree with Professor Fitzgerald. I became a member of the Joint Committee on 5 June 2008 and ceased to be a member when the Dáil was dissolved in February 2011; therefore, my direct experience as both a Committee member and Chairman with the Department was limited to just over 2 and half years. Professor Fitzgerald had years of experience of dealing with the Department both pre and post the crisis and pre and post the boom. I did not and accordingly I have no benchmark to determine the culture of the Department except as I found the culture in the midst of an ever worsening crisis which was an all-hands-on-deck culture.

R2b: In your time on the Committee, were there issues identified that could not be investigated due to limitations in the Terms of Reference? E.g. Financial stability, Fiscal Policy?

Reply:

I do not recall the Terms of Reference being a limitation. However, what was an issue and a limitation was the resources the Committee had; how could 11 Deputies and 4 Senators oversee such a huge remit? The Committee did not have, among its members, expertise or experience at a deep enough level, the committee and the secretariat while having policy analysis experience did not have expertise across the breath of the crisis and we found that access to financial or regulatory experience/expertise was available but there could be a conflict of interests because Ireland is a small country and those who would have the experience/expertise could be compromised by having worked in the sector, undertaken consultancy or commented on the crisis. Further, in regard to expertise available outside of Ireland, which was of greater depth than was available in Ireland, this could be negated or limited because of a lack of the necessary ‘Ireland’ experience. I would suggest that the Dáil needs this expertise in-house if it going to be effective in its oversight role and while there is an element of expertise available in the Oireachtas Library and Research unit it is not dedicated to the Committee and the Committee must compete with other demands and priorities on the services of the Oireachtas Library and Research unit.

R2b: What discussion can you recall about the likelihood or otherwise of a “soft landing” in the property market in the period up to 2008? Bearing in mind that there was an increased level of warnings in the public domain.

Reply:

I did not become a member of the Committee until June 2008, property had peaked in 2006. In 2007 house prices stabilised at first then started falling and by the time I became Chairman a “soft landing” was but a dream. I do recall discussion and commentary in the TV, Radio and Print media but by middle of 2008 there was no discussion about the likelihood or otherwise of a “soft landing”.

R3b: What is your view as to how the regulatory/supervisory bodies dealt with the financial institutions they were charged with overseeing? Do you

believe that their engagement with the financial institutions were sufficiently robust?

Reply:

I do not believe the regulatory/supervisory bodies were sufficiently robust in their engagement with the financial institutions. There are two points I'd make in this regard. Firstly, remuneration; the financial institutions had and continue to have the capacity to 'buy' the best talent and secondly; the recruitment process in the Civil/Public Service which includes the regulatory/supervisory sector.

Taking my first point, in my experience as a registered auditor and accountant there has always been a miss-match between Revenue and the Private Sector. The Private Sector can pay the best rates and get the best talent and therefore is always in a better position to save private sector companies money by tax avoidance, which is legal (tax evasion is illegal). The effect is an 'inequality of arms' between the Revenue and the Private Sector. I believe that the same 'inequality of arms' applies between the financial institutions and the regulatory/supervisory sector. In my opinion, with the boom that preceded the crash the 'talent' went where the pay was best and that was the financial institutions not the regulatory/supervisory sector. The problem that I see is that it is the financial institutions, not the regulatory/supervisory, sector that proposed innovations - it is a recast of my experience of being the Chairman of the Joint Committee during the crisis - reactive not proactive. The regulatory/supervisory sector, as established and developed, was reactive not proactive. If it was the reverse I do not think that the regulatory/supervisory sector would ever have developed or proposed financial products such as derivatives or contracts for difference. What we got was these products being developed by the highly paid best talent that money could buy, which the Private Sector paid for, and as we had an 'inequality of arms' then the regulatory/supervisory sectors understanding of these products, their effects and how they should be best regulated was diminished. Before the crisis, during the crisis and since, the 'spin', in relation to high salaries and bonuses, has been that you have to pay these huge salaries to get the best talent. The crisis begs the comment that the financial institutions really did not get value for money.

On my second point; the recruitment process in the Civil/Public Service which includes the regulatory/supervisory sector, here I hold a view that the selection process needs to be examined. The selection process determines who gets the job; therefore, a key question is, therefore, what was the 'type' of person the selection process wanted? I would contend that in relation to the 'light touch regulation' the selection process did not prioritise appointing a contrarian or a person who had a track record in taking a strong opposite or questioning positions to the consensus view in the industry. In relation to the position of Governor of the Central Bank this is even more oxymoronic. The Secretary General, up to the retirement of Mr. Tom Considine, was on retirement appointed as the new Governor of the Central Bank of Ireland. The Governor's role is to be independent and one of oversight of Government economic policy. This is where the oxymoronic position arrives. Is a just retired Secretary General of the Department of Finance now that they are Governor going to criticise the economic policy that they as Secretary General were responsible for prior to retirement? They, as a very minimum, had to be conflicted and, from my perspective,

to now criticise or be critical of the policies they were responsible for in the face of logic and human nature.

