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Subject: Serious Concerns

7 September 2015

Dear Peter, Deirdre, Chairman Ciaran, Ceann Comhairle, Cathaoirleach, Inquiry Colleagues,

As you are aware I have been unhappy about the entire handling of the protected disclosures of recent months. The initial secrecy of the Oireachtas service and of those committee members in possession of the disclosure at first has troubled me. Furthermore, I have been uncomfortable with the nature and extent of the review of the disclosure that has taken place. My preference before and now is for a full independent investigation of the impact of the disclosures on the Banking Inquiry rather than the limited review that has been conducted purely from the perspective of the Oireachtas Service as an employer dealing with an employee.

I have consistently requested a full independent investigation that is outside and totally removed from the Oireachtas Service.

The integrity of the Committee's work and the credibility of the Banking Inquiry following a full independent investigation is of the utmost importance to us all. Ultimately, it is the public who must have absolute confidence in the integrity of all outcomes in relation to the Inquiry's work.

While I welcome the completion of the 'Review' carried out by Mr Senan Allen SC, my original concerns remain and to my mind have been borne out given the incomplete nature of the Review that has been undertaken. Quite frankly, it does not serve the purpose of reassuring the public and witnesses before the Banking Inquiry of the integrity and completeness of our work as is required. The approach taken to date in respect of the investigation of the disclosures made are not in accordance with fair procedures for those affected by the work of the Banking Inquiry.

In addition to my position on the limited nature of the Report of the Review carried out by Mr. Allen on behalf of the Oireachtas Service, my principle concerns with the content of the Report are as follows:

1). Mr Allen has stated in his Report that corroborative witnesses were not interviewed or consulted including one potential and easily accessible witness specifically identified in the protected disclosure who, it was alleged, had exited the inquiry team for the self same reasons as the whistleblower and that were outlined within the protected disclosure. It seems bizarre that if any witness was going to be interviewed then surely it would be a person who had left the inquiry team for the same reason as the whistleblower and who was referred to in the protected disclosure. The failure to interview several obvious and potential witnesses concerns me and especially this one. I am bound to say the reason outlined in the Report by Mr. Allen for his failure to interview such witnesses is not credible or sustainable when one considers the importance of the integrity of our work at the Banking Inquiry.

2.) Among the central themes of the protected disclosure is the allegation that some redactions of Central Bank documentation supplied to the Banking Inquiry were unreasonable and incorrect. It would appear from Mr Allen's review that no such documentation was examined to determine if this was the case. I find this troubling. Why would one not examine such documentation given the importance and relevance to what is at issue in the protected disclosure. In addition, this matter goes to the heart of the credibility of the work of the Banking Inquiry and to questions of fair procedures for witnesses appearing before it.

3.) Without prejudice to all parties and regardless as to the validity or not of the allegations within the protected disclosure, I find the language within the report to be unusually trenchant and evocative. This was unnecessary. It would appear Mr Allen was anxious to vividly outline and underpin his view of the competency, ability, integrity, standing and reliability of the confidential discloser. He seems to have made such definitive findings without addressing either of the two points raised above in 1 & 2. I find this very concerning and regrettable. Above all, while the Report as presented may discredit the confidential discloser, it falls short of the required assurances of the integrity of our work at the Banking Inquiry. This is because, amongst other things, the absence of interviewing all the relevant and obvious witnesses and examining key information in terms of redactions within Central Bank documentation.

4) Mr. Allen's report seems to accept that there are potentially tens of thousands of documents furnished by the Central Bank and others to the Banking Inquiry that were not reviewed or properly reviewed or considered or brought to the attention of members of the Banking Inquiry. This is a major concern for the work of the Banking Inquiry and for any conclusions it may arrive at based on incomplete information and also for due process and fair procedures for witnesses appearing before the Banking Inquiry.

The need for a more complete and detailed assessment of the issues arising in a full independent investigation is further emphasised by my discovery within a written statement not yet published but made by a past Central Bank employee which expresses serious concerns about suppression of views within the Central Bank in 2007. I understand that this and other important information had not been provided to the Inquiry Team by the Central Bank or, if it was provided, it was not brought to the attention of the members. This is very concerning independent of the existence of any protected disclosure. It adds to the requirement for full independent investigation to include the incomplete level of material provided by the Central Bank to the Banking Inquiry.

No doubt we all look forward to completing the public hearings this week and indeed the remainder of our work to the publication of our own Report. You will recall from one of the earliest meetings I had stated that my primary interest is in the production of a Report that is based on all of the facts not a Report that is based on incomplete information or only some or a version of the facts.

The issues outlined above are valid and concern me greatly. A full independent investigation outside of the Oireachtas Service is now urgently required. Only such an immediate independent investigation can maintain the confidence of the public and all committed to the proper conduct of our work and a credible Report from the Banking Inquiry itself.

This is my position. I hope that you share it.

Yours sincerely

Senator Marc Mac Sharry.