R3b: One of the statutory objectives of the CB is the ‘promotion of the financial services industry in Ireland’. In your view was there a conflict between this objective and the Financial Regulator’s responsibility for prudential supervision?

Reply:

Yes. In my time as a politician I came across numerous proposals for industry funded regulation. You come to the front door in a suit seeking a firm or sector to contribute funds to run a regulatory function and the next day you put on your white coat, present yourself at the back door to examine how they did their business. If you found a major breach are you conflicted; do you close down a firm or sector from which you get your funding? If you are responsible for promotion you should not, if you are open and transparent, be then responsible for prudential supervision.

R4a: Macro Economic and Prudential matters can be highly technical issues. What level of external expert advice was sought by committees when examining issues arising under its Terms of Reference? Did you feel that the committees had sufficient access to additional expert advice?

Reply:

I recall two matters.

- 1) The provision of expertise to the committee to prepare for future meetings on the Credit Institutions (Financial Support) Act 2008 and scheme;
- 2) Commission the writing of an academic report in relation macroeconomic policy and effective fiscal and economic governance having regard to 1) Macroeconomic management and surveillance; 2) Fiscal policy, including budgetary and taxation policy; 3) Institutional structures; 4) Fiscal rules; 5) Emerging EU proposals and interactions between the above policy options.

In regard to the second question; “*Did you feel that the committees had sufficient access to additional expert advice?*” I refer to my response to the question: “*In your time on the Committee, were there issues identified that could not be investigated due to limitations in the Terms of Reference? E.g. Financial stability, Fiscal Policy?*” and state again that in my view the Committee did not have, among its members, expertise or experience of all the issues the crisis threw up at a deep enough level; the committee and the secretariat while having policy analysis experience did not have expertise across the breadth of the crisis and we found that access to financial or regulatory experience/expertise was available but there could be a conflict of interests because Ireland is a small country and those who would have the experience/expertise could be compromised by having worked in the sector, undertaken consultancy or commented on the crisis. Further, in regard to expertise available outside of Ireland, which was of greater depth than was available in Ireland, this could be negated or limited because of a lack of the necessary ‘Ireland’ experience. I would suggest that the Dáil needs this expertise in-house if it is going to be effective in its oversight role and while there is expertise available in the Oireachtas Library and Research unit it is not dedicated to the Committee and the Committee had to compete with other

demands and priorities on the Oireachtas Library and Research unit services. An Office like the Office for Budget Responsibility is necessary.

My experience as Chairman of the Joint Committee on Finance and the Public Service during the crisis was that the committee needed more experience and more expertise, but dedicated to the Committee not just something the Committee shares with other consumers of the service of the Library and Research Unit.

R4a: Are Oireachtas Committees – the key tool available to the Oireachtas to hold Government to account and scrutinise legislative proposals – resourced with sufficient specialised expertise and advice on complex policy issues?

Reply:

I refer you to my reply to the question above. However, I note the question relates to committees plural, please note that my reply relates only to the Sectoral Committee that would have oversight of Finance and the Public Service.

R4c: What level of contrarian or independent expert advice is sought by Oireachtas Committees when examining key issues? Is such advice sought regularly or only on an exceptional basis?

Reply:

As mentioned before, the work of the Committee was reactive and usually with a very tight deadline. Ireland was in the middle of a banking and fiscal crisis and, therefore, time was at a premium. However, it has been my experience that Sectoral Committees always seek - where time permits - to hear all views including contrarian and independent experts, because the validity of a Committee report and any recommendations made are undermined if only one view has been taken.

R5a: How open to scrutiny were governmental decision-making processes? Was the Oireachtas sufficiently aware of the stakeholders with whom Government Ministers consulted in the pre-legislative stage? Was this information available to the Oireachtas?

Reply:

This is three questions in one. On the first question, my view is that governmental decision-making processes were not open to scrutiny. On the second question my view is that the Oireachtas was not sufficiently aware of the stakeholders with whom Government Ministers consulted at a pre-legislative stage. Herein my experience is that up to the 2011 General Election any pre-legislative scrutiny that took place was on an *Ad Hoc* basis or 'pilot' basis. The pre-legislative scrutiny that was introduced under the 2011 Programme for Government is a very welcome development. My experience as a Minister of State was that Ministers and Departments did consult widely, but this was not open and transparent. On the 3rd question, the information was available if the right Parliamentary Question was asked, but there was not and I think it is still the case that this type of information is not readily available to Oireachtas Committees as a matter of course. The Regulation of Lobbying Legislation should address this but there also needs to be consideration of the issue of Cabinet Confidentiality.

I am of the opinion that the effect of our system of Government and Parliament is that the Government have the power, in effect the Government set their own exam, sit this exam and then correct the exam because only a Government Minister can move legislation or amendments thereto which involves a charge against the public purse. An amendment, the effect of which is a charge on the public purse which is not proposed by a Minister is Out of Order and may not be moved and the effect of this is that debate on alternative can be stifled particularly when the Committee Stage of a Finance Bill is being taken by the Committee.

R5b: What is your view of the quality of advice provided by the Department of Finance to the Government and in particular the analysis on which that advice is based?

Reply:

The Committee did not, due to Cabinet Confidentiality, ever have access to the advices provided by the Department and therefore I cannot comment on either the quality of advice or the analysis on which that advice was based

R5c: Please describe the level of analysis of budgetary policy carried out by the committee. Was the increased reliance on pro-cyclical or once-off taxes as a percentage of total income identified as a risk?

Reply:

The analysis of budgetary policy was not a separate stand-alone and focused process. Budgetary policy was analysed, in my opinion in a very quirky fashion, when the Committee took the Committee stage of each Finance Bill. I say a quirky fashion because, in my opinion the effect of our system of Government and Parliament is that the Government have the power because only a Government Minister can move legislation or amendments thereto which involves a charge against the public purse. An amendment, the effect of which is a charge on the public purse which is not proposed by a Minister is Out of Order and may not be moved. The reliance, increased or otherwise, on once-off taxes as a percentage of total income was not identified as a risk, though individual members and Party Spokesperson would have raised or flagged concerns.

R5c: Programmes for Government and Social Partnership Agreements were key drivers on the Expenditure side. In your view how appropriate were these plans in light of the volume and sources of available income to fund these policies.

Reply:

In my view the appropriateness of these plans is open to question. Negotiations for the 'The Seventh Social Partnership Agreement: *Towards 2016*' were formally launched in February 2006 and concluded in June 2006 with ICTU ratifying the agreement in September 2006. The headline cumulative wage increase was in excess of 10% over 27 months. I am sure that the Government and the Social Partners, if they were aware of the what lay ahead for the economy would not have proceeded down the road taken then.

R5d: Would you support the view that the dominance of the Oireachtas by Government in terms of setting the agenda affected Oireachtas' capacity to perform its oversight and accountability roles with respect to the stability of the financial system?

Reply:

Yes. A mature state must have a system of checks and balances. The doctrine of the separation of powers between the Executive, the Legislature and the Judiciary is a key to countering the domination of one organ of state by another organ of state. As I've mentioned in an earlier reply our system of Government and Parliament is ineffective as a system of checks and balances and I cited as an example that legislation or an amendment thereto, the effect of which is to impose a charge on the public purse, either on the Revenue or Expenditure side, will be ruled Out of Order unless moved by a Minister.

**MICHAEL AHERN,
"Libermann",
Barryscourt,
Carrigtwohill,
Co.Cork.**

7 August 2015.

Appendix 1

The role of the Joint Committee on Finance and Public Expenditure was set out and determined by the Terms of Reference which established that Committee. The Dáil Select Committee was established by Order of Dáil Éireann of 23rd October 2007 to consider, in respect of the

- 1) Department of the Taoiseach and the Department of Finance, Bills, Estimates for Public Services;
- 2) Such proposals contained in any motion concerning the approval by the Dáil of international agreements involving a charge on public funds;
- 3) To consider Annual Output Statements and such Value for Money and Policy Reviews conducted and commissioned by the Department of the Taoiseach and the Department of Finance as it may select.

The principal function, therefore, of the Joint Committee was to consider:

- public affairs administered by the Department of the Taoiseach and the Department of Finance, including, in respect of Government policy, bodies under the aegis of those Departments;
- matters of policy for which the Taoiseach and Minister for Finance are officially responsible;
- related policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas;
- statutory instruments made by the Taoiseach and the Minister for Finance;
- such proposals for EU legislation and related policy issues as may be referred to it;
- strategy statements laid before the Houses of the Oireachtas by the Taoiseach and the Minister for Finance;
- annual reports and accounts, overall operational results, statements of strategy and corporate plans of bodies under the aegis of the Department of the Taoiseach and the Department of Finance or bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas.