ANGLO/IBRC – IRISH BANKING'S ROTTEN CORE

A Tale of Lies, Damned Lies and Anglo/IBRC Lies

The Understanding Anglo Group

Dublin, Ireland.

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PREVIEW

This is the story which the 'Crooks in Suits' – the self-serving politicians and the pen-pushing bureaucrats - in the new Ireland hoped would never be told. It contains truths, which they would want to keep hidden, in order to protect themselves and their lackeys.

It is the story of a bank, which precipitated the collapse of a nation's finances and made every Irish man and woman ashamed and poorer; it is the story of how blame is being deflected to protect vested interests in the public sector.

This is a research report, written by researchers, but designed to do what has not yet been done: it unveils the truth, the real truth and nothing but the truth.

Much of it is as dry as the proverbial dust – not an easy read for most people. We apologise for that, but we considered it necessary to report the facts honestly and comprehensively. We recognise that our conclusions will shake out some of the cobwebs within the Irish public sector and the country's financial system – and that they will cause embarrassment to some people in positions of authority, who will attempt to rubbish its findings. Let them produce the evidence to contradict what is included her – if they can! We are satisfied that they can not, but we accept that they will try their damnedest

This is a story of collusion, conspiracy and corruption at the highest levels in Irish public life. It shows how the government, the Department of Finance, the governance authorities, parts of the legal system and the entire media conspired to deprive the people of Ireland of the facts about what happened, is happening and is likely to happen in the future.

It names the guilty parties. It identifies the conspirators. It uncovers the background. It nails the lies. But most important of all, it provides the facts – facts, which others have managed to keep hidden for far too long, facts to which the Irish people are entitled and facts which should change perceptions and attitudes, but probably will not.

But be prepared to choke on your porridge, as you read each chapter. It makes for uncomfortable reading. If ever the adage 'The Truth Hurts' applied to any story in modern Ireland, it applies to this one. It would be impossible to forget the Kerry Babies, or the refusal to accept the reality of sexual abuse in Kilkenny, or Sligo, or in other places, or the McBrearty case, or the Magdalene Laundries; in many ways, this is worse than any of them. The reality is that this involves conspiracy at the highest levels of Irish government and governmental agencies. It is a national disgrace, but very few people have seen that until now.

This is about state-sponsored corruption. Its telling will shake the very foundations of the Irish political system and the incestuous Irish Public Sector, and tell how power is being abused and has been abused.

You may find the early chapters heavy going, but they are there only to provide context. Much of the rest of it is heavy going too, but please stick with it. You will learn what you were never meant to know; you will be told the 'who', as well as the 'what' and the 'when'; and it will be different from what you have been told by the conspirators until now.

Enjoy it - if you can! At least, it's free. Tune in, friends, and stay with it. The Understanding Anglo Group has already started on their next report; it will reveal even greater injustices, bigger rip-offs and more evil conspiracies at other levels; it will disclose the existence of banking contracts not so far disclosed and involving several banks, both local and foreign. It should be mind-boggling – explosive as far as Ireland's financial system is concerned and is likely to have major implications for the Irish financial system and Ireland's position in Europe, for the Irish political system and for crucial parts of the public sector.

In our view, the Irish people are entitled to know the full story; it should not be the preserve of the elite few, who are using it to their own advantage and to disadvantage others.

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FOREWORD

The following notice appeared earlier this year in a number of Irish newspapers:
'*I invested €1M of my pension in Anglo's Whitgift Geared Property Fund and am unhappy with the level of information being provided. I have requested without success that the bank organise a meeting of investors. I have undertaken my own investigations and now have further information. I am keen to meet up with like-minded investors to share views'*.

Last year a somewhat similar, but broader, concern regarding Anglo resulted in the assembly of the group responsible for this report. It was undertaken by people with an interest in understanding what precisely had happened to give rise to the catastrophic collapse of Anglo Irish Bank Corporation Ltd., Ireland's third biggest bank at the time. It was prompted by a view that, despite some of them having a background in finance, not many really understood what had happened.

Their collective view was that if they did not fully comprehend it, probably others, with even less financial and legal knowledge, did not either. As they saw it, there were far too many loose ends, which had never been explained.

The research commenced through a series of unstructured discussions and, over time, evolved into an organised, extensive literature search of information in the public domain, from which an 'issues document' emerged. Through further group interaction, that issues document was developed and ultimately converted into a draft document for a number of small workshops. That latter document was eventually amended to incorporate the contributions from the 'Understanding Anglo' workshops and additional material which had been sourced, in the interim.

Despite what some people might think, the writing of this report was definitely not an attempt to apportion blame; neither was it an attempt to justify or to condemn any individual or any entity. There was no desire to divert blame or to criticise. This project started from a totally open and unbiased view, in the full appreciation that a bit of constructive research might provide some understanding – it was simple as that.

It ended entirely differently to what we had expected. Data presented in court cases suggested that the story was much more complex than we had believed – or possibly than we were persuaded, by a combination of interests, to believe. Our conclusions, some of which are based on transcripts of court proceedings, have led us to believe that an organisation, which is now owned by the State and which was supposed to be regulated by the State, committed some of the most serious breaches of the law of the land and of European Regulations, in the history of Ireland, in so far as the rules applicable to financial institutions and financial activities are concerned.

Worse again, there is, in our view, a serious possibility of a concerted cover-up and of an attempt to transfer the guilt to some people who certainly acted injudiciously, but not illegally. By any standards, that is a shocking conclusion; we would hope that we were wrong in arriving at that conclusion, but we fear that we were not.

The 'Understanding Anglo' report can best be described as collaborative and interpretative research, undertaken on a cross-border basis.

1. LOSING THE RUN OF OURSELVES.

Anglo-Irish Bank (Anglo) was the fastest growing and ostensibly the most profitable of Ireland's banks (in relative terms) for the best part of two decades, but especially during the period of the so-called Celtic Tiger. Its share price rose faster than that of any other financial institution in Ireland; its loan portfolio increased more rapidly; it became the 'bank of choice' for the burgeoning property and construction sector; it was the envy of not just other banks, but of a wide raft of other businesses, as Ireland's economy expanded; its management team was seen as exemplars of how to grow a bank, or any other business, when opportunities arose. Overall, its achievements were seen as stellar – an organisation to be admired and emulated.

The second half of the last decade of the twentieth century and the early years of the twenty-first was a period when the Country's output (as measured by its Gross Domestic Product or G.D.P.) was growing at a phenomenal rate, becoming the envy of small economies throughout the world. Ireland came to be recognised as a real-life model of how small nations could create wealth and improve the living standards of its citizens.

The nation's infrastructure, especially its roads and, to a lesser extent, its telecommunications systems, improved beyond recognition. Over a very short period, the Country changed from the impoverished ex-colony of previous decades into an international prototype for economic prosperity, with much of that improvement being pump-primed and facilitated by huge transfers of capital from its partners in the European Community/Union, in the early and mid-1990s. The €8 billion promised to and by Albert Reynolds, which had been seen as a joke and was roundly maligned by both opposition parties and the media, was actually received with a bit extra, and made a significant difference to people's lives, to economic development and to living standards - at least for a majority of Irish people.

But – and it is big 'but' - at the same time, the growth in Ireland's cost base was outstripping that of every other developed economy in Europe, although no one seemed to care or even to notice, apart from George Lee and one or two others, whose advice and comments were widely and roundly condemned. Their 'pessimism' was no longer acceptable in most of Celtic Tiger Ireland; we were becoming a prosperous nation and there was no justification for such negativity, we were told. Living standards were improving rapidly, if somewhat unevenly, with many parts of rural Ireland seeing little evidence of the new prosperity.

We knew that there was still a significant 'under-class' (to use a somewhat insulting phrase, which has become common currency, in certain sections of the media) in Ireland, and seriously disadvantaged pockets of poverty; certain clerics and those involved in charities were telling us that we needed to take greater cognisance of the level of homelessness, of child neglect, of economic inequalities, of the increase in suicide and psychological problems, and of social injustice; but to a large extent they were ignored.

The shelters for the homeless were full every night, with waiting lists, and those who ran them were growing demented by the pressure of inadequate provision and lack of funds. People were sleeping in cardboard boxes on the streets of our cities and few seemed to care. Anyone who had to spend an evening in the casualty ward of any hospital in an urban area, saw at first hand the energy and sweat being expended by nurses and doctors in trying to save the lives of those who had self harmed, taken overdoses or been injured whilst drunk; they would have seen the dread and the concern on the faces of parents, spouses, children and siblings, who had been called by the hospital to be told that things were very bad and that the patient might not survive.

But not everyone saw such trauma, nor would every citizen have had much sympathy, had they seen it. Putting it crassly, there was a widespread view that '...*really there should no longer be an under-class, given the opportunities available...'* Looking back, it is difficult to believe that so many of us were so arrogant and so far removed from reality. The pockets of poverty were bigger and deeper than we realised, and they existed in both urban and rural areas.

We accepted that Ireland was becoming – indeed had become - an expensive place in which to live, to visit or to do business. The cost of public utilities had increased dramatically, with a wide range of industry representatives complaining frequently and vociferously, about the way in which increasing energy costs, wage levels, rental rates, politically-driven government expenditure and massive waste of resources were damaging the country's international competitiveness. But such comments were condemned as whingeing; we were now prosperous and we deserved our prosperity, and no one had a right to complain. It was almost as if it was unpatriotic to complain. We would happily tolerate higher payments for those on social welfare and for the so-called 'under-classes', provided they accepted our generosity and shut up. The syndrome of the bold schoolboy standing almost invisibly in the corner and compelled to be silent was still alive and well, in Celtic Tiger Ireland.

Internationally, Ireland's manufacturing sector was beginning to feel a cold wind blowing from the high cost foothills within which it was operating, but that was ignored as new technologies and increasing American investment combined to fill the employment vacuum. Manufacturing was rapidly becoming seen as *passé*, if not entirely irrelevant or unnecessary. Anyway, it was 'dirty', no longer needed and should be left to the low cost economies of the developing world and the Orient. Planning applications for such activities were being seen as an assault on the sensitive tastes of those in secure and well-paid jobs, in urban Ireland with its over-priced property. We should be attracting 'clean' back-office investment, with a high research and development content, because we were now well educated - or so we were being told. The fact that some businesses were complaining that far too many of their intake from our schools were almost illiterate and/or non-numerate, was rejected as special pleading, with no real validity.

In international cost comparisons, Dublin ranked behind only a small number of other national capitals, in terms of how expensive it was as a destination for tourists, a place in which to live or a location in which to establish a business, though it was still seen, in the United States, as a highly desirable entry point for the vast European market. To an extent, the continuing flow of investment from North America, in particular, masked the problems which were developing and created an air of unreality, through which most people basked in happiness.

This was a new nation – the nearest Ireland had ever come to the nation envisaged by the 'men of 1916' and their successors. Its people conveyed an outward-looking, 'can-do' and confident attitude to investment and entrepreneurship, to trade and progress, to borrowing and building, to the Mercedes, the second home, the foreign holiday (or two, or three) per annum and the shopping trips to New York or the more expensive shops in London. Those who had made the money saw themselves as having a right to spend it and to show others how well they had succeeded.

Just as importantly, those who ran the place – politicians, media and the public sector – concluded that they had the same right to spend as the small number of 'high fliers' in the private sector and bench-marking guaranteed that they could do so, even if their productivity did not change, or they contributed little or nothing to the generation of that wealth, which they were spending so freely, or if they had faced none of the risks involved in its generation – in fact, especially if they contributed little or nothing, and took no risks.

Our politicians began to pander to lowest-common-denominator politics and woe betide any Minister who could be accused of promoting policies, which could be construed as hurting the vulnerable in society – we could afford to be generous and we should be '*as long as I don't have to pay for it*'. We moved from the 'working class' vulnerable to the 'middle class' vulnerable – in fact everyone, who was not a millionaire, was 'vulnerable'. The fact is that the majority of us espoused those, or broadly similar, attitudes and the politicians responded to our demands, though some also acted as cheer-leaders for such views, with absolutely no concern for what we could afford.

When Ministers dared to advocate (and not many did) that those who could afford to contribute more to society should be persuaded, or even forced, to do so, they became a target for personalised criticism, from both those with money and reasonable incomes, and from those with pens and word processors. 'Why should we have to pay? We had a right to these things, in a successful economy and an advanced society'.

As Education Minister, Noel Dempsey argued that families with high incomes should be asked to contribute to the investment in their sons and daughters, as they were being educated so that they would get the best-paid jobs. The initial indications were a threshold of somewhere between €120,000 and €150,000 for a family with one student in university education, increasing as the number of children at third level increased. To most people, that was not an unreasonable view, but Dempsey became the *bête noir* of the middle classes and of the media. Having previously suggested the 'single mandate', whereby TDs should relinquish their Council seats and the income that went with those positions, and having been 'hung out to dry' by his party on that issue too, he became seen as 'error prone'; with hindsight (although many of us realised it at the time), he was being far more realistic than any of his critics, or indeed than his party leader and his acolytes.

We were living in a 'new Ireland', which deserved to be celebrated by the *nouveau riche*, with their fossil-fuel-guzzling cars, their new business models, their disdain for concerns about risk and their passion for change and progress. And no organisation in the country reflected those attitudes better than Anglo-Irish Bank Corporation Ltd. High-flying, confident, flashy and ambitious; its management portrayed an image of success and an arrogant disrespect for convention and caution. It seemed to be a vehicle with no reverse gear – but, as we now know, with no brakes either.

Unstoppable, uncontrollable and uncontrolled, it was the epitome of the brash new 'Celtic Tiger' nation, with its disregard for either convention or moderation, its ignoring of the rules of governance and prudent management (though the majority of us were not aware of that at the time), and its drive for position, recognition, acceptance and market share. Its designers were arrogant and confident, even complacent, in their conviction that it could and would never crash or sink; but as history had shown, similar attitudes had applied among those who built the Titanic too.

Such a banking business held a great attraction for many Irish investors and, ultimately, for some non-Irish investors as well. Its primary attractiveness as an investment, to those who bought its shares, was its business model. According to its annual reports, that model relied on its low cost base, its superior service and its modern philosophy of 'relationship based banking'. It responded much more quickly than its competitors to the needs of its customers. As a result, its borrowers paid a higher price than was being charged by other local or international competitors. Outwardly, its customers were shown great respect and even feted by a market-focussed management, though more recent revelations have de-bunked the genuineness of the 'respect' element.

It was, we were told, a model of 'low risk with high return', which, as we should all have realised, contravened the most basic rules of micro-economics. We were advised that lending was being based entirely on the customer's ability to generate cash flow, with good asset cover and personal guarantees combining to provide a 'triple lock' of security; it had a centralised decision-making structure, which allowed it to make decisions quickly, using a consistent credit assessment model; and its staff were encouraged to adopt an entrepreneurial approach, based more on a sales and marketing philosophy than on any traditional banking systems or criteria. It was the ultimate customer-focussed business.

Unfortunately as we now know, the low risk business model, which was offered to investors, and was presented in its annual reports, media announcements and investment conference presentations, was not the one, which was actually being implemented. Instead, the Anglo model was a high risk one, totally at variance with what was being sold to investors and even different from what customers thought they were getting – though that may not have been the bank's primary concern; neither were the less prudent aspects of the bank's operations the primary concern of its borrowers, at that stage. When the fan ceased to turn under an assault of detritus, the triple lock became, at best, a single lock with inter-linked gears, and the entire system collapsed under the new pressure.

The model advertised by Anglo defined its business for investors. Paraphrased, it was robust, inventive, customer-focussed, entrepreneurial and safe. But once the underlying circumstances changed, Anglo became a completely different entity, with a totally changed risk profile. And both investors and the investment markets, as well as borrowers, found themselves exposed to a low volume/high value loan book, invested almost entirely in one industry sector, where values were in serious and prolonged decline.

At that point, the model's safety core collapsed, the share price collapsed and ultimately the bank collapsed. Worse again, the search for a fall-guy, or fall-guys, began, while the management structures and systems fractured and failed, and the regulatory bodies ran for cover. Hindsight suggests that this was a time for brave and radical decisions, for leadership and for addressing fundamental issues with forceful determination. Instead, the powers-that-be were tripping over one another in their frantic scampering for the burrows of refuge and the safety of the life-boats, and in the search for scapegoats. The entire system fell apart, with external, international, financial-market driven and macro influences contributing significantly to the scale of the collapse.

Subsequent analyses, reports and commissions have uncovered many of the facts, but they have also ignored some of the more unpalatable realities. It is now obvious that, in reality, Anglo was insolvent long before 2007. How long before that, we still do not know and no one seems interested in finding out. But it is an important issue, which is not being addressed constructively by the new regulatory regime, nor by any of the commentators, who pander to the authorities' line. That entire regime needs to learn from the past too; but it should not apply those lessons by closing down the entire economy, in the interests of some spurious concept of rectitude, which has huge costs with little benefit. Mr. Elderfield is now being allowed to rule the roost, but he needs to become more balanced and less arrogant in his approach, though there is no evidence that he realises that, or that he has the humility to accept that he has a broader brief, or that he could ever be wrong.

What we do know with certainty is that Anglo ignored the rules of good governance and were allowed to flout those rules, that its 'triple lock' security proved about as valuable as an ash-tray on the proverbial motor-bike when property values fell, and that its reported performance bore all the hallmarks of a pyramid, or 'ponzi', scheme, which would have made Bernie Madoff jealous.

We now realise that its published accounts were, at best, only scantily related to reality and that significant transactions were not reported as shareholders had a right to expect and as regulatory authorities should have demanded, or in a way which might have saved some of those shareholders from ruin and saved the State from serious financial and reputational damage.

Regulators, auditors, directors and senior executives failed the company, its customers, its shareholders and ultimately the entire State. And then they ran for cover, blaming the borrowers, some of whom became national fall-guys and hate figures. It is difficult for any outsider to comprehend how so many of those experienced and intelligent people accepted the veracity of information, which clearly contained half-truths at best, or lies at worst. One has to wonder how they could have tolerated practices which were unconventional, if not downright illegal, and how they have escaped censure, as a minimum. There were more than a select few who failed Ireland Inc. in this instance.

The whole episode stinks of failure, betrayal, devious manipulation of information, potential deceit, the hood-winking of investors, the disguising of insolvency and conspiratorial blindness on the part of those whose role it was to protect shareholders and the State. All those factors were accompanied by the most obviously illegal 'share support' and 'market manipulation' scheme ever operated in Ireland, or on the London or Dublin Stock Exchanges. Overstating profits is one thing – a common enough event, in fact; supporting the price of the shares in the company one manages is a different matter altogether; doing both, or failing to 'govern' the business while both were happening speaks volumes about the competence of those involved.

Is it not now time that those who currently run Anglo accepted that 'their' bank's collapse was caused primarily by the capacity of those who managed it, to 'fool' both investors and those responsible for its governance? Is it not time for them to focus on the protection of the public interest and the State, rather than on any irrelevant events in the market for its shares?

The failures, in this case, were so fundamental that one is tempted to ask if those who were fooled could be deemed to be entirely innocent of wrong-doing, or whether they were wilfully ignorant of the realities, or complicit through negligence by virtue of inadequate oversight, in ‘conning’ shareholders.

It is difficult to accept that some of those involved could not have seen through the haze of manipulation, distortion, non-disclosure and misrepresentation; it is difficult to accept that those involved in overseeing the business and those responsible for ensuring that the national interest was being properly protected could not have seen through the issues, the errors, the manipulation, the ‘control freakery’ and the secrecy. There is of course an exemption in law, based on senility, but whether that applied in this case is questionable.

One also has to wonder where on the spectrum from innocence, to ignorance, to passive collusion or complicity, to wrong-doing, to illegality, these failures lie. And one is tempted to ask why the State, through the Taoiseach and the Minister for Finance, at the behest of Messers Dukes, Aynsley and Woodhouse and their allies, have not addressed those issues instead of pursuing its victims, with such vehement and vindictive determination, at huge cost to the State, with little potential for pay-back. Why is there little, or no, evidence that value-for-money is being applied to their decisions and their activities? Why is there no evidence of any real contribution to Ireland’s economy or its future, from their actions?

Put bluntly, this financial disaster involved the most sophisticated ‘scam’ ever perpetrated in the history of Irish banking or Irish business, and the greatest pyramid trick in the world of international finance. Only very bright people could have carried it through; those who operated and managed this confidence trick were no fools. And now the entire madness is being compounded by the failure of those with the responsibility for addressing it, to balance the actions necessary to ensure that it can never be repeated, with the best interests of the Irish economy in the short and medium term.

There is no shortage of ‘smoking guns’, in this case. The real questions concern how are they being used, where they are being aimed and why the approach to a solution is single-dimensional only, when a multi-dimensional solution is so obviously needed. The least we should do is be realistic and make a real attempt to learn from the past.

2. THE DEVELOPMENT OF BANKING IN IRELAND.

By the beginning of the 1970s, Ireland had four, major, indigenous, commercial banks: Allied Irish Bank, Bank of Ireland, Northern Bank and Ulster Bank – the 'big four' Irish banks, as they were called. Although there were several smaller institutions, including some very small ones, providing various 'banking' services and apparently surviving profitably, those four dominated the country's banking system. And all four had the right to issue their own bank notes – a very valuable and profitable aspect of their operations.

The big four banks had grown and developed through a series of mergers, or other combinations of smaller organisations, over a period of more than 150-200 years. They had history, tradition, the respect of the public, a widespread presence across the Island and reasonable financial strength.

The post-war years of the 1950s and 1960s was an era when larger organisations were seen as essential in producing the economies of scale needed for national and international competitiveness. Indirectly, Irish Government policy had long been promoting mergers among other business and industrial entities deemed pivotal to the nation's economic growth.

It is no secret that, largely out of a concern about the possibility of the take-over of the Republic's only cement manufacturer by a foreign company, the government of the time had encouraged the merger of Irish Cement Ltd., then the biggest industrial company quoted on the Irish Stock Exchange, which had commenced the production of cement in both Drogheda and Limerick in the late 1930s, with Roadstone Ltd., an aggregates business, which had had a Stock Exchange quotation since 1949. The consequent merger in 1970 resulted in the creation of Cement Roadstone Holdings, later to become CRH plc, which is still one of Ireland's largest industrial companies, with interests throughout America, Britain, Europe and many other parts of the world. In the short term, that merger also resulted in Irish Cement remaining in Irish hands – and it is fully accepted that that was the primary motivating objective.

That may be the most transparent example of the 'size matters' attitude of that time, but it was not the only one; Ireland lost its motor business in those years, because it was not big enough to survive in an industry, which was rapidly becoming progressively more capital intensive. Clearly, size and economic strength were seen as being important to the economy's development by national leaders, many of whom had fought for independence and had lived through the so-called Economic War. Therefore, government policy in the 1960s and 1970s was unlikely to have been averse to similar mergers and similar competitive economies in the banking and financial services sector too, even though it may not have been directly active in pursuing such mergers.

Bank of Ireland was the oldest of those banks, having been founded in 1783. It had been operating for a complete century before it reached 58 branches across the Island and it made its first acquisition almost a century and a half after its establishment, when in 1926 it acquired National Land Bank (changing the name to National City Bank). In 1958, it acquired a competitor, in Hibernian Bank, and it took over the Irish interests of National Bank in 1965 (renaming it National Bank of Ireland); that bank had been founded by Daniel O'Connell among others, in 1835, and held a particularly significant symbolism in parts of Ireland.

In 1969, all those interests were consolidated into Bank of Ireland Group Ltd. Through both acquisitions and joint ventures, initially in Britain and Ireland, and later in North America, involving diversification into other categories of financial services such as building societies, asset and investment management companies, a US foreign exchange business and securities services (the majority of which it sold in 2010/11), Bank of Ireland expanded to become one of the dominant influences in Irish banking – in fact, it was perceived as Ireland's premier bank, and with considerable justification.

Over time, this bank's domestic branch network had to be rationalised to produce greater efficiencies of operation and, periodically, staff reductions occurred as a result. But from the consolidation of its disparate units at the end of the 1960s until 2007, this bank followed an overall path of consistent expansion of its activities, including of its loan book, in both the domestic and the international markets. And for most of that period, it continued to apply established banking criteria to both its lending and its funding activities

Allied Irish Banks Ltd. was created in 1966, through the merger of the Provincial Bank of Ireland (which had been founded in 1825), the Royal Bank of Ireland (founded in 1836 and merged with Shaws Bank in 1837) and the Munster and Leinster Bank, which had commenced operations in 1885. The original Munster Bank had been established prior to that, in 1864, and had expanded through acquisitions in 1867 and 1870; it failed in 1885 but was resurrected very shortly afterwards as part of the new Munster and Leinster Bank.

All three of those banks had their own branch networks, and their amalgamation into Allied Irish Banks created an economically strong and viable bank, with a branch network, which covered the entire Island, but also involved unavoidable duplication in its buildings and services. Like Bank of Ireland, AIB later diversified geographically into Britain, North America and Continental Europe. It undertook considerable necessary rationalisation of its branch network and it renamed its operations in Northern Ireland 'First Trust Bank', following the merger of those operations with the Belfast-based Trustee Savings Bank, in 1991.

Allied Irish Bank also followed a path of strong growth in both its domestic and its overseas markets following its establishment, as well as diversification into other services. It became Ireland's second biggest bank, with a strong presence in rural communities and also in the nationalist communities of the North. Unfortunately, its progress was disrupted periodically by a variety of issues, which produced both reputational and collateral damage.

Firstly in the 1980s, there was the Insurance Corporation of Ireland (ICI) debacle, when the bank was forced to close a wholly owned subsidiary, which it had acquired a year earlier at a cost of £85 million. That closure was precipitated by the fact that ICI was seen to be operating below its statutory reserve ratio and AIB claimed that it did not have the resources to augment those reserves. Estimated losses for that first year of AIB's ownership amounted to about £200 million, and the Irish taxpayer was ultimately required to pay approximately £400 million for the mistakes, which gave rise to the first real such 'bail out' in the Republic's history.

Secondly in 2000, the bank was forced to agree a €90 million settlement with the Revenue Commissioners in relation to its involvement in tax evasion linked to Deposit Interest Retention Tax (DIRT). This involved collusion with customers in moving money 'off-shore' to avoid tax on either, or both of, the original funds and the interest paid on those monies.

Thirdly in 2002, John Rusnak, a currency trader with Allfirst (one of its American subsidiaries, based in Baltimore) cost the bank $691 million in currency losses. Rusnak was jailed for seven and a half years, but was released after six. That event raised entirely justified concerns about the adequacy of this bank's control and governance structures, especially in relation to its management of its foreign subsidiaries.

Fourthly in 2004, based on information provided by a 'whistleblower', it was discovered that AIB had been overcharging customers on foreign exchange transactions and that the Central Bank had been aware of that, but had failed to take any action over a number of years. Why no action was taken has never been explained in any satisfactory way. The final cost to the bank was estimated at somewhere in excess of €60 million. In addition, it was discovered that it had been overcharging on a number of other services too, over a prolonged period, which in some instances extended into decades, though the overall amount was significantly less than that on the foreign exchange transactions. Again, that raised questions about its entire governance and control systems, as well as about the integrity of its relationships with its customers.

Fifthly in 2006, four senior executives of the bank reached a settlement with the Revenue Commissioners in relation to tax on investments in a Virgin Islands company. While the amounts were relatively small (so small that one wonders why such activities were deemed necessary, in the first place), this episode proved embarrassing for the bank and its management team.

Allied Irish Banks appeared to be particularly prone to mistakes, management misjudgements and an outrageous disregard for the rights of its customers. Despite those problems and the all-too-regular shortfalls in its governance regime, AIB was successful as a commercial bank for three decades after its formation. Operating in regions as diverse as the highly developed United States and the British Isles on one hand, and the less developed Poland, Bulgaria and the Baltic States on the other, with a small level of activity in a well developed part of Asia, it remained profitable for a long time, with a strong deposit base and a relatively good portfolio of loans. Most of its new areas of activity had been penetrated by means of acquisitions, though despite the risks associated with take-overs generally and overseas take-overs in particular, AIB seems to have managed that aspect of its development reasonably well; later, there was to be one notable exception, which reflected poorly on its control and governance systems.

Northern Bank commenced operations in 1809 as the Northern Banking Partnership, an unincorporated enterprise, which was based in Belfast, then a city with a rapidly growing and highly successful linen trade. It was to become the main provider of financial services to Northern businesses for over a century, being seen as the North's primary provider of finance for business. It ultimately incorporated as the Northern Banking Company Ltd. but it was over thirty years in existence before it opened its first branch in what is now the Republic. It was, in every sense, 'The Northern Bank', even before that became its official name. Over recent decades, both its employment practices and the political complexion of its customer base have changed radically.

As the other banks on the Island were already consolidating with an eye to expansion, the Northern Banking Company merged with the Belfast Banking Company Ltd. in 1970, to form the Northern Bank Ltd., with branches on both sides of the border, but with its main presence still being in the North and the border counties. So dominant was its position in the northern jurisdiction, that educated estimates suggested that it had as much as 60% of the total corporate business in the North, in the early 1960s – though that total was not massive, by comparison with today's figures. Over the following two decades, that market share fell dramatically (by somewhere between one-third and half, before it was taken over), partly as a result of the entry of overseas banks, but more so as a result of its inability to maintain its customer relationships, following the increase in the competitiveness of banking in Ireland and a significant change in the demography of the new business community.

By the time it was acquired by National Australia Bank in 1988, it had already spent a decade as a subsidiary of Midland Bank plc. Following the take-over by National Australia Bank, it was rebranded as National Irish Bank in the Republic, whilst retaining its Northern Bank name in the North. In December 2004, it was acquired by Danske Bank.

The Ulster bank was established in Waring Street, in Belfast in 1836. Like the other main banks, it had the right to issue its own notes. Waring Street was to become its head office for most of its existence. Its first branch in what is now the Republic was opened in Sligo in 1860, followed by a Dublin branch two years later. Prior to opening in Dublin, it had used Bank of Ireland as its correspondent bank there. In the latter half on the twentieth century it developed a significant presence in the Republic, successfully expanding its activities into both Leinster and Munster, in particular.

Long before the major consolidation of the other Irish banks, in the 1960s, Ulster Bank had amalgamated with the London based London County and Westminster Bank, and when that entity merged with the National Provincial Bank to form National Westminster Bank in 1968, the Ulster Bank retained its own name, but adopted its parent bank's logo. It continued to expand its scale of operations in the Republic until the 1990s. It parent, National Westminster Bank, was acquired by Royal Bank of Scotland in March 2000, in what was, at that point, the biggest bank merger in the world (costing £22 billion). Its activities in Ireland have recently been curtailed by the problems faced by its ultimate parent bank.

By the start of the 1970s, those four 'big banks' represented the cornerstones of the Irish banking system, North and South of the border. But as in any forest, there were saplings too. Dublin, in particular hosted a number of small banks and finance houses, providing a variety of services to specific niches within the broad banking and financial sector – hire purchase facilities, leasing, instalment credit facilities etc. The general impression was that many of them were struggling and that was probably true, because the Irish financial services market was very loosely-regulated during the 1960s and 1970s.

One of those small, specialist banks was Anglo Irish Bank, which, over time, was to leave a much bigger legacy than any of the others.

3. THE GENESIS OF ANGLO.

In recent years, no serious, impartial or independent analyses have been undertaken into the conduct of Anglo Irish Bank Corporation's (Anglo's) business as a whole, or to investigate its activities properly. Instead, there has been almost total reliance on information generated by Anglo itself, with the new management being even more precious with real information than their predecessors. As a consequence, the Anglo story has so far focused almost entirely on specific events close to the date of Fitzpatrick's resignation as Chairman, and all analyses have been supported by an inordinate level of public relations 'spin' from the new management as well as that generated from Fitzpatrick's own press leaks.

There is now a widely held public view (particularly outside Dublin) that this bank is now being managed with a very clear focus on public relations and that it uses one particular national daily paper to disseminate its message. There is even a suspicion that this approach is designed to deflect attention from the bank's real activities, past and present – although one might be tempted to expect that, as a State-owned bank, its activities should be more balanced and more open to public scrutiny.

Even superficial assessment would suggest that some of the claims, which have been made in relation to Anglo Irish Bank, are ludicrous and that there was much more to its demise than simply the out-workings of CFD wagers, or the collapse of a few property developers. Neither the new management nor the new regulatory authorities are serving Ireland well by restricting their analyses in such a way; effectively, their analyses and their P.R spinning both appear designed to find and punish scapegoats, rather than to learn and apply lessons, or to penalise the real culprits.

All initial reviews of the events close to Fitzpatrick's resignation have failed to yield any clear answers as to the real basis for Anglo's failure. The approach adopted in all of those studies was to look at the origins of the bank and see whether that would provide clues to its failure. Such an approach frequently has considerable merit, because in many business instances, issues and problems that are not addressed in the early stages become critical in the mature phases. It is very doubtful if that approach, on its own, is particularly beneficial in this case, but it is the dominant analytical tool being used so far. And it is becoming progressively more obvious that the 'new' management, of that bank and its successor, is happy that such superficial analyses should dominate the public's perception of Anglo.

Through the approach adopted in this report, based on information, some of which has been sourced online, some of which has been garnered from court reports and some of which has been taken from its published accounts, a completely different profile emerges from the one presented in legal actions and in the media – or indeed by its current chairman, directors or management. It indicates that Anglo was in serious difficulty long prior to any CFD activity, or the national and international collapse in property values, both of which were, at worst, only catalysts for a collapse, which was ultimately inevitable in any event.

The four big Irish banks had long adopted a very conservative approach to lending to businesses. They were entirely 'transactional' bankers and ledger managers, with 'relationships' being almost totally reserved for social links. The majority of matters related to business were conducted on a largely non-personal basis, except where well-known people, or those of a certain social standing, were concerned. In many cases (some would argue, in most cases), their approach bordered on elitism, though the banks and their senior staff would have resented any such suggestion; but small farmers and rural businesses would have been almost unanimous in that view, over many decades. Banks and bankers in the rural Ireland of the 1950s, 1960s and 1970s, and even into the 1980s and 1990s, were respected because of their perceived social status, but not particularly well liked by the majority of the public.

Because of the banks' innate conservatism, many new and growing businesses found raising money to be almost impossible. Those main banks were not interested in serving the needs of small businesses - they considered both new businesses and new businesspeople to be far too risky, as borrowers. The most common excuse for a refusal to support them was 'no track record'; apparently only those who were already in business were entitled to be in business. That reflected the sense of elitism which pervaded the system at that point – indeed some would say, until the late 1980s, or even later.

Consequently, both businesses and their owners regularly expressed unhappiness with the services being provided by those banks. The need for alternatives to the big four was raised regularly, by the country's small business community, with little response – and absolutely no response from either the political, regulatory or public sector authorities. In reality, because the people working for those authorities never had any problems with their banks, they appeared to be completely unaware that there was any such problem – but it existed, in the world of business and commerce.

There was nothing new or specifically Irish about that situation. Banking was just as elitist and just as conservative in other places, but especially in Britain; and it was also failing to address the problems of both existing and new businesses, particularly those of the latter group. But the banks themselves seemed to be unaware of these issues.

As far back as 1931 (over eighty years ago) the British Parliament commissioned the 'Report of the Committee of Enquiry into Banking, Finance and Credit'. The committee was composed mainly of economists and sat under the Chairmanship of Lord Macmillan; consequently, its published findings became known as the Macmillan Report.[1]

That report identified a shortfall in the provision of finance, in amounts which were specifically relevant to small and medium-sized businesses (SMEs). It commented as follows:

"It has been represented to us that great difficulty is experienced by the smaller and medium sized businesses in raising the capital which they may from time to time require even when the security offered is perfectly sound. To provide adequate machinery for raising long dated capital in amounts not sufficiently large for a public issue ....always presents difficulties."

That was seen as a direct criticism of the entire banking system, at that time – as indeed it was. The evidence it provided of a 'gap' (it was named the 'Macmillan Gap' in the economic literature) in the availability of capital for SMEs, was overwhelming.

More than a quarter of a century later, similar views were being repeated in the economic literature of the late 1950s and in the 1960s, and various conservative governments of that period complained about the inadequacy of banking support for small businesses and the consequent effects on economic development. Selwyn Lloyd (of the infamous 'stop-go' economic policy, when he was Chancellor of the Exchequer) was known to be particularly dissatisfied with the banks' contribution to economic development, as were many other Ministers of that era.

[1] Technically it was the 'Report of the Committee on Finance and Industry': cmd 3897 (1931)

The 'Macmillan Gap' was still being widely discussed in the economic and political literature of the 1970s. It continued to be a matter of concern until recently, although the term 'Macmillan Gap' has largely disappeared from recent economic literature. Businesses continued to claim that there was and, many if not most of them would argue, that there still is little evidence of any significant improvement in the availability of loan capital for small businesses, or of equity funding for new ventures, other than that, which became available over parts of the last two decades for high technology ventures.

And that spell of 'hi-tech' activity also ended badly, with the bursting of infamous 'dot com bubble' and its shades of the 'South Sea' debacle of centuries earlier – proof positive, if proof was needed, that investment in new ventures carries high risk. But in the Celtic Tiger era, that truism was ignored, with inevitable consequences (in hindsight) because few businesses or commentators saw those consequences as inevitable at the time.

In Ireland, especially in the urban areas – mainly Dublin, where most of the country's commerce was based - the equivalent of the 'Macmillan Gap' created opportunities for small banks and finance houses, not just to provide instalment credit, hire purchase, leasing and similar facilities, but to become involved in the provision of loan capital too. Over the fifty years since the early 1960s, almost one hundred banks have existed in Ireland. Many of them lasted for only a short time and, more recently, a considerable proportion of them were subsidiaries of international banks, taking advantage of the favourable fiscal arrangements available in Ireland – not least in the International Financial Services Centre (IFSC).

Many of those new organisations took on a much riskier profile than that espoused by the main, established, commercial banks. They competed by providing a better, more personal service and ensuring quicker response times, with less 'red tape', and for that they charged higher rates and took greater risks; that became the typical profile and business model for such organisations. Ultimately that was the model adopted by Anglo Irish Bank too. But most of those small banks were very careful not to be seen as potential providers of equity capital, either directly or indirectly; in fact they lent mainly on a short term basis, taking whatever security was available.

Since the majority of these operators had no significant deposit base, nor any network through which to generate significant deposits, they were forced to restrict their levels of activity and growth to that which could be funded from a combination of profit retention and short-to-medium term borrowing, which could be sourced on inter-bank markets. But traditionally inter-bank markets have not tended to provide a particularly good service to such organisations.

Among that group in Ireland was City of Dublin Bank Limited ("CDB"). Founded in 1964, it was a small deposit-taker and lender, and provided funds for selected businesses, with selected types of finance, which those businesses could not get readily through the main banks. It grew rapidly and, by 1971 (i.e. within seven years of its establishment) it had secured a publicly listed (Stock Exchange) quotation. In 1978, CDB acquired the struggling Anglo Irish Bank Corporation Ltd (Anglo). According to contemporary reports, the price was £100,000 and, for reasons which are not entirely clear, it maintained its new acquisition as a separate subsidiary, at a time when the major banks were already adopting a different approach, by consolidating their operations, as described above.

A contemporary Irish Times report on the purchase stated that the Central Bank of Ireland "...*was worried about the financial position of Anglo*..." as, according to its accounts, it had, between 1972 and 1976, accumulated losses of about £300,000. Nevertheless, Anglo managed to improve its performance under its relatively young chief executive, Fitzpatrick. By 1986, CDB was in difficulty as a result of loss-making. At that point, Fitzpatrick and Anglo were able to organise a 'reverse take-over' - acquiring its parent company - with Fitzpatrick becoming chief executive of the merged group.

Fitzpatrick had, according to his contemporaries, an unremarkable academic background – adequate, but certainly not outstanding. He was also seen as someone, who was quiet and had 'little to say for himself', though no one has ever suggested that he was short of confidence. It is claimed that he was a pretty good out-half for Bective Rangers rugby club and, as we know, the out-half is often considered the controller of the game. Many were surprised that he succeeded in qualifying as an accountant. He was definitely not seen as 'a genius' nor as a potential chief executive or chairman of a bank.

However, he surprised his many sceptics by proving to have the commercial shrewdness, aptitude for business and risk-taking personality, which drove Anglo's growth for well over a decade and a half. Over time, those who worked with him learned that he was a particularly 'good reader of people', who used people's mistakes and their failings as leverage in his future dealings with them. As a result, they learned to tell him what they knew he wanted to hear, whether it was accurate or not; he was never a recipient who welcomed bad news and his staff knew that.

Fitzpatrick had trained as an accountant with Reynolds McCarron & O'Connor (later Reynolds McCarron), a middle-ranking Dublin audit firm. Like Anglo, Reynolds McCarron grew rapidly through amalgamations and mergers with other mid-sized accountancy firms, and it ultimately became the core of Ernst & Young, the Dublin arm of the international audit and accountancy firm. It acted as auditors to Anglo until that bank's demise.

In 1988, Anglo acquired the ailing Irish Bank of Commerce, which had previously been named Tea Importers (1958) Ltd. Among the employees acquired in the process was a certain Tiarnan O'Mahoney, who was also to play a major role in the history of Anglo, becoming its chief operations officer and overseeing much of its expansion. He resigned from Anglo to establish International Securities Trading Corporation (ISTC), following his failure to succeed Fitzpatrick as the bank's chief executive.

Whether the later by-passing of O'Mahoney for the top position in the bank, in favour of the less experienced David Drumm, contributed to Anglo's more recent problems is still a matter of conjecture, with some people arguing that he would have had the strength of character to manage and control Fitzpatrick's penchant for expansion. The subsequent failure of ISTC is seen by others as evidence that his appointment would have made no great difference to the ultimate outcome for Anglo.

CDB and Anglo Irish Bank Ltd were merged in 1986 into one entity under the Anglo name. At that point, the use of the Anglo name made absolute commercial sense, since CDB was loss-making and Anglo was profitable, according to its accounts. That was a very significant reversal of the position in 1978, when Anglo was loss-making and CDB was profitable. Gerry Murphy, until then the CEO of CDB, became Chairman of the new entity and Fitzpatrick, general manager of Anglo, became Chief Executive Officer (CEO) of the new entity.

In 1987, Anglo established an Isle of Man operation. There is general agreement that potential access to the deposits of Irish citizens who had money invested in Douglas, was certainly a factor, if not the primary factor, in that decision, but to be fair to Anglo and its management, it may not have been the only one; Anglo needed deposits from wherever it could get them and the isle of Man was an obvious source of such funds.

The largest shareholder in CDB had been the UK-based Clegg family with 17.5% of the equity, but their stake was diluted to 15% as a result of the Anglo 'merger'. John Clegg was appointed a non-executive director by the Board of Anglo on 25th April 1988 to represent his family interests. One month later, Anglo purchased Porter & Irvine, a small Dublin stockbroker firm, which had been used extensively by the Clegg family for share dealings in Ireland and in the UK, over a number of years. The use of relationships in the bank's business dealings had already started

Also in 1988, Michael Jacob, a former finance director of a Co-operative, was appointed a non-executive director of Anglo and he was to become the second longest serving director after Fitzpatrick. That was the start of a trend, which was to see Anglo link itself very closely to the food processing and agri-business sector, and Jacob was to become the first of many non-executive directors of this bank with such a background. Probably no one will ever know to what extent the link between food processing and the farming community was a factor in the development of the relationship between the cooperative sector and Anglo Irish Bank – the rural bank in the City. That is a relationship which was also being developed and exploited by other banks, so Anglo was following an established trend, in that approach.

Anglo later folded Porter & Irvine into Solomon Abrahamson, another small Dublin stockbroker, which it had acquired, and the two firms were re-branded as Solomons Stockbrokers. Among the traders employed in this firm were Joe Gill (latterly with Bloxham Stockbrokers and adviser to Ryan Air), Regina Breheny (later Director General of the Irish Venture Capital Association) and Leonard Abrahamson (later senior executive at Dolmens Stockbroker). It had a high profile and those members of its senior staff were acknowledged as being among the best in the business.

In 1992, John Clegg was forced to resign as an Anglo director, following British newspaper reports that he may have been involved in money-laundering for the IRA. A subsequent investigation by the UK's Department of Trade and Industry (DTI) found that there was no evidence to support that allegation and it is now accepted that the allegation had no proper foundation. However, the overhanging Clegg shareholding of 15% impacted negatively on the Anglo share price for a long time. It was to be another sixteen years before another shareholding of a similar or greater level would exist in that bank, though that appears to have been held under multiple names, but by related persons.

Later, there were allegations that the Clegg family had made as much as Stg£50 million through insider trading in ‘small cap’ shares, over a decade, using Porter & Irvine Stockbrokers (a subsidiary of Anglo) as the main vehicle for negotiating those transactions. DTI inspectors spent eight years investigating Clegg’s share dealings while he was chief executive of Wace (a media services company). The transactions so investigated involved the UK specialist printing firm Tinsley Robor (Europe's leading supplier of printed packaging for the music and multimedia publishing industries), European Colour (a firm which manufactured ink, pigment, fire retardant and chemical colour), and Parkway (a rival of Wace). The investigation concluded that there was clear evidence of insider trading, but John Clegg left the country. Significantly, there was no evidence of any secondary reputational damage to Anglo – it was clearly sufficiently removed from these activities to avoid any such damage.

Nevertheless and somewhat surprisingly, Anglo Irish Bank closed Solomons Stockbrokers very suddenly, in November 1992. That unexpected decision and Fitzpatrick’s refusal to meet with Regina Breheny, the then general manager of the brokerage, to discuss the closure, was considered very strange, at the time. It prompted questions as to why the decision had been taken with such apparent haste and so little consultation. But again, there appeared to be no long term reputational damage; it was developing an image as a ‘Teflon-coated bank’.

Fitzpatrick travelled to South Africa and Australia in an attempt to ‘trace’ Clegg. Both trips received extensive Irish newspaper coverage, and as a result he was seen to be ‘hands-on’ in organising the ‘institutional’ purchase of the shareholding, in the bank of which he was CEO.

In relation to Clegg’s departure, Fitzpatrick said, *“He was about to be removed from the board and he did the decent thing and resigned. It took some time for him to dispose of his stock*." Fitzpatrick’s comment was largely accepted at ‘face value’.

The disposal of Clegg’s stake has been a contentious issue for some commentators, ever since. At one stage subsequent to its disposal, Fitzpatrick claimed that Bank of Ireland bought the eighteen million shares for roughly £4,000,000. With the benefit of hindsight, it is easy to smell the possibility of share support, or at least market manipulation, in those transactions, though that was never investigated at the time.

From 1995 onwards, Anglo Irish Bank initiated a very aggressive growth and geographical expansion strategy. Much of it was based on acquisitions, but it was also very aggressive in developing its loan book, with a major emphasis on the property sector in Ireland and Britain, especially from the turn of the millennium, as Ireland's Celtic Tiger economy developed and prospered.

Its first acquisition was Royal Trust Bank (Austria), which it acquired from Royal Bank of Canada and renamed it Anglo Irish Bank (Austria). That bank had a century-long history as a successful indigenous bank.

Around the same time (1995), Anglo acquired a loan portfolio from Allied Dunbar, which was, by then, a subsidiary of British American Tobacco. BAT had acquired Allied Dunbar, which had been established by Sir Mark Weinberg as a financial services company. At that time, BAT was very active in acquiring other businesses in order to reduce its high dependence on the tobacco sector, with financial services being one of its target sectors. It subsequently (in 1998) sold its asset management activities to Zurich Financial Services.

A year later, Anglo acquired the poorly performing Ansbacher Bankers (Ireland), which had been established in Dublin in 1950. In rapid succession, it proceeded to acquire a number of relatively small, but strategically valuable, banks and other financial institutions, some of which could accurately have been described as 'ailing'. That expansion programme started with the purchase of the Credit Lyonnais (Austria) in 1998, which it integrated into Anglo Irish Bank (Austria). That was followed in 1999, by the acquisition of Smurfit Paribas Bank, which had operated in Dublin since the early 1980s (and had a client called Sean Quinn), the loan book of Bayerische Hypo-und Vereinsbank, and, in 2001, Banque Marcuard Cook & Cie. in Switzerland, which it renamed Anglo Irish Bank (Suisse).

By this point, it had also acquired the loan book of Hill Samuel (Ireland) plus the two small stockbroker firms, Porter & Irvine (involved in the Clegg transactions) and Solomon Abrahamson.

Individually a good case could have been made for each of these investments, especially where the acquired entity had an independent deposit base; but collectively, they were compounding the risk profile of the overall organisation. Looking back, there is little evidence of a coherent or logical strategy behind this programme of acquisitions; it has all the characteristics of a series of opportunistic take-overs, though the Anglo management team would probably have denied that; in their expressed opinion, it was all strategic.

All of the Dublin-based banks acquired by Anglo had very small customer bases, were mainly financing property deals and were struggling to attract deposits; that was also largely true of some of its non-Irish diversifications. Essentially, virtually all of them were funding their loan books via short-term, inter-bank money rather than by depositor funds, whereas a big proportion, if not a majority, of their borrower-customers, were property and/or development based. In banking terms, virtually all such customers would have needed medium, if not long-term, finance; some would also have required special arrangements, given that speculative property investments require finance, on which interest frequently has to be capitalised, or rolled forward, until sales can be made and funds received.

Even if that had not been the case, there would still have been a massive task involved in integrating such a variety of activities, of locations and of organisational cultures into a coherent, efficient organisation, with a manageable, unitary strategy. That crucial issue appears to have been largely overlooked not just by the bank's management, but also by those who have since pontificated on its demise, as well as by those who bought its shares. There was clearly a need for a good strategic vision at that time, but it appears to have been missing, though the bank's senior management would have denied that too – and have done.

One of the more critical consequences of its shortage of a reliable deposit base was that its year-end deposit totals began to give a worrying impression of the absence of adequate matching of its subsidiaries' assets against their liabilities, and of the bank's overall funding mix. More importantly and unrecognised by the vast majority of its investors, that reality mirrored Anglo's own mismatch between its funding and its lending strategy. Better and more accurate reporting of these activities would have given investors and potential investors a clearer view of the risks involved. The regulatory authorities had a clear responsibility to ensure that any such imbalances were brought to public attention, including to the attention of investors (notwithstanding the *caveat emptor* maxim); they had a statutory duty to do so.

The evidence from the bank's own published accounts indicates that funding at Anglo was managed and directed by Tiarnan O'Mahoney until December 2004. Without a significant deposit base, that was becoming a progressively more difficult role, as the bank's lending activities expanded.

In the early 80's, Trinity Bank, a small Dublin-based bank, in which Denis O'Brien was employed for a period and which was also funded primarily by short-term, inter-bank money, lost a treasury executive to Anglo and he began servicing deposits in the Isle of Man, mainly from Irish residents; he was to remain in that position for over twenty years. In that time, he created a considerable base of deposits for his bank and that fact did not go unnoticed by Anglo's management, which then targeted the Isle of Man for deposits too.

During the early part of that period, the major broker in the Dublin inter-bank market was Dermot Desmond's money broking firm, National City Brokers (NCB). It had acquired Shane Ross's stock broking firm, Dillon & Waldron, in the early 1980s and was increasingly operating as an investment bank from the late 1980's. One of the greatest strengths of this business was that it had established close working relationships with the CEOs and the treasury managers of all the Dublin banks. Eventually NCB sold its money broking business.

It is not known to what extent, if any, NCB, as Dublin's main player in that market, was a provider of inter-bank money to Anglo; what is known with certainty is that Anglo depended on such sources of funds.

The entire basis of Anglo's business model involved significant potential for problems, though that is more obvious now than it was ten or even five years ago. But even then, some people were sceptical. For a start, bolt-on acquisitions rarely offer quick returns; they invariably involve clashes of managerial and organisational cultures, which take time to resolve; and the integration of control and operating systems and processes is invariably fraught with difficulties and conflicts. Inevitably the resolution of such issues has an impact on profitability – at least in the short term, but frequently into the medium term too. That also seems to have been ignored by both Anglo and the investment community.

Secondly, with both the parent bank's funding and that of several of the acquired subsidiaries being provided mainly through the inter-bank system, its funding costs were high. Relative to the main banks, it had a comparatively high cost-of-funds base, though that was partly offset by significant economies in other aspects of its operations. Nevertheless, the high cost of its funds must have forced Anglo into writing new, high-risk lending to businesses. By comparison, the clearing banks had direct access to much cheaper deposit-based funds and were in a position to offer cheaper loans and attract business with a lower risk profile.

In tandem, these disadvantages combined to create a high-risk, low-return environment in Anglo, which, when combined with a sluggish economy and without many obvious off-setting competitive advantages, had to have rendered it very difficult to achieve sustainable profitability.

Despite those disadvantages, year-on-year Anglo's business grew, and it took market share from its competitors, including the 'big four' - much to their chagrin. It continued to record profits, which demonstrated an upward trend and its Balance Sheet appeared to become stronger and stronger. The industry and a minority of the more canny investors wondered how this could happen when its competitors, who had more resources, higher deposit bases and access to cheaper funds, were being hit with high levels of bad debts.

The net result was that Anglo was seen by borrowers and businesses as putting its competitors to shame: it understood their needs much better and it addressed them more constructively; it became the darling of the construction and the property development sectors; it was accepting higher and higher levels of risk; and those who were borrowing from it were happy to pay its higher rates.

Unfortunately, those whose job it was to protect investors and creditors never raised a red flag, or shouted 'stop' - not even a single yellow card, from the breast pockets of their well-pressed Louis Copeland suits.

Ultimately the authorities, and their friends in the media, blamed the borrowers and the businesses, which had been fuelling the economy. They looked for scapegoats and hid from their own responsibilities, knowing that the investors and the builders were likely to be unpopular in the national psyche, when things turned sour. What an indictment of modern Ireland and of those who control it, whether officially or unofficially.

Unfortunately, the majority of investors also bought the story written by the senior management of Anglo Irish Bank and promoted very aggressively and with great confidence and panache by its Chief Executive, Sean Fitzpatrick.

Under Fitzpatrick, Anglo's management reports were entirely bullish; its annual reports contained not the slightest hint of a qualification. Investors accepted what they were being told; they accepted that the deposit base was strong, because that was what the accounts said. So its share price increased; it became the most successful stock on the Irish Stock Exchange. And while many of its competitors held a sceptical, if not jaundiced, view of Anglo, the majority eventually accepted the validity of its model and decided to replicate it within their own organisations.

The ‘groupthink’ had taken hold in Ireland’s banking and financial services sectors, and the consequences were to be both dramatic and disastrous.

....

One of the great mysteries associated with Anglo and the ‘groupthink’ is the failure of the Irish and London media to analyse what had actually happened. While a few academics have attempted to examine the causes of its failure, no journalist has yet analysed its financial performance or its financial position (i.e. its Profit and Loss Account and its Balance Sheet) in such a way as to discover what really happened.

Some have even written books about this saga. But those were based entirely on superficial analyses and biased interviews, and have resulted in a regurgitation of the information provided by Wilson Hartnell and Drury Communications, supplemented by the views expressed by Dukes, Wodehouse and others, during sessions in some pub – whether in Dublin or Nicosia, or elsewhere. That is a disgrace to Irish journalism. This case deserved proper analyses, which would unveil the scams, the overstated profits and the strategies which were never implemented.

Instead, what we have received is superficial and trite. Could it be that the coverage had two eyes on the paymaster for Ireland’s media. RTÉ is scared shitless that Rabbitte will divert some more of the licence fee to other uses; so why provoke him by telling what he does not want to hear?

And the Government is the main source of advertising income for the national newspapers – both dailies and week-end ones. So why risk its wrath and its advertising by telling a truth, which the editors know might have the potential to reduce advertising revenue?

What a sad indictment of Ireland’s media, that those organs, which should hold Government and Government Departments to account, feel that they have to peddle the Government’s line on issues of national importance. Poor Ireland!

4. IGNORING THE CONCERNS.

In the 1970s and early 1980s, back-to-back loans (deposits with overseas banks being used to secure loans taken out in Ireland) were available to high net-worth borrowers, particularly through the non-clearing banks with overseas operations in the Isle of Man and the Channel Islands. Off-shore funds were probably a feature of Irish economic life long before that, with the North being mainly used for that purpose. Many of those deposits had been created from incomes, which had never been subject to tax in Ireland. Unfortunately, the local clearing banks were involved in that activity too, as the 'D.I.R.T. Enquiry' was to prove conclusively.

In some cases (it is impossible to quantify the proportion, but it may well have been significant), loans were advanced in Ireland as a way of creating overseas deposits. That practice ended in the late 1990s, as the powers of the Revenue Commissioners increased following the Ansbacher and Guinness & Mahon 'scandals', plus the disclosures in the McCracken Report and the National Irish Bank (NIB) investigation by RTE in 1998, together with the related High Court Inspector's report. However, it is now considered highly probable that, by 2007, Anglo was still accepting overseas deposits, some of which were probably unreported by their Irish resident owners, as part security for Irish borrowings. Back-to-back arrangements could be used to boost banks' Balance Sheet totals artificially, including both deposits and loans, particularly at financial year-ends.

All the available evidence suggests that, over the past thirty years or more, the overriding concerns of the Central Bank and/or the Financial Regulator have been:

(i) to avoid a 'run on deposits' - that was seen as crucial;
(ii) to avoid scandals in financial institutions becoming public; and
(iii) to assist the national economic development agencies in expanding the financial services sector, particularly following the creation of the Irish Financial Services Centre (IFSC).

The latter was part of government policy, partly because a previous government had been responsible for this development, but also partly because, as we now know, it was also a huge generator of income for the State.

Consequently, the approach of the Central Bank to smaller banks was quietly to encourage mergers and takeovers, in order to overcome any inherent financial difficulties. In this manner, from the 1970s to the mid/late 1990s, much of the financial services industry (most of the merchant banks, finance houses and other banks licensed by the Central Bank) were quietly rationalised to clear the market-space for the four clearing banks, a few international banks and Anglo. That may not have been the articulated policy, but it was clearly the implied policy, at government and Department of Finance level – though it is likely to have been a policy based on expediency rather than on principle, especially in relation to Anglo.

For example, as a result of this philosophy, UDT, Highland Finance, Bowmaker Finance and Trinity Bank were taken over by Woodchester Finance, which became successful in its own right, before being acquired by GE Money. Guinness & Mahon (which had been a significant player in parts of the market) was taken over by Irish Permanent, which in turn merged with TSB and finally with Irish Life to form Irish Life & Permanent plc (IL&P). IFG plc was formed mainly from Credit Finance.

It is now widely accepted that the Central Bank never planned that Anglo would remain independent; it had assumed that it too would be acquired by a more strongly capitalised bank. Hence Anglo's business model, which involved its being funded primarily by short-term inter-bank deposits and warehoused shares, did not initially cause much concern; any consequent problems would be sorted by the anticipated take-over. But once Fitzpatrick had established the precedents for using his model, he used them as leverage to increase the scale of Anglo's operations and he accelerated its rate of growth to the maximum, thereby reducing the probability of a take-over.

The National Treasury Management Agency (NTMA)) got it right by spending "...*a lot of time agonising...*" over the risks associated with the overall growth in the Irish banking market, especially in relation to the volume of lending, according to recent comments by Dr. Michael Somers. One such threat, which was spotted early by that Agency, was Anglo Irish Bank. Dr Somers says that "...*years ago...*" Jim Farrell, then an executive at Citibank and subsequently chairman of the Board of the Financial Regulator, first raised concerns about Anglo's banking model.

"*The problem with Anglo was that they didn't have a deposit-collecting base. The main banks had branches all over the country, and people saved with them . . . We felt that there wasn't a tradition with Anglo*."

The Agency held about €20 billion in cash on behalf of the State; it spread that around in about 100 banks worldwide. While the limit for AIB and Bank of Ireland was capped at €300 million each, the Agency would place a maximum of €40 million with Anglo. As reported by the Irish Times, Somers held and subsequently expressed that view (in 2010), in the following terms:

"*That was a principle we followed: no unnecessary risks. We have to take a lot of necessary risks; we are not going to take any unnecessary risks. That* (placing large amounts on deposit with Anglo) *was an unnecessary risk, and I wasn't going to take it*." [2]

At the Cantillon School[3] in Kerry in 2010, Brendan McDonagh, CEO of NAMA and formerly of NTMA, was asked about certain NTMA actions in 2007 and 2008 regarding Anglo. Brendan told the audience that the NTMA became concerned at the explosive growth in Anglo's Balance Sheet in the early 2000s and said that "...*they didn't understand the business model at Anglo...*" that was therefore the reason they stopped the practice of placing deposits with that financial institution.

Unfortunately, it seems possible that, while both Dr. Somers and Brendan McDonagh analysed Anglo accurately, neither shared their concerns about that bank with the Central Bank, the Financial Regulator, the Department of Finance or with other relevant State agencies, or, if they did, those concerns were ignored – though only they can say with certainty whether they did or not. If they had done so and if their views had been acted upon and made more widely known, many people would not have invested in Anglo, Dr Somers might not now be a public interest director of AIB and Brendan McDonagh might not have increased his salary four-fold at NAMA.

NTMA's accounts were audited each year, by the Comptroller & Auditor General (C&AG) John Purcell, while Somers was Director General. It seems extraordinary that the C&AG never acted on the fact that the NTMA had serious concerns about the third largest bank in the State. As both the NTMA and the C&AG are agents of the State, did they not have a common duty of care to the Irish taxpayer? The retired C&AG (John Purcell) is now engaged by the Institute of Chartered Accountants in investigating Ernst & Young's auditing of Anglo.

It would be unfair to attribute blame to any individual for the failure to act on the concerns now being expressed by both Somers and McDonagh. Even if they were expressed earlier, there may have been communications failures; or the validity of the concerns could not be substantiated; or the views of Somers and McDonagh

[2] http://www.irishtimes.com/newspaper/weekend/2010/0918/1224279146544.html

[3] The School, located near Richard Cantillon's birth place in Co. Kerry, provides opportunities for entrepreneurs, economists, academics, the media and public sector representatives to discuss current topics of national, business and economic interest. Outputs are relayed as an authoritative 'White Paper' report to Government.

were simply ignored. Hindsight is a wonderful teacher and we would all now wish that more credence had been given to such views, much earlier.

But it would also be useful to know what, if any, supplementary information was provided to the C&AG in relation to the risks perceived by agencies of the State, concerning Anglo. Clearly, it would also be important to ascertain what information was uncovered by the auditors and how they dealt with it.

Dr. John FitzGerald of the ESRI has stated in Village Magazine that "*... very real concerns were being discussed in private...* " relating to the financial industry. Rather than raising legal concerns, "... *it was felt to be difficult to air them in public without having undertaken the necessary background research...*" In light of what has happened since, it is not unreasonable to ask who was involved in those private discussions and why did they not react or respond to the concerns being articulated in the various corridors of academia, research and power?

The D.I.R.T. Enquiry by the Dáil in 1999-2000 had already found that the Central Bank had failed to supervise the banks effectively and the Report indicated clearly that the relationship between the Regulator and the banks was "…*particularly close and inappropriate*… " As Dr. Kinsella of the Smurfit Business School has explained it, the Central Bank was "…*too mindful of the concerns of the banks, and too attentive to their pleas and lobbying…*". In reality, Ireland's financial regulation was, and was beginning to be seen as, a shambles; and it was getting worse rather than better, but nothing was being done about it.

Given the existence of such concerns and their expression by various people, it is fair to ask why some other aspects of the findings of the Dáil's D.I.R.T. Enquiry were not acted upon. Our legislators and certain senior personnel in our public service would seem to have served the country poorly on these issues, over a prolonged period – deferring decisions, avoiding problems, allowing issues to fester and 'passing the buck'. But they are safe, because they will never be asked to pay a price for their inadequacies, nor will they ever be expected to take the blame for what happened. Rightly or wrongly (and most fair-minded people would think 'wrongly'), the blame will be taken by perceived lesser mortals – not by teflon-coated civil servants or politicians. In Ireland, it always happens that way; one would be inclined to wonder why that should be so.

There has been very little analysis of some of these issues, but one particularly perceptive contribution from the commentator Sarah Carey (one of the more balanced commentators in Irish financial media circles) in 'theIrishEconomy.ie' sets out the resultant scene very clearly:

'*It's pretty clear that the efforts to save Anglo were done at the behest of and with the approval of the Regulator, the Central Bank and I think it's fair to speculate, DoF. This includes the Maple 10 deal and the Green Jersey deposits. Why do you think Gillian Bowler (Chairman of Irish Life Permanent TSB) never resigned? Because no matter how much Lenihan wanted a head, I'd bet anything she was able to say "No way - you guys told us to do this, and now you want me to resign over it?"*

Instead Lenihan was happy to accept Sean Quinn's head, when the new Financial Regulator offered it – probably at the behest of Britain's Financial Services Authority (FSA). He might have served Ireland Inc. better by being more selective and more resistant to the Regulator's apparent determination to make a name for himself.

The Honohan Report (2010) makes it clear that there were catastrophic regulatory and governance failures, both in the financial sector itself and in the Central Bank and Financial Services Authority of Ireland. However, Holohan failed to point out that although nominally independent, the Central Bank and the Financial Services Authority of Ireland are both, effectively, under the control of the Department of Finance.

It is also reported that Tom Browne, former Head of Lending at Anglo, is claiming in letters to that bank and in submissions to the court, in relation to his ongoing legal action, that "negligent acts" by the bank and state bodies between late 2007 and January 2009 had led to the collapse of the bank's shares, resulting in the nationalisation of the bank; he claims that, as a direct result, he and others suffered substantial loss and damage.

He has also claimed that, had the then Board and State bodies not engaged in certain courses of action, Anglo would still be a publicly quoted company and his shareholding would be "*of material value*" to himself and the bank. That is an insider's view, reflected in court papers, but it is being rejected by the current management in Anglo, even though they were not there at the time; in the process, they are costing the Irish taxpayer a fortune in legal costs. But how can they know the truth, when they were not there? Those who know the truth are now gone and the public cannot be sure that they have heard the truth, so far. The public is not in any position to discern what is fact and what is 'spin', because there is far too much of the latter.

Those who are fighting legal actions on behalf of Anglo may well be entirely justified in their actions. But perception is very important in such issues and, to an outsider, their penchant for legal remedies, as a first resort for some large borrowers, rather than a last resort, seems ill-advised. The evidence to date appears to indicate that insiders of the past, like Tom Browne and others know the real truth and that the current Board is in denial. There is, at the very least, the possibility that what actually happened is not what some people, who were not there at the time, would like to believe was the truth and, more importantly, would like the public to believe that too. There are many in Ireland today who think that it is both arrogant and self-serving of those who now run the place to claim otherwise.

It is understood that information and data collected by Regulators, the Central Bank and the Financial Regulator, cannot be used in legal actions. Hence the current Garda enquiry into a number of aspects of Anglo's activities cannot utilise such information. Also, apparently the Central Bank cannot be sued for negligence, only for malfeasance or bad faith; many would consider that to be unfortunate. For the people of Ireland who are expected to pay for any such negligence, if such occurred, those are very salutary and very costly realities, and many people justifiably believe that these rules and practices are simply mechanisms for protecting senior people from consequences, which others have to suffer, when they are wrong.

As Paul Hunt has suggested, Ireland has all the trappings of proper, representative, democratic governance and centralised local governance, but very little of the substance. There is now a considerable cohort of citizens who believe that Ireland has become a corrupt state, with politicians who have been corrupted by the system and with a corrupted public sector; and many are now saying that loudly and clearly.

The reality of highly centralised governance is that it is normally ineffective and frequently under-resourced, but that it has the unequivocal support of an expansive, and largely unaccountable, State apparatus, which lacks the competence to deal with it; that invariably leads to waste, bureaucracy and ultimately injustice.

The national economic and fiscal collapse, driven largely by the property and banking fiascos (but clearly not deriving entirely from those sources) emerged liked a stampeding herd of elephants, forcing its way through the huge gap between the optical illusion of democratic government and governance, and the reality of public sector incompetence. The fact is that there is no real prospect of a sustainable economic recovery in Ireland, until that huge gap is closed.

That dysfunctional position is still not really being addressed by Ireland's political system, or its elite. In most of the most crucial sectors of Irish life and in the nation's psyche and many social and economic areas too, it still remains endemic. That is particularly true of most of the areas which continue to be subject to varying degrees of State ownership, control or direction.[4]

Hunt does not raise the issue of fraud directly, but it should also be considered. Essentially, fraud involves intentional deception for personal gain or to cause loss to another person, or a company, and that must be demonstrated in any allegation of such behaviour. But what if the alleged fraudster is broke, if the losses were only ever paper numbers, and if no one was explicitly deceived? What if the alleged 'fraudster' was a bank, which was insolvent, or is in liquidation, or both, and if the losses were in the form of shares which have become worthless and the losers were investors or the State? Does that change the equation, or make things different?

What if many people – above all, many people in positions of power and authority – appear to have known what was happening and did nothing about it? What if they are not being asked to pay the price, but if, instead, many of them are benefiting from what has happened, while those who were being deceived are being used as 'patsies' and fall-guys? Would that not be seen as highly irregular, unethical and unfair? Should it not be seen as absolutely incredible and wholly disgraceful?

In today's Ireland, there are many who believe that we have a tendency to side with 'the system' and to create scapegoats, instead of punishing perpetrators, especially if they have political connections, and that it is pointless to go to court seeking justice, unless one has influence.

The Nyberg Report showed clearly and convincingly that banks, regulators, auditors and most of the country, including its media, were trapped in a Celtic Tiger 'groupthink' in which share prices increased only, apparently with no downside, a flat in Inchicore cost as much as a villa in Cap Ferrat and 'risk assessment' was

[4] TASC: Comment by Paul Hunt on 'Restoring Competitive Competitiveness ' by Suzanne Rosselet-McCauley & Adrian Devitt ,www.progressive-economy.ie

something the conservative, but now sidelined, old-timers in the banks muttered about, over their chicken soup in the basement canteens; shades of Ebenezer Scrooge's grating voice interminably repeating 'Bah, humbug'. But Anglo might have benefited from a scrooge and a few old-time bankers, to maintain a better balance.

Sadly, that 'groupthink' involved bankers, civil servants, regulators, politicians and the media. It has had major damaging effects on our Country, its economy and its citizens. It is a direct condemnation of our society and our system of government. Now those same interests are colluding in finding scapegoats, on whom to heap the blame, but some of whom could not possibly have been responsible for many of the clear failings.

Is it reasonable to expect that because regulation was hopelessly incompetent and everyone was thinking along the same lines, norms of honesty and integrity had changed? To paraphrase the barrister, John Maher (Sunday Business Post, 15th May, 2011), '*when the village sergeant says he has no interest in looking for stolen bicycles, is everyone free to grab as many as they can*'?

It is clear that many institutions, including a number of arms of the State, were very sceptical about the Anglo business model from the early 1990s (and possibly earlier). They were wary of loans to property projects, including for the purchase of property which had no planning permission, using short-term funds borrowed at high rates on the inter-bank market. If the concept of the 'matching' of assets and liabilities – a core principle of banking practice, not just for decades, but over centuries – meant anything, then the Anglo model was based on an entirely unacceptable mismatch.

Why then did the powers-that-be sit on their hands? For example, and taking one which preceded any collapse in property values by some considerable time, either those in authority did not know what to make of Fitzpatrick's claim that the 15% Clegg stake was purchased by 'institutions', or they accepted it at face value. Simon Carswell in his book on Anglo claims that the Bank of Ireland purchased the 15% stake and sold it on to institutions some time later. One or other of those sequences has to be wrong. But why should the Anglo 'supremo' claim such a sequence of events, if it was not true?

In hindsight, it appears probable (we cannot be certain, since the information is not yet publicly available) that Fitzpatrick may have 'warehoused' (in some form) a large part of the stake and that Carswell was probably correct, although he did not call it warehousing.

The range of possibilities in a warehousing context is immense. They would include: the provision of guarantees to, or from, other banks; the borrowing of funds from INBS, or another such institution, to provide security for warehousing with Bank of Ireland; the use of Anglo funding warehoused through INBS or any other such organisation, at year-end; and a range of variations of those options. The link with INBS is obviously a possibility given what we now know about the subsequent warehousing of Fitzpatrick's loans with that institution and the possibility of other potentially suspect transactions between the two organisations.

But we cannot be sure and no one seems interested in finding out. We cannot even be confident that there is no skeleton hidden somewhere in the cupboard now being guarded so zealously by Dukes and Aynsley and their Board members. Indeed the existence of such a skeleton might be the real explanation for why they are pandering to the public's need for a fall-guy, instead of resolving the issues, which need to be addressed, in the national interest – sooner rather than later.

At some point, the Central Bank was obviously focused (probably fixated) on the ERM currency crisis. Fitzpatrick would have been very aware that the overriding concern of the Central Bank and the Financial Regulator would have been to avoid a 'run on deposits' or 'scandals in financial institutions becoming public', and may well have used that knowledge in determining his bank's strategy. So the regulatory authorities could have been presented with a share warehousing initiative as the only realistic solution (possibly produced as a short-term solution) to the claim of 'IRA money-laundering' by Clegg – but that is purely hypothetical. Nevertheless, it is important that such a possibility should be investigated, since it has clear implications, legal and otherwise, for the interpretation of some things, which have happened since then.

There is no evidence of any formal Central Bank 'approval' for any of these courses of action; but then formal approval was always unlikely. If there was approval, it was certainly informal and took the form of 'turning a blind eye'. On the other hand, there is always the possibility that the authorities were not aware of what was really happening. One way or another, there is ample evidence that someone, somewhere, was asleep on the job, even if there was no collusion, or no approval – formal or informal. In that context, closing Solomons stockbrokers (Porter & Irvine), at short notice, could also have been offered by Fitzpatrick to the Central Bank as a *quid pro quo* to enable it to respond positively to the DTI report's claim that Clegg used Porter & Irvine for 'insider dealing' in the UK. That possibility is also clearly worth investigating, but there is no evidence that it is under consideration, at present; nor is it likely to be investigated in the future either.

This was also a very busy period for Dermot Desmond and NCB, and that could also have deflected the focus of the Central Bank – to what extent, we cannot tell. As had happened in 1991, Desmond had to step aside, for a period, at NCB, over the Telecom Eireann/JMOB site purchase and NCB's involvement with the Greencore IPO also generated some serious disquiet. In addition, Desmond had just completed the sale of liqueur drinks manufacturer R&J Emmet to Gilbeys for £36m. The Central Bank would probably have been interested in all these activities.

There has long been a suspicion that Freezone (in the Isle of Man) may have received some of the Gilbeys' money, but there has never been any proof of that. Concerns that as much as £15.3 million may have been lodged in an account there were rife but, if such a deposit existed at all, there is no evidence that it belonged to Desmond, or that it was held on his behalf. Those who have made such claims or inferences have never produced any evidence to support them.

In any event, in his Stock Exchange filings, Desmond has never indicated any ownership of, or involvement in, any such cash holding; neither has he been investigated in relation to such a deposit. There is therefore a strong possibility that this deposit, if it existed at all, was totally owned and controlled by another party.

Shortly after that, Desmond moved offshore, while continuing to involve himself heavily, but not exclusively, in Irish business. Years later, the Moriarty Tribunal, reported that Desmond's Bottin International Investments Limited had, in 1996, an account with Anglo (Isle of Man). Bottin is Desmond's offshore investment holding company. Whether there was a link between those two events is still a matter of conjecture. What is certain is that the subsequent closure of Solomon stockbrokers indirectly benefited NCB by removing a competitor. In 1994, NCB was acquired by Ulster Bank and subsequently it was bought-out by its management team.

In the absence of irrefutable proof, any alleged share warehousing, in those early years, is simply an allegation, albeit one which has received considerable credence in business circles; but no one has yet provided the proof. In fact, there may be no proof. Nevertheless, given the plethora of investigations of recent years, one has to wonder why that proposition has not been investigated, or if it has been investigated, why the public has not been made aware of the outcome; or is someone, or some entity, whether regulated or not, being protected?

The suggestion has also been made that the Central Bank may have 'approved' some form of loan arrangement, whether a warehousing scheme or some variation. That has been extended into a suggestion that this scheme may have provided the basis for Michael Fingleton, Chief Executive of Irish Nationwide Building Society (INBS), to operate a subsequent annual loan warehousing arrangement for Fitzpatrick and Anglo. Those who have advanced this argument have done so on the basis that, without such 'cover', why would Fingleton engage in such an arrangement over so long a period? Clearly, as we now know, it was not just a 'once off arrangement', carrying short term risk only; it was a recurring event, which was not noted in Anglo's published accounts, but which would clearly have had a significant impact on the interpretation of that company's financial statements.

Fitzpatrick regularly complained to the media about the absence of growth in Anglo's share price to match the profit growth. Did someone know something which not everyone knew? One result of the poorer performance of the share price was that Fitzpatrick and his colleagues were not receiving the 'appropriate' rewards from their share options.

When Anglo bought Royal Trust Bank (Austria), the former subsidiary of Bank of Canada, in 1995, the acquired entity had no loan book but it had, apparently, deposits of £235 million providing "...*a cheap source of funding for future lending...*", according to then director Tiarnan O'Mahoney. Fitzpatrick said at that time that Anglo's target was asset-backed loans averaging £400,000, and that deposits should exceed £1.4 billion.

In 1998, Anglo established a US operation in Boston and purchased Austrian units of Credit Lyonnais Bank for £10.1 million. Profits rose 49% to £45.1 million. In 2001 there was a 46% rise in pre-tax profits to €194.8 million, about a third of which was generated overseas. Fitzpatrick then claimed that Anglo was aiming to increase lending by 15-18% per annum. Defending the levels of directors' remuneration, he argued that the bank had "...*a policy that rewards success*".

In 2002, one year after Michael Buckley, former CEO of NCB, was selected as Group CEO of AIB, he appointed Donal Forde as managing director of AIB's Retail and Commercial Banking Division. Almost immediately, that division started to compete aggressively with Anglo in the property sector, with 'win-back' teams targeting Anglo's property developer clients.

In parallel, AIB's Capital Market division started to compete with Anglo in the commercial investment property market. Prior to that, none of AIB's divisions would have competed with Anglo, on risk grounds. Following Buckley's retirement, Eugene Sheehy continued the Buckley policy and, about 2006, Bank of Ireland also started to compete with Anglo. Clearly, career bankers Soden and Mulcahy, while managing both banks, knew or felt something about Anglo's model that others did not; or possibly, they just made a harsher and much more realistic judgement on that bank and its business model.

The Nyberg report summarised the change in attitude among the main clearing banks, when it stated "...*As other banks tried to match the profitability of Anglo in particular, their behaviour gradually, and even at times unintentionally, became similar...*" It is obvious that, by then, the 'groupthink' syndrome had gained a firm foothold in Irish banking practice. Ireland would ultimately pay a high price for that mistake.

The overall result of this series of apparently unrelated events and activities was a reluctant legitimisation of Anglo within banking circles, in the media and within the wider business and institutional community. And the public sector simply watched, twiddled its metaphorical thumbs and did nothing. Over time, the soaring profits, the stellar share price performance and the company's P.R. spin combined to eliminate any lingering doubts – or so it could be argued - but the greater probability is that most people were taken-in by the attractive business model and the reported profit performance.

The reality was, as we now know, that all of these outcomes were based on a misleading business model, profits which were almost certainly overstated, glowing broker reports and published information which was fraudulent and published without qualification; the *caveat emptor* maxim was never designed for this sort of activity, despite its being used in some ill-informed commentary on this issue.

By this time, Anglo executives had begun to engage in much more extensive investor presentations. According to Finance Director (Willie McAteer)[5] "*Once Anglo's market capitalisation hit €2bn, American investors wanted to know more…We used to do a token trip to Boston and New York, but now we go at least once every six months to see these people"*.

North America was clearly one of the bank's main target markets for greater investment. A marketing-led approach would always go down well there; so too would bullish comments from the CEO; and the type of business model being promoted by Fitzpatrick and his team would also find favour there.

In addition, the USA was always likely to be a potential source of capital for a high-flying Irish bank and Fitzpatrick would have been well aware of that. Acceptance in that country would have meant something particularly important to him – it would have indicted that he had 'made it' as an international player.

On January 16th 2005, the Investors Chronicle recommended buying Anglo shares, '*Buy Anglo Irish Bank at E18.50; should deliver growth well above the level of its rivals, with potential bid appeal as well'*. There can be no doubt that Fitzpatrick would have welcomed such an endorsement from such a prestigious publication, but whether he would have welcomed the suggested bid is uncertain; however since he knew what others did not know, he might have been very happy to exit. Only he can answer that.

But he continued to be bullish in his comments about the bank. His chairman's statement in the 2005 Anglo Annual Report stated that '*Your Bank's performance in 2005 has contributed to a five-year total shareholder return in excess of 800%, making it the leader amongst its peers*.'

A year earlier, analysts had looked at the high growth rate of the UK's royal Bank of Scotland (RBS) and warned that it had "...*been putting on lending growth faster than many of their rivals; they have expanded into sectors such as commercial property, which others have avoided - not surprising as this is an area where banks such as Barclays got their fingers burnt in the UK during the recession of the early 1990s*". They could just as well have been talking about Anglo.

[5] "*Anglo Irish Keeps Its Feet on the Ground*": efinancialnews.com (28th July 2003)

Nevertheless, another comment on the bank was equally bullish: "*Anglo has a 'can-do' culture; they take on propositions that other banks won't touch. On the other hand, everything is claimed to be on the balance sheet, so there is full transparency. This has become a big, lean machine; amazingly efficient and entrepreneurial at the same time. No one expects it to stumble now."*

The figures indicated that it was a 'big lean machine' and that it was efficient; and there is no doubt that it was entrepreneurial. Unfortunately the 'full transparency' was somewhat of a myth and it would eventually stumble and fall. But what these comments indicate was that, from a position of initial and prolonged scepticism, Anglo had become accepted as a mainstream bank, with credibility for its model and an expectation that everything was as both the published accounts and the management's public relations strategy were indicating.

It's amazing how gullible the public can be; it's even more amazing how gullible the so-called experts can be. And the financial media lapped it up and embellished the gullibility. On the other hand, one could argue that Fitzpatrick was a genius, given how many people, including the so-called experts, he 'took for a ride'. The fact is that virtually all of us accepted what we were being told.

Over a two-year period, the share price, after a slow start, rose on the back of very impressive growth in reported profits. The bullish comments from both the Chairman and the Chief Executive, combined with Anglo's increased acceptability in financial circles would have given considerable impetus to that growth.

Anglo was becoming – indeed had become - another 'acceptable face' in Ireland's banking landscape, but crucially it was being accepted in international banking too. That acceptance, when combined with passively inadequate regulation, was to cost many investors and the Irish State very dearly.

Table 1 provides a summary of the movements in the share price between October 2005 and January 2009, when it was finally nationalised, though it had effectively been nationalised before that, when the bail-out occurred. It shows a steady decline from the beginning of June 2007, when it stood at €17.53, valuing the bank at almost €13.5 billion, as compared with an accounting value for the shareholders' funds of just over €4 billion. Given that the post-tax profit for the previous year was €685 million, that implies a multiple of almost 20. However, it must also be recognised that the interim results for the six months ended March 2007 indicated a half-year profit of €464 million, which represented a somewhat more acceptable multiple - but only slightly so.

The decline was steady from June 2007 over the following year and a bit. Then the reduction accelerated rapidly, as other economic factors came into play: the international financial system began to unravel and property values toppled. Anglo had stumbled and fallen.

TABLE 1	
Growth in the Share Price of Anglo Irish Bank p.l.c Over Three+ Years	
Date	**Share Price**
October 2005	€11.61
April 2006	€13.07
August 2006	€11.36
December 2006	€15.41
February 2007	€16.33
March 2007	€16.24
April 2007	€16.55
June (1st) 2007	**€17.53**
Late June 2007	€15.97
August 2007	€13.44
October 2007	€11.35
November 2007	€10.79
December 2007	€11.47
January 2008	€9.53
14th March	€8.20
19th March 2008	€7.58
June 2008	€7.58
Early July 2008	€5.45
Late July 2008	€5.27
November 2008	€0.92
December 2008	€0.19
January 2009	**€0.20**

By the end of 2008, Anglo Irish Bank was worth approximately 1.1% of its value in mid-2007. Why was that? And who would take the blame, or become the scapegoat? One thing was certain: it would not be the Teflon-coated establishment – the public sector or the politicians of any hue or kind. Not a chance in hell.

But others may well determine what happens next. Frank O'Dwyer, Chief Executive of the Irish Association of Investment Managers, had claimed that, in time, the various fund managers will decide whether to sue the bank, or not. One would have to assume that it is a very real prospect and, furthermore, that if justice is to prevail, they are likely to succeed. O'Dwyer criticised both Anglo Irish and the Financial Regulator for keeping investors in the dark. He commented as follows:

"*Clearly, in terms of our understanding of proper behaviour, what happened in Anglo Irish was not appropriate. What we do not know is whether what happened was a matter of illegality. People are going to want to know what happened in and around Anglo Irish.*"

And then he added: "*We will await a reasonable period to see what a new [Anglo] board says about the matter."*

If he waits until that board responds, he may have to wait a very long time. One would have to assume that he and his members will not wait for ever.

5. ANGLO'S BUSINESS MODEL.

Stripping aside all the hyperbole and public relations, what was the reality of Anglo Irish Bank and its much-touted model? Ignoring the systemic failures of the regulatory, control, audit, compliance and disclosure processes (and that is difficult to ignore), why did the metaphorical wheels eventually come off the Anglo wagon? Clearly, the model was successful for some time, but why did it cease to be successful and was it ever as successful as was touted by its management?

In all that has been written over the period since its collapse, this bank's failures have been concertinaed into criticism of a small number of borrowers and of selected members of the organisation's senior staff. There can be no doubt that they made some contribution to what eventually occurred, but that is almost certainly far from the full story.

Anglo's alleged business model was set out very clearly in a succession of annual reports, almost from the time it first secured a Stock Exchange quotation. The following paragraphs provide a summary of the explanations provided there.

Starting with its 1999 annual Report, Anglo was then describing itself as "...*an integrated banking group, with an assets base of €7.9 billion, supported by capital resources of €700 million*..." It had had a very good year ending 30th September 1999, with pre-tax profits increasing from IR£45.1 million to IR£70.2 (an increase of 56%), and post-tax profits going from IR£37.0 to IR£58.6 (an increase of 58%).

Interestingly, while Total Assets and Deposits had both increased by considerably less than 50%, Advances had increased by well over that rate (just marginally below 60%). Claiming that growth had been achieved "...*largely......organically*...", it also claimed to have pursued a strategy *"... of acquiring businesses which are similar from a risk perspective and also complementary to existing activities*." That in itself, might have signalled a concentration of risk in limited areas of activity, but very few appear to have adverted to that fact, at the time.

In terms of strategy and philosophical approach, those last accounts of the past millennium laid out what became a mantra, which was to be repeated for the remaining years of that bank's existence as a lender. Under the sub-heading 'The Anglo Approach; Experience the Difference' its group profile explained that:

"*Ongoing and supportive relationships with clients are the foundations of the group's business strategy. Critical to this, and of paramount importance to all Anglo Irish Bank employees, is quality customer service.*

The Bank has developed a strong position in its market as a provider of superior quality service.......the emphasis is always on providing the customer with the service or product they require in the most efficient and effective manner.

The Bank's management continues to invest considerable time and resources by instilling a superior customer service ethos throughout the group. The quality of service provided is a key competitive advantage, which enables the Bank to compete without reliance on price alone. The Bank will continue to use its superior customer service to differentiate itself in the increasingly crowded marketplace for financial services."

In identifying its target market for those services (specifically for its lending services), Anglo sets out its aim as follows:

"Anglo Irish Bank's Banking Division helps progressive businesses to continue their growth and expansion. Customised solutions are devised for all aspects of company's financial needs ....The Bank has clearly defined lending criteria, which are consistently applied. It is very focused on its target markets. The Bank has earned a solid reputation and has developed a recognised expertise in its marketplace."

Looking to the future, the Group Profile in that year's published accounts describes its lending approach as being designed to add value, in the following terms:

"*The Bank has clearly established a niche for itself in the markets in which it operates*.

It is renowned for providing a flexible but consistent service. Consequently the Bank's market share continues to grow as customers look for quality service. This trend is expected to be maintained, despite the competition in the financial services market, as few companies match Anglo Irish Bank's high standard of personalised service.

Anglo Irish Bank's business is based on relationship banking, rather than commodity transactions and it is, at all times, seeking to add value to these relationships."

There are some very clear messages in the bank's own summary of its profile. Some of it might be interpreted as 'wishful thinking' (this was no wilting violet), but the reality is that its own view of its approach to banking can be summarised as follows:

- a very strong emphasis on marketing and growth;
- a huge emphasis on customer and personal relationships;
- the use of customer service as its defining and distinguishing market strength;
- the existence of a group-wide ethos, based on service and customer relationships, and investment in the training needed to make that effective; and
- the delivery of a bespoke service, as distinct from 'commodity transactions'.

And for that 'better' product, they charged a higher margin and customers were prepared to pay for it. Philosophically, that was very different to traditional banking's conservatism, and to its regulation-based approach to its customers. But more importantly, it was very different from the 'transactional banking' approach, which had dominated banking and bankers' attitudes, in Ireland and elsewhere for decades, if not centuries.

The Chairman, Anthony O'Brien, in his statement, elaborated on the overall approach, in an even more expansive way; he wrote:

"*At Anglo Irish Bank we believe that the redefinition of market boundaries and the reduction in barriers to entry in the new European banking landscape present significant opportunities for this Bank in Ireland, the UK and in mainland Europe."*

It would be difficult to envisage a more bullish view of the future, but it accurately encapsulated the Anglo perspective.

Predictably, the Chief Executive's (Fitzpatrick's) statement complemented the views expressed by the Chairman. He talked about the bank's consistent strategy of focussing on clearly defined markets, where it could add value and broaden its fee-income (that was to be repeated regularly, over the following years), of using its superior service to grow market share in highly competitive markets, without diluting the quality of its assets, and of the strong long-term nature of its client relationships. He emphasised the value placed by its customers on those relationships, as being the primary basis on which it could grow without diluting its margins.

Fitzpatrick boasted of the 'generous' 1% general bad debt provision, which supplemented the 'prudent' specific provisions on non-performing assets; whether those 'prudent' provisions amounted to write-offs, was not stated and apparently no one asked. With hindsight, someone should have. And finally, he devoted considerable attention and comment to the bank's risk management strategies, which he portrayed in a very positive light.

The report also contained detailed information on the control and governance systems operated within the bank, though those particular comments were quite general in nature. And in the end, the auditors provided a 'clean audit report'.

That 1999 Annual Report acted as the prototype for this bank's reports to shareholders for the following eight years, before the position of the bank changed radically. But over those years, the core messages remained constant. Apart from some additional references to 'the millennium' and slightly different wording, 2000 was a repeat of 1999: strong, organic growth; relationship banking; niche banking; margins remaining steady; continued stringent risk management standards; the over-riding importance of increasing shareholder value; and of course very good corporate governance and compliance regimes. To quote the motto of the Olympic Games, it was *citius, altius, fortius*, with no constraints.

Thereafter the content became almost depressingly repetitive. The Group Profile was, for all practical purposes, the same from one year to another; the Chairman's Statement changed very little in content and not at all in tone; and the Chief Executive's Report continued to emphasise the '*bespoke services to niche markets*' strategy. The only real issues were the precise rates of growth and the level of the dividend, which also increased from one year to the next.

By 2002, Peter Murray had replaced Anthony O'Brien as Chairman. It has been claimed that O'Brien had a tetchy - occasionally tempestuous - relationship with Fitzpatrick, but that is difficult to confirm.

However, Fitzpatrick was also known to have had occasional tense relationships with some of his senior staff and even with some Board members. According to Simon Carswell, a Director from the 1990s recalled being invited to breakfast by Fitzpatrick, shortly after the announcement of the bank's latest excellent results. Over the meal, Fitzpatrick told him that he was the only director who had not congratulated him on the bank's performance. The Director thought that it was bizarre of a bank's Chief Executive, as well paid as Fitzpatrick, to be insecure enough to demand praise – and it was.

‘*Fitzpatrick was arrogant*’ according to another former Director of the bank. Allegedly, he wanted ‘semi-yes-men′ around him. He was happy enough to have arguments, provided he always won. Apparently, beating him in an argument, was not a good idea.[6] Carswell also wrote that Mike Soden, the former CEO of Bank of Ireland, said that Fitzpatrick suffered from ‘small man syndrome’.

While the success of the company’s wealth management activities was added to fee income and bespoke lending as the income generators, the thrust of the strategy showed no change; but the success of the North American subsidiaries (especially Boston) was being mentioned more frequently and was clearly taking a much higher profile. Apart from some rotation of directors, little was changing. But then, that was what was expected from banks – steady as she goes.

Other than the repetition of ‘the proven strategy’ of the provision of ‘bespoke banking services’ and of the confidence that ‘our competitive strategy will continue to deliver superior returns to shareholders in the future’, new content in 2003 included the fact that the UK represented 40% of the loan book and had increased by 168% since 1999, and the success of the bank’s model in Boston.

That report also announced the raising of additional ordinary share capital of €63 million, a Loan Asset Securitisation of Stg£400 million and a Tier One Non-Innovative Capital Instrument for Stg£160 million; it also commented on the Tier One Capital ratio having risen to 8.2%, as a result of profit growth and retention. A figure as low as 8.2% was traditionally seen as the minimum in banking theory – in fact, it used to be right on the bottom limit of acceptability - but clearly the 2003 report was trumpeting an increase to what was an almost unacceptable level. And it was accurate in that respect, because prior to that, Anglo’s Tier One capital was at a totally unacceptably low level, according to banking theory; but that position has to be interpreted in the context that many other banks, possibly a majority, had been operating around that level, in those days too.

Again, the 2004 report was entirely bullish. Pre-tax profit had exceeded €500 million (going through the €½ billion barrier was a major break-through for Anglo), earnings per share were 115.4 cents and return on equity was 35.3% - all record figures for the bank. It also announced the pending retirement (scheduled for January 2005) of Fitzpatrick from the position of Chief Executive, to become Non-

[6] ‘Anglo Republic’: Simon Carswell, Penguin Books (page 38).

Executive Chairman and it mentioned Tiarnan O'Mahoney's retirement from the Board a month earlier.

By 2005, Anglo was publishing both an interim report and an annual report and was reporting '20 Years of Uninterrupted Profit Growth'. It was now Ireland's third largest bank and the fourth largest company listed on the Irish Stock Exchange. Again it emphasised its centralised business model and claimed that '*secured term lending* (was) *the Bank's core area of expertise and main driver of income and profitability'* and indicated that the strength, flexibility and scalability of the model would enable it to capitalise on the opportunities available. But the core messages remained the same.

That self-congratulatory tone continued in 2006, including the claim that Anglo was "... *one of the best performing banks globally over the past decade...*" For the first time, the bank's corporate responsibility was raised, including a suggestion that "...*we consistently aspire to the highest standards of conduct in everything we do and in all our relationships*." David Drumm's (the new Chief Executive's) report contained somewhat more technical information than did those of his predecessor, but the overall bullish tone continued.

The 2007 report reflected another outstanding year's performance; most of the main statistics showed a 40% to 50% increase on the previous year; all three main operational areas – Business Lending, Treasury and Wealth Management - had performed well; the cost: income ratio had decreased from 26.5% to 22.3% - a relative reduction of 16%, which was fantastic, by any standards; there was an increasing emphasis on the U.K. market; and crucially, there had been a significant increase in the level of customer deposits, especially in the non-retail customer deposit business, which had been expanded into the United States.

The bank's new Chief Executive, David Drumm, spelled out Anglo's underwriting model in the following very explicit terms:

"*The Bank operates a strict underwriting model. We lend to experienced business people and professional investors, providing senior term debt on a secured basis. Cash flows from proposed transactions or a client's existing asset portfolio must provide sufficient debt service coverage, typically a minimum of 1.25 times – the Bank does not engage in speculative development lending. The cornerstone of our consistent record on asset quality is strong underlying client cash flows, normally* *based on long-term contractual rental incomes derived from diverse sectors of the service economy. These sectors continue to perform strongly*."

He also devoted considerable attention to the deposit base, emphasising that the Capital Requirements Directive ('CRD'), which would implement the provisions of the Basel II Capital Accord in the EU, would come into effect on 1st January 2008. The clear implication was that Anglo was well-placed to meet the new criteria.

He referred to the fact that the bank had experienced some moderation in the rate of growth in Ireland, in the second half of that accounting year (i.e. between April and September 2007) and indicated that Anglo's management expected that trend to continue for some time. Nothing in that report provided any real reason for major concern.

David Drumm also reported that the bank's consistently low loss outcome in the event of a default was:

"... *further underpinned by personal guarantees and by the fact that close to 100% of the loan book is secured by a first legal charge on tangible assets, typically on a cross-collateralised basis."*

Effectively, that was indicating the repeatedly reported 'triple security lock': customer cash flows (including any cash being generated by other businesses owned by the same borrower), a charge over the assets, normally collateralised to include all the borrower's other assets too, and a personal guarantee. That was not at all inconsistent with best banking practice; in fact, maximising the security against every loan had long been a core tenet of traditional banking and a source of great annoyance to most borrowers. It was not until the mid-1970s that U.K. banks started lending in any substantial amounts on future cash flows, and probably half a decade later before that approach became established in mainstream Irish banking.

In the early years of the State, the Irish Government (the first De Valera government) established the Industrial Credit Company (later the Industrial Credit Corporation, which, unfortunately, was eventually sold to Bank of Scotland to form the basis for Bank of Scotland - Ireland) as a parallel to the Agricultural Credit Corporation.

That bank (ICC) became much more active in the early 1960s, during the implementation of the Lemass and Whitaker inspired First Programme for Economic Expansion, at a time when the Macmillan Gap affected Ireland too. From the early 1970s onwards, it was to become the primary source of loan capital for new manufacturing businesses with a major appetite for funding; that was a reflection of the fact that the main banks were not lending for economic development – specifically for the much-needed new business starts, especially if they involved manufacturing. Sadly, ICC has never received the credit it deserved for its contribution to the early phases of the development of Ireland's industrial base. It actually pump-primed much of Ireland's subsequent indigenous manufacturing growth.

So given the ICC precedent – although that was much more effectively regulated - Anglo's model may not have been entirely unconventional, but it was sufficiently different that both competitors and regulatory bodies had difficulty understanding it. The old saw occasionally, if not regularly, applied to academics "*If you can't convince them, confuse them*" seems apt in that context.

Why it should have been so difficult to understand the Anglo model is now rather hard to understand, but what has since become clear is that the failure to understand it led to an abysmal failure to analyse it and to control it. Fitzpatrick and his management team cannot be held accountable for that aspect of the bank's subsequent failure, though they may validly be held responsible for other aspects of their management of it.

6. CREATING AND EXPLOITING STRENGTHS.

Nobody can ever claim that Anglo did not make the main parameters of its business model clear for all to see – or those aspects which it wanted all to see. As indicated above, the principal elements of its marketing strategy were described with pride and no small degree of 'swagger' and confidence, in every annual report for more than a decade. The strategy underpinning what its management described as its 'model' was plain for everyone to see. In their own words, its management claimed that:

"Anglo Irish Bank is a focused business bank with a private banking arm. The Bank provides business banking, treasury and wealth/management services. It is not a universal bank and its stated strategy is niche rather than broad market. Each of its customers deals directly with a dedicated relationship manager and a product specialist."

There was, apparently, nothing covert or disguised about the majority of those aspects of its activities – or at least that was what the company and its management wanted readers, analysts and investors to believe. According to them, its loan book was first and foremost based on 'cash flow lending', to which was appended a security lock – plain and simple; and it was not geared towards manufacturing nor for lending for working capital. The following are some clear examples of how this bank projected its role and its activities.

In an interview published in 2003, the bank's Finance Director, Willie McAteer, said: "*We do term lending, not working capital, and we focus on service businesses, not manufacturers. Also, we don't have a legacy of a branch network, which is very expensive. It's really the model that gives the efficiency*.......*Four fifths of the bank's business consists of loans to the business market, and particularly owner-managed businesses, with a focus on service companies rather than manufacturers*."[7]

Its own presentations and those of some other analysts at investment conferences and similar events also highlighted its "*Lending model: following basic tenets of good banking – No.1 Cash Flow*'. [8]

[7] http://www.efinancialnews.com/story/2003-07-28/anglo-irish-keeps-its-feet-on-the-ground

[8] *Anglo Irish Bank*. Davy Equity Conference – New York, 9th January 2004

As described above, its Annual Accounts continuously and robustly reaffirmed this approach, in terms like this:

'*In all geographies we apply the same relationship-based model to our business lending activities. This model focuses on lending primarily to proven operators on transactions that are supported by secure cash flows and strong collateral*'.[9]

'*Secured term lending is the Bank's core area of expertise and main driver of income and profitability. We lend principally to the mid-corporate and professional sectors*.'[10]

There can be no doubt that Anglo's so-called model was seen as a competitive advantage and that its senior staff and its directors perceived it as both an advantage and a 'badge of honour'. The following are other quotations from its annual reports; they are clearly designed to confirm to shareholders and others that the model was consistent, was based on cash flows and, by implication, was being faithfully implemented each year.

"*….advances supported by <u>recurring stable cash flows</u> while retaining a charge on assets as security*" (2004);

"*We seek to build relationships with strong people, where <u>cash flows are secure</u> and supported by collateral" (*2005);

"*This model focuses on lending primarily to proven operators on transactions that are supported by <u>secure cash flows</u> and strong collateral*" (2006);

"*This model focuses on lending to experienced business professionals on transactions that are supported by <u>secure cash flows</u> and strong collateral*" (2007).
(Underlining added in all four cases.)

It is possible that the origin of the emphasis on 'secure cash flow' consistently used by Anglo, stemmed from the hire purchase/leasing activities of one of its constituent banks, City of Dublin Bank[11] into which Anglo had reversed and which would have had to rely entirely on that generic type of source for repayment; in addition, its earlier involvement with the provision of 'block discounting' arrangements - advances against future contractual cash flows such as lease or rental payments (e.g. TV rentals etc) - would have provided it with familiarity with, and confidence in,

[9] 2006 Annual Report, Group Profile page 4.

[10] 2005 Annual Report, Group Profile, page 2

[11] Founded in 1964, City of Dublin Bank was one of dozens of small banks and finance houses which sprung up in the loosely-regulated Irish financial services market during the 1960s and 1970s. In 1971 it floated on the Irish Stock Exchange plus it acquired Anglo Irish Bank.

that type of repayment profile. But it should also have provided it with a greater understanding of the risk of default, under such arrangements; that seems to have got lost somewhere in the system.

That was and still is simply an alternative form of asset finance. But the term ‘secure cash flows’ sounded good in promotional material and may have been used initially by Anglo to promote its office mortgages, in the mid 1980s, to small professional firms. Its continued use in every presentation and every subsequent annual report was possibly viewed as being likely to appeal to investors (especially American investors), due to the associated implication of relatively risk-free lending. For whatever reason, its use in this case appeared to either confuse, or fool, both investors and the market for more than twenty years, because that was not really how the model was actually being applied. While its management may not have realised that, they should have.

In 2006, Anglo’s business model appeared to be further validated by a Davy Stockbrokers[12] fund-raising exercise. Davy, as sole arranger, placed 33.6 million new ordinary shares in Anglo Irish Bank at a price of €12.40 per share, raising approximately €416 million. The placing is believed to have been the largest ever by an ISEQ listed company and was more than four times oversubscribed.

In that same year, Anglo funded the MBO of Davy Stockbrokers from Bank of Ireland. That transaction and whatever relationships may have developed during that period, would have provided grounds for concern about Davy’s being potentially biased, if not conflicted, in any subsequent comments, including brokers reports, on Anglo; however, there is no evidence of any favouritism in any of Davy’s commentaries on either Anglo or the other Irish banks, and absolutely no evidence that their independence was impaired. Nevertheless, the perception of the potential for a ‘conflict of interest’ would normally have required that any such comments would have been qualified in some appropriate way.

An interesting feature of the Davy placing, apart from its magnitude, was the manner in which it was communicated to the market. Unusually in an Irish context, the intention to arrange the placing was announced before any ‘book building’ exercise had taken place and Davy’s subsequently completed an accelerated book build of €416 million worth of Anglo’s shares within a matter of hours.[13]

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[13]www,Finance-Magazine.com

There was a particularly high level of sensitivity to any actual or even implied criticism, within the Irish banking system in those years. Any criticism of Anglo's model was met with fierce resistance, but that was also true of criticism of the other Irish banks. They were all surprisingly defensive in this regard. Michael Lewis, the acclaimed American author and financial journalist, published the following account of mid March 2008.

"*On March 13, 2008, Phil Ingram, a Merrill Lynch analyst, published a report, in which he simply quoted verbatim what British market insiders had told him about various banks' lending to commercial real estate. The Irish banks were making far riskier loans in Ireland than they were in Britain, but even in Britain, the report revealed, they were the nuttiest lenders around: in that category, Anglo Irish, Bank of Ireland, and A.I.B. came, in that order, first, second, and third.*

For a few hours the Merrill Lynch report was the hottest read in the London financial markets, until Merrill Lynch retracted it. Merrill had been a lead underwriter of Anglo Irish's bonds and the corporate broker to A.I.B.: they'd earned huge sums of money off the growth of Irish banking. Moments after Phil Ingram hit the Send button on his report; the Irish banks called their Merrill Lynch bankers and threatened to take their business elsewhere. The same executive (Matt Moran) from Anglo Irish who had called to scream at Morgan Kelly (UCD economist) called a Merrill research analyst to scream some more. Ingram's superiors at Merrill Lynch hauled him into meetings with in-house lawyers, who toned down the report's pointed language and purged it of its damning quotes from market insiders, including its many references to Irish banks.[14]

Anglo was clearly very confident about the validity of its strategy and its lending model, even if 'screaming' was unlikely to have been part of its written strategy. But others too appeared to be content with it, though not everyone was sure, and we now know that there was considerable justification for their scepticism.

For example, the following is an extract from a PricewaterhouseCoopers Project Global summary report of 2009, on Anglo's loan book, which had been commissioned by IFSRA. It reported as follows:

"Business model

The Bank's business model is to lend on a senior first secured basis to proven operators against investment (cash flow supported but often highly geared) and

[14] http://www.vanityfair.com/business/features/2011/03/michael-lewis-ireland-201103?currentPage=all

development property assets. New lending to existing customers is supported by both the asset being acquired and the customer's pool of assets held as security.

Interest roll up

In common with other banks, Anglo provides interest roll up facilities when providing development facilities where supported by expected future cash flows. Interest roll up and capitalisation is permitted under IFRS[15].

Investment property loans

In some cases, Anglo lends on an interest only basis against cash generative investment properties. In certain cases, capital repayments will be derived from asset sales or refinancing.

Investment property – security

Development loans are converted into investment loans when a development is completed and assets become revenue earning (tenants in place) and, in many cases, the loans are retained on the Bank's books post development.

Equity release

In accordance with industry norms, the Bank will, in certain circumstances, provide equity release facilities where there has been capital and/or income appreciation to allow customers to invest in other projects.

Property developer land banks built up over time

A number of key property developer customers purchase or take options over land banks, a considerable period of time in advance of local area plans, zoning, planning permission etc. being available. Management state that the Bank's involvement in major land/development deals has reduced over the past three/fours years.

Close relationships with key customers

From our review of the larger loans in the portfolio, it is evident that a small number of key customers are involved in a large number of transactions and represent a significant proportion of the loan portfolio."

Source: PwC - Project Atlas [16]

Categories of loans such as those involving interest roll up, those used to fund the acquisition and building of land banks, or those used for equity releases etc. could not be classified as 'cash flow supported'. Overall, the loan categories identified in the PwC report indicate a strategy of loan book '*growth for growth's sake*', rather than a loan book based on cash generating assets.

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[15] International Financial Reporting Standards

[16] http://finance.gov.ie/documents/publications/other/2009/Anglopwc.pdi

By the same token, there are very few instances in which the following customer categories could be deemed to be cash generating:

(i) 'key property-developer customers' who were borrowing money for the purchase of options over land-banks, or the direct purchase of such land-banks, long in advance of local area plans, zoning, planning permission etc. being available, or who were borrowing to undertake speculative building, after the legal and planning hurdles had been surmounted;

(ii) customers relying on Anglo's penchant for providing interest roll-up facilities when advancing facilities for the purchase of development land or other development projects, which were not going to translate into cash quickly; and

(iii) customers, who were borrowing to fund equity releases, which were being undertaken where there had been capital and/or income appreciation without the confirmation provided by a sale.

The further comment that '*Development loans are converted into investment loans when a development is completed and assets become revenue earning (tenants in place) and in many cases, the loans are retained on the Bank's books post development*' indicates that Anglo was happy to accept, if not have a preference for, borrowers who would defer repaying loans. The higher margin on such rolled-over loans, together with the additional fees associated with such roll-overs, had to be very tempting to a management team with a very heavy focus on profit margins.

In addition, the IFRS rules allowing interest roll-up and/or capitalisation of interest facilitated Anglo in reporting high margins, which were not converting into cash flows and might continue not to do so for a long time. Added to that was the fact that the published accounts did not go very far in giving shareholders or investors any real insight into the significance of the difference. This was a very unorthodox approach to banking – especially for a bank whose public utterances indicated that its lending approach was firmly grounded in 'cash flow lending'. One could easily conclude that it was also being used as a device for disguising reality from investors.

The aforementioned PwC report also indicated that Anglo was, if not predominantly, then certainly significantly, engaged in 'property development, involving interest capitalisation', rather than in conventional business banking. Clearly, despite what was being written in its annual reports and in its other promotional documents, what Anglo was doing was not 'cash-flow lending' – it was very far from it.

The Nyberg Commission, in its comprehensive report into the entire banking system in Ireland, commented as follows, in relation to Anglo:

*"…The bank classified itself to customers, rating agencies, funders and the authorities as a "relationship based business bank with a centralised business model operating in three core areas – Business Banking, Treasury and Wealth Management". Customers were described as "*experienced business professionals*" and loans were to be* "supported by secure cash flows and strong collateral*". In particular, business lending, which was classified as "*secured term lending*", was presented as the Bank's core offering and main driver of revenues and profitability.*

Notwithstanding this description of itself as a broadly based business bank, in reality Anglo actually catered for a relatively limited number of customers, many of them in the property development sector. The bank felt confident that a good knowledge of its customers, asset security and personal recourse, combined with geographic diversification of its loan book, would reduce the risks inherent in its property lending model."

Unlike the main clearing banks, Anglo essentially had one main income stream – interest margin and fees on its loans; it tended to charge more for such loans than its competitors (usually 2.25%), thereby producing better margins[17] – but those higher margins were not converting into cash flows, since much of the interest was being rolled-up. Instead those margins were being enhanced through charging various loan fees at a higher rate than the other banks (and much of those fees were also being rolled-up); and successive annual reports commented favourably on the growth of its fee income from the late 1990s onwards, but especially in the middle years of the last decade.

As Anglo did not offer current accounts (normally a most valuable and significant source of finance for a commercial bank), all funding for its loans was either borrowed on the inter-bank markets or sourced from depositors. In order to attract deposits, Anglo had, by and large, to pay a higher interest rate than its competitors. Therefore, the net margin on loans, due to the comparatively high costs of funding, was being eroded by its higher cost of funds, though it was still reported as being higher than that achieved by the other banks. The question is: was it high enough to cater for a potentially higher level of loan write-offs?

[17] For example the fee for the loan advanced to the consortium, which bought the Ringsend Glass Bottle site was reputedly €3,000,000.

To a very great extent, Treasury was servicing the Anglo lending book. And over time, Wealth Management became a down-stream activity of lending, but one which contributed little to the net margin. The following quotation from Simon Carswell's book on Anglo provides an example of the management's conviction in the validity of its model:

"*He (Fitzpatrick) pointed across the road to the building on the far corner, using it as an example of how the bank wasn't a property lender but a lender on the cash flow from rock-solid tenants in the building. 'There would be a major shop on the ground floor, one of the biggest accountancy firms on the first floor and one of the biggest law firms on the second floor,' he said. 'Anglo was covered on its loan, not just on the value of the property but on the strength of the business in the building. The strength of the bank loan on the building was a sign of the strength of the economy…"*

Carswell then expressed his personal (not very complimentary) view on the validity of Fitzpatrick's interpretation of the Anglo model*: "The Fitzpatrick banking model was shite. It took a property crash to expose just how flawed it was".*[18]

Given Anglo's operating systems and the lack of institutional confidence in its model, Anglo needed to produce progressively higher profits to create confidence in the bank's capacity to deliver. To support that, it had to promote an understandable and clear business model, which would make sense to investors. Anglo provided just such a model and promoted it very well. Unfortunately the model offered to the public was not the one being implemented – though, it is highly probable that at least some of the bank's management might not have realised the difference.

Was its strategy and its operating model a fraud on investors and on the financial markets? That is one of the most fundamental questions related to the demise of Anglo Irish Bank. So far, it appears not to have been investigated and all the evidence suggests that the current management is operating as if the borrowers were to blame and the bank was blameless. But then, it is possible that they have to believe that, though it may also be the case that they would not know the difference.

[18] 'Anglo Republic': Simon Carswell, Penguin Ireland (page 127)

7. BALANCING STRENGTHS AND WEAKNESSES.

So what exactly was the problem with Anglo's way of doing business and its banking model? Clearly, some aspects of its operations were good and soundly based; equally clearly, some of them were highly deficient. In analysing the issues associated with this bank, it is useful to examine those aspects in two tranches: what was good about it and how far could those strengths carry it, and secondly where were the deficiencies and how significant were their effects?

It is obvious that parts of the Anglo strategy and model were very good and very effective – so good and so effective that, ultimately, the other Irish banks felt forced to attempt to follow the Anglo approach. That may now be seen as a 'back-handed compliment', but it was and is a reality; Anglo was taking market share from all its competitors and predictably, those competitors decided to copy the Anglo model.

There is no doubt that Anglo's main strength was its approach to its market and the service it offered to its customers and those strengths covered a range of dimensions.

Anglo had an understanding of its customers' needs, which was incomparably superior to that of the four main banks, and it tailored its product offering to those needs and to the customers who created those needs. Its approach was entirely sales and marketing based.

It was not, and did not see itself as, a traditional bank, whose core activity was the processing of customer transactions; it had no branch network, so it was not dealing with as wide a range of customers as were its competitors. Consequently, it was not encumbered by the conventional 'transactional' philosophy, attitudes and activities, which have always been the hallmark of traditional banking. It was a different sort of bank – one which needed to be managed differently and, more importantly, needed to be regulated differently. If the regulatory authorities did not appreciate that, then there was something seriously amiss with banking regulation in Ireland. All the evidence suggests that the regulatory authorities did not fully appreciate how different Anglo was.

Anglo was never part of the bank clearing system and hence could not operate current accounts. Consequently, Anglo operated all its transactions through its Bank of Ireland account; that should have given Bank of Ireland much greater insight into the activities of Anglo than might have been available to any of its other competitors. The absence of current accounts at Anglo gave the forecasting of year-end totals great certainty in relation to term deposits and interbank funds with fixed maturities, and created an environment, which was very conducive to balance sheet 'window dressing'.

All the non-clearing banks, excluding branches of international banks, had by this point been subsumed into major international entities, with the exception of Anglo. However, Anglo continued its reliance on inter-bank funding and it is in that context that the 2007 IL&P back-to-back arrangement needs to be assessed, though that does not excuse its being a fraud on the markets and investors.

In a recording of a phone call on 1st October 2007 between Anglo and the Financial Regulator's office regarding the IL&P back-to-back deposits, the bank official stated that "*It's trying to manipulate our balance sheet for our financial year-end….We boosted our customer funding number so that when our snapshot is produced at the beginning of December it will look as good as possible*"[19]

Tom Lyons in 'The Fitzpatrick Tapes recounts the following quote from Fitzpatrick: "*Treasury got the money in, and the lenders were centre-forwards. Treasury was about full backs, centre-halfs, goalkeepers and wing-halfs* (sic). *The lending guys were all Lionel Messi. They were all strikers. They were the pop-stars. They were the guys who were making the fucking money. They didn't worry about how the money was got to give to them*".[20]

Because it was different to other banks, in terms of the policies which dictated both sides of its operations and both sides of its Balance Sheet (i.e. it was both funded differently and its assets had a different structure in portfolio terms), it could concentrate fully on its customers and could refine its service to the needs of those customers, in such a way that they would willingly pay a higher price for that service. In other industries and especially in marketing terms, that would be seen as a latter-day version of a 'holy grail' for any business – a perfect match between product, or service, and the market.

The main dimensions of Anglo's product offering have already been described above; they included:

[19] Ship of Fools, Fintan O'Toole, Faber & Faber, page 210
[20] Anglo Republic by Simon Carswell Penguin Ireland, pages 94-95

- a very personalised service, where the focus was clearly on the customer and his/her needs, and the major customers were rewarded with loyalty and various forms of corporate hospitality, which would have done credit to organisations in other walks of life, such as hospitality, media, public relations or merchant banking;
- a product, which, as it was promoted to customers, was not a 'one size fits all' service, nor a 'take it or leave it' service; it could be, would be and was modified, to address different needs; it was a tailored service, a specialised service and a service which was absolutely unique in Irish banking, or probably in banking anywhere else either;
- a much quicker response to its customers than was being provided by its competitors; odd as it may seem to other banks, which show less regard for the needs of its customers, those customers actually welcome and appreciate a speedy response – even when it is negative - though they also have a strong preference for banks, which lend money;
- very little red tape – this was neither a bureaucratic organisation nor a structurally hierarchical organisation;
- a willingness to lend against projects with a comparatively risky profile, provided the promoter could meet the bank's security criteria;
- being prepared to lend on longer term projects than other banks would consider;
- charging higher-than-normal rates for its unique service and its customers were happy to pay for it; and
- an overall approach, which produced massive growth on a consistently sustained basis, far outstripping the growth of any of its competitors.

In terms of product and service to its customers, this was a marketing-man's dream: a customised product and service, which met its customers' needs, produced growth and profits for the lender, generated a steady overall increase in the share price and in the bank's profile, took market share from its competitors and out-performed every one of those competitors, both indigenous and international, on almost every important dimension.

Crucially, it also created growth in turnover. Unfortunately, its management failed to recognise that businesses, which expand their turnover rapidly, regularly face funding problems. In other walks of life the phenomenon is known as 'overtrading', which is a complex technical problem, but which is normally interpreted as 'growing too fast'. While that is not entirely technically accurate, neither is it too far off the mark. In practice, overtrading is expanding faster than the resources of the business, including its management resources, can sustain. From a purely theoretical financial perspective, it is growing at a rate which the capital base of the business cannot support, unless it is supplemented through some combination of additional capital and retained profit, assuming the mathematical relationship between turnover and investment requirement is reasonably constant, as it normally is.

That said, experience shows that overtrading is really about what the management is capable of managing productively and efficiently – and they are the two crucial dimensions. In practice, the need for capital is a symptom of overtrading, rather than a cause of it. Management is the real limiting factor, which leads to overtrading.

Therefore, while it is not well recognised in the literature on the subject, overtrading is normally the result of a business growing at a rate, which outstrips its management's capacity to manage it efficiently (i.e. generating good margins) and productively (i.e. generating high turnover from its capital base). Such businesses regularly struggle to match turnover with profits. One common reason for that is that they tend to cut prices to generate the growth. But Anglo increased its prices and grew both revenues and profits. By any standards, that was 'one helluva trick'. Economic and marketing theory says that, other than in exceptional circumstances, it is virtually impossible.

That was where product differentiation became so important. Anglo was selling a completely different product or providing a completely different service (depending on how one defines 'product' or 'service') from that being sold by its competitors. Anglo's product was tailored and its service was quick – precisely what customers, who were in a hurry to get things moving, wanted. Two or three percent on the margin was almost irrelevant to developers who anticipated doubling their money, or even more than that, on a successful project. In effect therefore, Anglo was not charging enough for its service to provide it with the profit retention needed to support its growth rate. Strategically then and mathematically too, that was one of its biggest problems.

What this analysis suggests is that Anglo's strategy was almost right, but not entirely right, and that the gap between 'almost' and 'entirely' was one of the causes of its problems. In fact, it is probable that, in mathematical terms, it was the biggest single contributory factor in its ultimate downfall. Its product and marketing strategies were right, but they did not match its growth strategy. When the greedy man sits down to lunch, he needs to curb his appetite; Anglo failed to curb its appetite for fame and fortune, as reflected in the growth of its share price.

So whatever its critics may say (and Anglo's critics have had plenty to say), Anglo Irish Bank got its product/service strategy right and its marketing strategy right; it was far ahead of all of its competitors on these dimensions. But it failed to carry those achievements through to the point where its strategy was good enough: it failed to match its profitability and its pricing policy with its growth strategy. That was clearly the result of the fact that the business was growing to the point at which its management could no longer control it properly and prudently.

Sean Quinn had applied those same principles much better than most, when he broke the monopolistic and over-priced structures in cement, in insurance and in glass manufacturing. He did it by ensuring levels of efficiency and productivity, which his competitors could not achieve, though his achievements are now being undermined and dismantled. Anglo was trying to replicate the Quinn model in the banking sector, but its management failed to make the final connection.

It made a broadly similar mistake in relation to its credit evaluation processes. There were many positives to its centralised decision-making approach in relation to loan applications. In theory, that much-trumpeted centralised system for evaluating loan applications was conducive to quicker and more consistent evaluations, to greater operational efficiency and to better decision making. Adding into that system at least annual visits to each project being financed by the bank (as the annual reports frequently advised their readers) should also have acted as an early-warning system for trouble, or potential trouble, with any specific project(s), or from any individual borrower. In principle, that too should have been a great advantage, assuming that the senior people in the bank were capable of assessing such projects.

The reported operation of that system is an interesting study in its own right. Peter Killen was recruited from AIB (Foster Place Branch, in Dublin 2) by Fitzpatrick as the bank's head of operations – effectively as the branch manager, though that is not how it was described - but Fitzpatrick maintained day-to-day control over virtually all aspects of the bank's operations. Annual reports state that Peter was responsible for Group Risk Asset Management.

‘*Peter (Killen) was Fitzpatrick’s right-hand man’, says a former Anglo executive. ‘He was the only guy who stood up to him’*.[21]

In 2002, Tiarnan O’Mahoney was appointed Chief Operating Officer but he still retained his treasury role. According to the 2004 Annual Report, Peter Killen had retired from the Board in February 2004 and Tiarnan O Mahoney was due to retire in December 2004. As indicated in that report:

“*Peter played a key role in developing the Bank’s lending franchises in Ireland and the UK and in establishing our risk model. Tiarnan contributed hugely in building the Bank’s Treasury and Wealth Management businesses and in various senior roles with the Bank over the past 20 years. Their impact on the development of Anglo Irish Bank has been enormous.”*

The real issue is: how well did this structure work, in practice? There were clear potential advantages arising from the customer-relationship approach to lending adopted by Anglo. But did the bank outgrow that approach? Or did it manage it properly? The person who initially dealt with the customer was responsible for the loan until it was repaid. Hence the normal checks and balances and oversight by other people in the organisation were largely being bypassed. That would clearly have been eminently suitable for a small bank branch with head office oversight. But what seems to have happened, in the Anglo case, was that the system was never upgraded or scaled up to handle the increased volume and size of loans.

One would have to ask whether that was deliberate, so that Fitzpatrick could continue to exert ultimate control over lending policy and lending activity; more importantly, one would wonder whether the non-executive directors ever raised the issue or queried this practice

While Anglo claimed to hold formal weekly credit committees to approve loans, there is some evidence to suggest that Anglo’s procedure involved ‘instant’ credit approval, which was sanctioned retrospectively by the credit committee. That was followed by quick loan draw-down. The competitor banks always claimed that this allowed insufficient time to finalise loan security and there may be some substance to those claims, but then they would say that, wouldn’t they?

[21] ‘Anglo Republic’: Simon Carswell, Penguin Ireland (page 15)

The result was that personal guarantees were used to seek to secure immediate draw-down of the borrowing, with paperwork in respect of the agreed loan security being finalised much later[22]. It would now seem that, in many cases, the paperwork for the loan security was never properly finalised. The pace of loan approval and the frequency of draw-down at an early stage outstripped the bank's internal systems and, over time, that was used as a competitive advantage. That is where the difference between the marketing approach and the more conventional banking organisation, with its strong administrative support systems became apparent; Anglo was operating on a very different wavelength.

Of course it could equally be argued that this outcome resulted from a volume of activity, which had long since grown to the point where it was far in excess of what management was capable of controlling; and that too would be accurate – one is the corollary of the other.

What is clear from the various comments now being attributed to former executives is that the bank was being run very much like an owner-manager business. According to Simon Carswell, a former Anglo executive is reported to have said " *treated the bank like his corner shop – he needed to know everything that was going on*."[23] That attitude too is commonly associated with overtrading.

After 2004, most new construction proposals and some others (possibly many others), which were coming through Anglo's lightning-fast credit approval machine, were sanctioned on the basis that they were one-offs, that the customers were wealthy and well known to the bank, and that the projects were 'sure things'. But they could not all have been one-off and it was unlikely that they were all sure things – in fact they clearly were not. Anglo was rapidly becoming like a junkie granting itself one last hit, again and again – another symptom of the overtrading issue. The overall situation, which was then developing in this bank, was summarised in the pithy comment, *"The bloody customers were running the bank*," from Gerry Murphy, the bank's first chairman.[24] It should be noted that Murphy was executive Chairman while this business model was presented to investors and also during the Clegg saga.

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[22] Later in this report that laxity is again described in relation to one customer and his family; in that case, it may have been a crucial mistake.
[23] 'Anglo Republic': Simon Carswell, Penguin Ireland (page 95)
[24] Simon Carswell - Irish Times journalist

In reality, it was worse than Murphy was claiming. In practice, the funding side of any bank's Balance Sheet should determine how much the bank should lend and at what levels of risk. In Anglo, it seems clear that the lending side dominated the decision-making process and the funding/sources side was expected to generate whatever funds were needed. 'Matching' of assets and liabilities ceased to be a priority; it should not have been 'a' priority – it should have been 'the' priority.

Traditional banking theory suggests that 'risk' is of paramount importance in bank lending and in its credit assessment policies. In Anglo's case, insiders have since suggested that the credit function was greatly under-staffed, that so too was the risk function (predictably, if credit was under-staffed) and that, for much of the time, the treasury function did not have the priority it needed. Anglo was entirely 'lending controlled', as might be expected from an organisation, which placed such a high priority on a market-led strategy and a market-based business model.

The Nyberg Report was close to being caustic in its assessment of Anglo's credit analysis model, as the following comments indicate:

"*In Anglo, credit risk management structures were, in practice, deficient and there was ineffective overview of Group credit decisions. Lending policies were treated as guidelines rather than strict rules; exceptions to policy were very common. In addition, the internal sector limits which did exist were not enforced. Loans were not clearly or appropriately classified by commonly used sector lending categories. This created an image of diversified business, corporate and SME lending portfolios secured on stable cash flows and solid assets.*

In fact, Anglo was essentially a monoline bank focused almost exclusively on commercial property lending. One of its strong selling points was "speed of approval" for loan applications. Additionally, the lending culture was such that when applications were problematic, the mindset was "there is a 'yes' in there somewhere". Being a relationship lender, Anglo found it quite difficult to decline a loan to any of its traditional top customers. Furthermore, loans that were not supported by strong or sufficient cash flows or collateral were frequently reinforced by personal guarantees, which were either unsupported by assets free of debt, or supported by equity in other property (often highly leveraged and correlated in value) already pledged to Anglo."

That comment was supplemented by the following equally damning indictment:

"*Recording of Credit Committee minutes only began in 2004 at the behest of the FR (Financial Regulator). Reports on Exceptions to Credit Policy were only started in November 2005, again at the behest of the FR. The level of exceptions was running at 25%+ monthly from commencement of reports despite underwriting criteria having been relaxed in 2005, 2006 and 2007. In the first quarter of 2006, a total of 1,047 loans were approved by the Credit Committee of which 519 (49%) were exceptions to the Credit Policy*."

In tandem, those two comments are a ringing condemnation of the entire credit evaluation system operated by Anglo Irish Bank, and a ringing admonition of its senior executives and their ways of doing business. Exceptions at that level should also have been taken into account in any assessment of the potential for bad debts, irrespective of the buoyancy of the overall economy or of the state of the property sector specifically; that aspect is considered separately, in more detail below. It is also a ringing condemnation of the performance of the bank's Audit Committee, of the State's regulatory regime and of the external audit.

According to Brendan McDonagh, CEO of the National Asset Management Agency (NAMA), loan-to-value on deals were as high as 100%. As a result, he said, the bank was totally exposed to any decline in value. In many cases, Anglo took personal guarantees as security, but NAMA was attaching no value to these. But was he aware of this before NAMA was created, when he was refusing to place NTMA deposits with Anglo? If so, what did he do about it?

The new Australian CEO of Anglo, Mike Aynsley, said later in a newspaper interview: "*hubris played a very, very big part.*"[25] In many deals, Anglo Irish Bank, he said, would lend to wealthy individuals to further their equity participation. It is unclear whether such analyses were based on Aynsley's opinion of a few cases or on solid and valid research. But there is little doubt that the comment has some validity.

Whether Aynsley's perception was soundly based on research or analyses is largely academic, because it clearly reflected the widespread view of Anglo within the property and development sector, as the following comment from Simon Kelly indicates:

"Anglo was the easiest place to source a draft for your bid, and you knew that they would be able to follow up and finance the deal if you were successful. That was

[25] That does seem to have changed very much, in recent years – insolence and arrogance still appear endemic in the new IBRC.

part of their unique service. The other banks were never as free with that kind of money.

We never had to worry about the money for a deal. Once the numbers on the deal stacked up, Anglo was there – and sometimes Anglo was there even if the numbers didn't stack up.

We heard rumours from other developers of the existence of a head of risk, but we didn't worry about him because he had no power in the bank. The ADs [associate directors] all wanted to get their own loans through, so they would not stop each other's. … If a deal looked tricky, the bank would put up the price of the money but lend it anyway.'

In the bank's heyday, borrowing money from Anglo was easy – provided you were already an Anglo client. They thought more like developers than bankers."[26]

Kelly is also reported as having claimed that the only time in his career that an Anglo executive became upset with him, was when he repaid a loan with money borrowed from AIB. Obviously Anglo would have preferred a roll-over of the loan, probably at a higher interest rate.

Another developer is reported as having said that one senior banker at Anglo once told him that the bank never expected him to repay the capital on his loan. It always wanted him to roll up the equity from one completed deal and use it to fund another[27].

What is certain is that, when declaring its annual and, later, its half-yearly results, the bank was keen always to stress to investors that it had a healthy 'pipeline' of new loans agreed and that its continually growing lending book would, in time, feed into future profits. Predictably, that pipeline was closely monitored by investors and bank analysts as a major indicator of the bank's future profitability.[28] But it was really a fiction: instead of signifying new customers for loan finance, much of the 'demand' was in fact rolled-over loans, combined with rolled-up interest and loan capitalisation fees on loans, which borrowers were unable to service. There are lies, damned lies and Anglo lies.

[26] Extract from a *Review of Breakfast with Anglo* by Simon Kelly (son of Paddy Kelly) Penguin; (2010)
[27] 'Anglo Republic': Simon Carswell, Penguin Ireland, (page 47)
[28] 'Anglo Republic' Simon Carswell Penguin Ireland, (page 70)

Kieran Duggan joined Anglo's lending team as part of the Hill Samuel (Ireland) acquisition. While at Anglo, he was involved in the financing of the acquisition by the McNamara/DDA/Fitzpatrick/Bradshaw consortium of the Irish Glass Bottle site at Ringsend. On his retirement as a Director of Lending at Anglo in 2005, he became a Director of property consultants HT Meagher O'Reilly and also of Pierce Contractors, an Anglo client. Fairly or unfairly, his reputation appears to be accurately reflected in the following comment:

"*In Ireland we had Anglo and Kieran Duggan was their best lending officer. Trips on the Orient Express, weekends in Venice ………………. like the style and largess that 'Large Loan' displayed when entertaining his clients. He was Anglo's execs on steroids, even hiring a private jet ………. Now making money telling the borrowers where the holes are in the loan documents that he drafted.'*[29] .

One of the really unfortunate consequences of Anglo's approach to lending and the out-working of its alleged model, was that "*Competitive pressure on the leading banks to protect market share came especially from reckless expansion by one bank, Anglo-Irish (whose market share among Irish controlled retail banks jumped from 3 per cent to 18 per cent in a decade, as it grew its total portfolio by an average of 36 per cent).*"[30]

Whether it was clear to those within Anglo or not at the time, it is now clear to anyone who has probed what was happening, that the biggest lie emanating from within the Anglo system and through its public relations, was that its business model was based on '*lending to those with secure cash flows*'. That just was not true and once that reality was exposed, it led immediately to the spectacular and speculator-led collapse of its share price.

In normal circumstances, any failings in that system (or any comparable system) would have been identified through the bank's internal audit procedures and processes. Anglo published the existence of an Audit Committee, with the names of its members, in every annual report, for well over a decade. The question is what was the audit committee doing, or where was it getting the information needed to fulfil its role properly? Or was it getting the necessary information and did the members check the accuracy of what was being presented to them? We can only hazard a guess at that, but we have had some good indications.

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[29] Namawinelake web site
[30] phonohan/What Went Wrong.pdf

During the Dáil Public Accounts Committee's questioning of Anglo's Internal Audit Manager, who was accompanied by Director Frank Daly (current NAMA Chairman), it was stated that it was not the function of internal audit to question the value of loan security or the extent of borrowing by individual borrowers; internal audit was focused on procedures and did not have a mandate to consider risk or the adequacy of security supporting loans[31].

Technically, most of that comment may be entirely accurate, but someone had to have responsibility for assessing the adequacy of the bank's systems and procedures, and that responsibility went up to Board level. The Audit Committee should always be the single most important cog in the control and governance systems of any business; there is no evidence that it played such a role in Anglo, while there is plenty of evidence of defective procedures.

The 'triple-lock' security system was almost right too – but 'almost' proved not to be good enough. Anglo's security model consisted of a charge on the asset being funded with cross-collateral charges on other assets, security provided by other cash-generating assets (especially if the one being financed was not cash-generating) and personal guarantees; that seemed strong security and it would be very surprising if some of its customers did not consider that Anglo was 'over-secured' – which was about the only complaint one heard from Anglo customers in the middle of the last decade.

But that security lock ignored one crucial factor: all three security holds, which seemed to strengthen its position, were interrelated, in an almost perfect correlation. Property values determined the value of all three, in the vast majority of cases. It is true that some of its borrowers (but only a small proportion) provided security in the form of cash deposits or equivalents, which provided the bank with a deposit base, but such deposits generally covered only a small proportion of the debt. The cash flow from most of the other businesses, owned by those borrowers, depended heavily on property values, or occupancy, or both.

When property prices collapsed, the majority of such borrowers were inevitably going to face problems. When that property collapse coincided with a collapse in the international banking system (and may even have contributed to that latter collapse, or *vice versa* - we cannot be sure), the consequences were always going to

[31] Dail Committee Meeting attended by Anglo's Internal Auditor

be horrific. And they were. But more than any other Irish bank, Anglo was exposed to such consequences, because of the preponderance of property-based lending in its portfolio.

In reality, Anglo was particularly highly exposed to such a collapse primarily because of the thinness of its deposit base and of its own capital structure. The other Irish banks were almost equally exposed, but Anglo became the butt of the majority of the criticism – with, one would have to say, considerable justification.

In reality, Anglo's marketing model was excellent; its product was well tailored towards the needs of his customers. Apart from any possible problems with how it quantified and reported its results, this bank's failings from either a strategic or an operational perspective arose from four primary aspects:

- there was an excessive focus on growth, which was not adequately supported by a realistic capital and deposit base;
- Anglo ignored the traditionally accepted need for banks to match their assets and their liabilities;
- the administrative structure proved incapable of managing the processes necessary to protect the bank's position, in the event that it had to call on the security, which was backing the loans; and most importantly of all,
- the entire control and governance system appears to have been a shambles; certainly, there have to be serious questions about the role played by the Audit Committee and, by extension, by the Board of Directors, which included the chairman of the time.

It is not uncommon for organisations with ambitious management teams and with a strong focus on growth and market penetration, to concentrate on the 'big picture' and assume that the detail will look after itself. It didn't work in Anglo; in fact, ignoring the detail rarely works in any business.

8. IDENTIFYING CORPORATE FRAUD.

Share prices rise and fall for many reasons, including so-called 'sentiment' which is impossible to quantify and frequently impossible to justify. Such fluctuations occur as a result of a wide variety of events - international, national, industry related and company related. All too often, a company's value will rise and fall on rumours, speculation and leaked information, some, all or none of which may be true.

In reality, only a small proportion of movements in share price are directly controlled by the company itself, even when it is profitable. Share prices seem to follow no short-term logic; and even any long term logic is questionable – it definitely bears little relation to any normal mathematical equation or formula.

There are some academics who espouse the 'Random Walk Theory' and claim that it is impossible to outperform the market without accepting extra risk; clearly there is considerable economic logic in that view. Others go further and claim that all technical and fundamental analyses are a 'waste of time and effort' since there is no evidence that they result in 'beating the market'; that is a much more contentious view and is not accepted in many quarters, including by the many academics who have secured their doctorates by producing predictive models and systems for assessing either absolute or relative risk, as a mechanism for predicting share prices. Models or no models, all investors who have any understanding of capital markets must understand that investing in shares and businesses is risky – whether prices are random or not – and that it is best undertaken by long-term investors.

But there are also those companies and directors who attempt to 'manage', if not manipulate, the value of their shares. Depending on how they go about this activity, they run the risk of violating the law and some do. Anglo clearly placed a huge emphasis on the performance of its shares, partly at least because its management and its directors held considerable numbers of those shares - totally understandable enlightened self-interest for those involved in capital markets. But rising share price was also seen by the senior management as reinforcement of their achievements and of the validity of their business model. Headlines in their accounts, such as 800% return over a five-year period, reflected the management's emphasis on growth and profitability. They were not the first management team to adopt such an attitude and they are unlikely to be the last either. Lessons like that frequently have to be learned through direct experience.

Scams associated with investment in shares and businesses go back a long way. By far the most infamous was the 'South Sea Bubble' of 1720. That company had been founded in 1711, when it was granted certain exclusive trading rights in the South Americas. Those rights later included the right to transport and even trade in slaves, on which it is reported to have made a profit. The company also took over some of the British government's debt (allegedly acquiring that right through the bribery of officials), when that government included shares in this company as part of the security for, and repayment of, its national debt book. Unfortunately, the company also became involved in whale trading, in which it lost massive amounts of money. But it was never as profitable as investors were led to believe, if indeed it was ever profitable at all.

Its Board of Directors was like a 'Who's Who' of Britain's political elite and social establishment. Many of the shares in the company were sold to, or at least owned by, politicians (including the then Chancellor of the Exchequer and the Postmaster General) and their friends. Some were issued on the basis that the shareholder would not have to pay for them, but that they would be held by the company until the share price increased, when they would be sold, with the profit going to the shareholder. This was clearly a much better deal for shareholders than CFDs ever were. Such a scheme would be inconceivable today, but those were different times.

There appears to have been no concrete evidence to support the 'hype' surrounding the company's performance or its prospects. Its directors used rumour and public announcements, which vastly overstated its prospects and its performance. As a result, the company's share price rose like a Cape Canaveral rocket, more than quadrupling its value over four months, in early 1720, and increasing ten-fold over that year. But there was no basis for those bullish statements; the company was not profitable. Eventually, demand for its shares fell dramatically and rapidly, and many people, a large proportion of whom were in 'high places', lost a lot of money.

In reality, as the hype started to wane, investors lost confidence in the business, ceased to believe in the projections about its future prospects and started selling their shares, by which time buyers were no longer in the market. In banking and investment terms, there was a run on the shares and the price collapsed.

Probably surprisingly, the company itself survived, although many of the directors (but only directors) lost their estates, while some senior and well-known politicians were impeached for corruption and at least one was imprisoned. The business continued to trade as manager of Britain's national debt for more than a further century and a quarter after the bursting of the most famous 'bubble' in history. But the whole episode became notorious as the first major example of how a company could be used to defraud investors, whether by accident or design.

Over time, there were many others, which created less of a stir and had much less of a reputation, which did not survive nearly as long, including many which had been much more profitable. History has recorded some of those other such failures.

Fraud and failure have been a feature of corporate life for centuries, although much of it has been concealed and, until recently, very little of it had led to prosecutions, much less to serious penalties on the perpetrators.

Corporate fraud takes many forms, from bribery and corruption (which were alleged in the South Sea case), through investment fraud, to corporate fraud and the publication of false information. Specific examples of bribery and corruption, as mentioned in various legal documentation related to business practices, include:

- bribing employees, or ex-employees to provide information, especially trade secrets;
- bribing state agencies or their staff, or the staff of competitor businesses, customers or suppliers, to award contracts or to overlook failings, corrupt dealings, illegal activities etc.;
- making corrupt payments to public officials, politicians, or employees (including making payments in such a way as to defraud the national treasury e.g. tax evasion);
- any form of extortion, embezzlement or cronyism; and
- collusion in extracting money or knowledge for the specific benefit of individuals, including shareholders or potential shareholders.

In many ways financial fraud incorporates some much more sophisticated activities, of which the following are examples:

- 'share scams' such as so-called 'boiler room fraud', whereby 'hard-sell' tactics are used to persuade investors to put their money into worthless ventures or non-existent businesses;
- ponzi and pyramid schemes, where returns to investors are paid from the investment of others rather than from trading profits, with losses guaranteed for those who do not exit in time;

- asset stripping, which involves any form of taking a company's assets, but leaving its liabilities behind;
- 'share ramping' where the value of shares is artificially inflated by creating false expectations;
- fraudulent trading which is probably the most common in practice; it involves trading whilst insolvent, or any form of trading with the objective of defrauding creditors, including lenders; and
- publishing false information to mislead investors, or potential investors; this normally involves providing information designed to overstate the profitability of the business (often including its sales) and increase the perceived value of its shares.

All of those have multiple variations and many of them are difficult to detect, until it is too late for the investor, or the suppliers, banks or other creditors. But long before Enron, or Tyco or WorldCom, instances of corporate fraud were common and led to successful prosecutions in the United States.

While there was a widespread recognition in Britain that such activities existed, corporate fraud was not seen as a major issue, until the City was beset by a series of financial scandals, beginning in the early 1970s. Some of the personalities involved were people, who previously had a very high standing in British social circles and that had a major impact on public confidence in the overall financial system. But similar things were happening in Ireland too, even long before that, as those who remember Paul Singer and Shanahan's Stamp Auctions, and other comparable events, will be well aware.

The British public and investor reaction to the growing frequency of such problems led to the establishment, in 1983, of the 'Fraud Trials Committee' (commonly known as the Roskill Committee, because it was chaired by Lord Roskill). Its remit was to "*...consider in what way the conduct of criminal proceedings .... arising from fraud can be improved and to consider what changes ... would be desirable to secure the just, expeditious and economical disposal of such proceedings*."

Their report, submitted in December 1985 and released to the public in 1986, was trenchant in its criticism of the existing system. It placed heavy emphasis on the public concerns over delays in the conducting of such investigations and the need for 'effectiveness' in addressing the issues involved. It recommended the establishment of a new, single organisation dedicated to detecting, investigating and prosecuting corporate fraud. The response to that suggestion was the enactment of the Criminal Justice Act (1987), which resulted in the establishment of the Serious Fraud Office (SFO), as a 'non-Ministerial' Government Department, under the aegis of the Attorney General.

The selected structure was designed to ensure that it would not be subject to political influence or interference – and the public would believe wisely so. Unfortunately, the distinction between the legal and political systems is less clear in Ireland, and no similar legislation was introduced in Ireland until much more recently. Even yet, such legislation in Ireland is still not nearly as strong as the U.K. legislation. Worse again, the lack of urgency, which was reflected in the British system for so long, still appears to apply in Ireland, and the Irish system appears to be much more geared towards finding scapegoats, in order to satisfy media and public expectations and demands.

When the Serious Fraud Office was finally established, its role included investigation and prosecution, but not detection; it is still a matter of dispute as to whether that was wise and to a non-legal mind that division of responsibility appears to be somewhat of an anomaly.

When it was eventually established, its remit covered and still covers the more serious categories of business crime. The criteria for its involvement provide for its responsibility for cases:

◊ involving fraud of at least £1,000,000; and/or
◊ which has or had caused widespread public concern, or has given rise to national publicity (possibly involving government departments or agencies, or those of foreign countries, or where individual losses are small in absolute terms, but where the impacts of those losses is significant); and/or
◊ with a 'significant' international dimension; and/or
◊ which are complex, requiring the application of specialist skills and knowledge, such as Stock Exchange practices or an understanding of regulated markets; and/or
◊ where legal, accountancy and investigative skills have to be applied together; and/or
◊ which are complex, requiring special legal powers.

All of those would apply to the Anglo Irish Bank case, if the State, through its politicians and its judiciary, was willing to prosecute perpetrators instead of searching for scapegoats.

The SFO has received considerable criticism over the twenty-five years of its existence, being compared unfavourably with its counterparts in the United States. It is seen as being far too slow to react to events and having far too low a success rate (as measured by the proportion of convictions secured, currently over 70%, but increasing in recent years). However, it has also been defended on the basis that it has never been afforded the resources needed to undertake its role properly and there appears to be some justification for that view. But if that was, or is, true in Britain, it was and still certainly is true in Ireland. And the SFO has had some major, high profile successes and been involved in a range of cases of both national and international profile and importance.

The SFO's first major case of share-trading fraud was the 'Guinness case', which set the precedent for what is now known as 'insider trading' or 'share support' schemes. These have long been recognised as notoriously difficult crimes to prove; when does 'pub talk' become 'insider knowledge'? However tough the Financial Services Authority may claim to have become on these issues, anecdotal 'evidence' would suggest that what is being uncovered is only the tip of the iceberg. But if it had happened in Britain, the Anglo case would have been dealt with by the SFO.

In the 'Guinness case' (which has clear parallels with Anglo), the high profile Scottish drinks company, Distillers plc, a company whose antecedents had been established over a century earlier through the amalgamation of six Scottish distilleries and was the holder of some of the outstanding whisky brands of all time (Dewars, Johnny Walker, Haig, White Horse, to name just four of its twenty-plus brands) had received a hostile bid from Argyll, a Scottish food retailer, which later acquired Safeway, to make it the fourth largest multiple retailer in Britain

The Distillers directors were not favourably disposed towards the Argyll offer and they sought the support of Guinness plc as a sort of 'white knight'. As a result, Guinness trumped the Argyll bid, by making a higher offer of £2.7 billion - one of the biggest ever take-overs of a British company, at that point. Ultimately, the crucial difference was that the Guinness offer was agreed by the Distillers Board and recommended for acceptance by its shareholders. Later there were claims circulating in financial circles, that Guinness had agreed to certain non-financial matters which were deemed important by the Distillers directors, but that one or more of those agreements was/were not fulfilled; however, those suggestions were never confirmed and the rumours may never had any validity, even if they were widely believed.

The price was to be paid by way of shares in Guinness and a deal was finalised. Over the period between offer and acceptance, the Guinness share price increased and the number of shares needed to pay for the acquisition fell to the equivalent of approximately £2.3 million at pre-bid prices; that was a reduction of around 15%.

In the aftermath of the take-over there was considerable dissatisfaction on the part of a number of the former Distillers shareholders on two issues. Firstly, the Guinness share price fell back to its pre-bid level, very quickly, in the aftermath of the takeover; and secondly the composition of the new Board and, apparently, the selection of the Chairman too, did not meet with their favour; allegedly, the Guinness Chief Executive, Ernest Saunders, was not accepted by some of the Distillers people. That led to antipathy between some of the leading figures in the two original companies.

Eventually, after losing the support of the founding family, Saunders stepped down as chairman and CEO, only for the firm's accountants to announce that they had discovered what appeared to have been a 'share support'/'market manipulation' scheme.[32] There were suggestions that certain city stockbrokers and possibly one major figure in British financial circles may have known about certain illegal payments, but subsequent investigations concluded that there was no case to answer by either of those parties. There is never a shortage of rumours and innuendo in such cases and the Anglo case was no different.

Over a year later, an extremely successful American stock/share trader, called Ivan Boesky, was charged with a number of 'insider trading' offences, in New York. The main charges related entirely to activities in the United States and the transactions involved were completely unrelated to the Distillers case.

Nevertheless, as part of his plea bargain, Boesky revealed that he had been involved in illegally purchasing Guinness shares, in order to push their price higher, thereby reducing the number of shares needed to cover the bid for Distillers. He claimed that the scheme had been organised at the highest level within Guinness and that it included the provision of unlimited guarantees, or indemnities, to the buyers of those Guinness shares, although that was never sanctioned by the Guinness Board. In addition, there was an allegation of the payment of fees, including a 'success fee' to an American lawyer, though there were also widespread suggestions that he may

[32] Investors Chronicle – 'A History of Scams and Fraud'

not have been the recipient of the full amount of that fee – in fact, that some of it was refunded to personal accounts owned by some senior U.K. people involved.

What was proved later was that Boesky had had access to $100 million, which he invested in Guinness shares, inevitably causing the price to rise. Subsequent revelations showed that Guinness had offered secret indemnities, from its own funds, to several companies including at least one bank (eleven different purchasers were suggested) to buy up to $300 million worth of Guinness shares and that they were paid a 'commission' for doing so. Predictably, the company's share price increased as a result of the higher demand for the shares and Guinness secured control of Distillers for the issue of considerably fewer shares than would otherwise have been required – somewhere of the order of 15% less, as a result of 'paying' with higher valued shares.

Following prosecution by the Serious Fraud Office, four directors of Guinness received jail sentences and some others involved paid severe fines. The longest jail sentence was imposed on Ernest Saunders, formerly Chief Executive of Guinness, but all the jail terms were subsequently reduced by the European Court of Human Rights, on the basis that the defendants' rights had been violated by 'improper use' of statements, which were deemed to have been secured under duress.

The official report into the Guinness affair was finally published, eleven years after the Department of Trade and Industry inspectors began their investigation. By then, Margaret Beckett MP, was President of the Board of Trade. At that time, she announced that none of the businessmen central to the 1986 Guinness scandal would be disqualified from working as company directors, because the Government's legal advisers believed that an application for disqualification, against those criticised in the report, would not succeed[33].

There would appear to be certain obvious similarities between the actions of some Guinness directors, during the Distillers takeover, and what we have since heard was Anglo's scheme(s) to support its share price. We already know, from the accounts provided by former staff, Browne and McAteer, that pressure was exerted on Anglo executives to purchase shares to counter the falling price. That raises other questions about who else was encouraged to make similar investments. Did the Maple 10 receive any inducements to participate in a blatant market manipulation

[33] BBC news services

or share support scheme? Did Fitzpatrick use the INBS loan warehousing to disguise share price support activities? Were any indemnities granted or were overseas banks engaged? Will these questions ever be tested in court?

It is likely that some court, or succession of courts, possibly including some European court, will have to adjudicate on whether some of Anglo's activities should be subject to similar examination and, possibly, whether some of its more recent actions were legal; there might even be prosecutions of individuals, either formerly or currently associated with that bank. On the other hand, the 'new' management may conclude that their pursuit of others might not be aided by following this trail – though clearly that has to be the most appropriate route, if justice is to be served. Who knows what the thinking of Anglo's new management (IBRC) is?

Subsequently, the SFO was involved in other high profile cases too. The biggest of those was the BCCI case. Bank of Credit and Commerce International had been founded by a Pakistani financier in the early 1970s. It was incorporated in Luxembourg, but because it had no banking business there, it was not subject to regulation there. One of its head offices was in London, the other was in Karachi, with London being its operational headquarters. Following allegations of money laundering and other financial crimes, BCCI was forced into liquidation in 1991.

At that time, a director of the Federal Reserve's Banking, Supervision and Regulation Division (William Taylor) testified, in the following terms: "*I want to make it clear that BCCI, unlike virtually any other major international bank, was not subject to a comprehensive system of supervisory oversights by authorities in its home country...".* There is plenty of evidence to suggest that the British regulatory authority, the Bank of England, found BCCI to be a "...*most difficult bank to deal with*..."

If recent comments about supervision in Ireland over the past decade and more, are to be believed, there are parallels to be considered, in any assessment of Anglo's problems. BCCI expanded rapidly and so did Anglo; more importantly both operated within what some people would claim to have been a less-than-perfect regulatory regime; both seemed to be lacking the sort of corporate governance regime appropriate to a bank; and both could be categorised as overtrading, especially if that term includes extending beyond management's competence. Why was this allowed to happen in Anglo, given the BCCI precedent?

What is also particularly interesting about the BCCI case is that its liquidators Deloitte & Touché, filed lawsuits against the bank's auditors, Price Waterhouse and Ernst & Young. Those claims were settled in the late 1990s, so that no legal precedent in respect of liability was ever properly established. However the Enron case, which led to the downfall, in 2002, of Arthur Andersen, undoubtedly the then premier brand in world auditing, created a precedent in respect of the liability of auditors for the signing of accounts which allegedly did not represent a true and fair view of a company's financial position or performance. That aspect of the Anglo situation may yet become the focus of greater attention – in fact, it is difficult to understand why it has not happened already, but it may be that there is still plenty of time, within which to initiate any such action, should the authorities wish to do so.

One of the many other cases, which had some parallel or similarity to what happened in Anglo and in which the SFO became involved, was Versailles Group plc, a company originally quoted on the Alternative Investment Market in 1995, before securing a full London Stock Exchange quotation in 1997. It was a provider of mezzanine finance to businesses with a poor credit history; it helped them to buy raw materials, parts and services for designated clients, who were supplying goods to larger end-user companies, and it charged very high rates of interest to its customers. Is that latter part of their model familiar?

It also had a number of so-called 'traders' who provided it with finance on the basis that their funds would be used to finance specific transactions, with specific customers and they lost about £23 million when the company collapsed. Would those traders have had a sustainable, legal case against the company, if the company had been recapitalised and continued to trade? If they would, what is so fundamentally different about Anglo, which continues to trade, albeit under a different name and with a different shareholder?

Despite being a FTSE-250 company, by late 1999, Versailles was in difficulty with its bankers and a few months later it went into liquidation. A subsequent SFO investigation discovered phantom trades, forged documents, 'teeming and lading' and the alteration of computer records, with up to 80% of its sales transactions in some years being identified as phoney. To say the least, it is difficult to understand why no similar forensic analysis of Anglo's activities has been undertaken to date. Informed 'word on the street' suggests that such a rigorous investigation would uncover information, which has not yet been made publicly available and which might change the public perception of the real issues involved; recent court cases have reinforced the conviction that such data exist.

While the Versailles case was a gold-plated, trade-finance fraud, other categories of bad or fraudulent deals would have had exactly the same effect. For example, in relation to Anglo, could the funding of property or developments with no real security, but where the bank has subsequently claimed security over assets which it had not funded, on the basis of documentation drafted retrospectively, be deemed to be fraudulent? It is currently being argued by one borrower that a foreign court has already decided that money alleged to have been lent by Anglo for such a purpose was never lent for the purpose alleged. If that is true, is the new Anglo involved in a fraud and have certain actions taken by that bank been based on a false, if not an illegal, premise? Again some of the principals in the Versailles case were jailed. That seems unlikely to happen to those involved in the Anglo case.

A broadly similar 'scam' was perpetrated by RGB Resources, a London-based metal trading company. While it was doing some legitimate business, most of its turnover was fictitious, with bogus documentation and other false records. How different is that from loans made for one purpose, which were subsequently retrospectively adjusted so that the lending bank could claim that they were lent for other purposes? There is, of course, one major difference viz. that in the RBG case, the principals were jailed. Has the possibility of a rewriting of the documentation related to such loans been investigated yet in the Anglo case? That allegation has been made by at least one borrower. If it has not yet been investigated, it should be; and it should be undertaken independently – not an investigation by the new management, which is being chaired by a director of the previous company (albeit for only a short time).

In the RGB case, the fraud was uncovered by the auditors almost by accident. Whether it should have been uncovered sooner, through proper audit procedures or better regulation is now a moot point, but still an important one, with wider implications.

An even more outrageous scam was that perpetrated by Barlow Clowes Ltd., which simply persuaded investors to buy secure 'gilt edged' investments. Would that not apply to the Maple 10? This was the most basic of all scams, being effectively theft, which landed the promoter with a long jail sentence. What it and many of these other cases (not just Enron) including all of those involving the fraudulent diversion of funds do, is raise serious questions about the effectiveness of current internal and external audit procedures in uncovering corporate fraud. Any investigation into Anglo needs to consider that aspect, and needs to investigate both the internal and the external audit processes, with considerable rigour.

The need for improvements in the systems and record-keeping procedures of some banks was highlighted by the fine of £1,250,000 imposed on Halifax Bank of Scotland in 2003.[34] That followed a review of its procedures and their capacity to ensure compliance with legal requirements in relation to money laundering and the proceeds of crime; the review was instigated by the Financial Services Authority (Britain's equivalent of the Financial Regulator). Equally importantly, the FSA commissioned PwC to investigate that bank's risk management framework and produce a 'risk mitigation plan', which would lead to 'independent challenge of credit approvals'. The production of such a plan had obvious implications for every bank's Audit Committee and for its Board of Directors.

One would have to ask why, given the existence of concerns about Anglo's business model, no similar investigation had been initiated into that aspect of that bank. Why did the Financial Regulator not ensure that Anglo's Audit Committee and its Board of Directors challenged their bank's credit approval processes to make them more effective? The precedent had been set in the U.K. five years before Anglo was seen to be in major difficulties. If the internal governance regime was not operating properly, there had to be an onus on the external regulatory regime to protect the interests of depositors, shareholders and borrowers, albeit probably to different extents.

The FBI's 'Annual Financial Crimes Report to the Public' for 2010-2011 indicates a rising trend for cases under review. It suggests that corporate fraud is both big business and a growing business. While financial fraud has not been seen as a major issue in Ireland, in the past, the FBI's statistics indicate that the need for greater surveillance of financial institutions is becoming an international issue and Ireland is unlikely to be immune from it. The following comment is taken directly from the 'General Overview' at the start of its 2011 report:

"The majority of corporate fraud cases pursued by the FBI involve accounting schemes designed to deceive investors, auditors, and analysts about the true financial condition of a corporation or business entity.

[34] The recent publicity in relation to HSBC confirms the potential adverse effects of poor governance in banks.

Through the manipulation of financial data, the share price, or other valuation measurements of a corporation, financial performance may remain artificially inflated, based on fictitious performance indicators provided to the investing public. In addition to significant financial losses to investors, corporate fraud has the potential to cause immeasurable damage to the U.S. economy and investor confidence.

While the number of cases involving the falsification of financial information remains relatively stable, the FBI has observed an increase in the number of insider trading cases. Insider trading has been a continuous threat to the fair and orderly operation of the U.S. financial markets and has robbed the investing public of some degree of trust that markets operate fairly. The dissemination of material, non-public information, commonly referred to as insider information, has also caused irreparable harm to victim institutions whose employees illegally pass privileged corporate information. The FBI has worked extensively with the U.S. Securities and Exchange Commission (SEC) to target the widespread problem of insider trading which has plagued the fair and orderly operation of the securities markets.

Additionally, corporate fraud matters involving self-dealing by corporate executives, particularly utilizing companies to perpetrate large-scale, high-yield fraud schemes, continue to be an issue of concern. Traditionally, Ponzi schemes were perpetrated by individuals or small groups within a community environment. However, the current financial crisis resulted in the exposure of several large Ponzi schemes ..... perpetrated not on an individual community level, but on a corporate national level by executives of what were once considered legitimate companies."

There are four main implications from those comments. Firstly, corporate fraud is now a major and a growing issue, even in places where there are organisations dedicated to, and active in, pursuing its elimination – whether those are internal, external or statutory. Secondly, there is an increasing need for both internal and external audit and governance processes to achieve the level of scrutiny now needed to uncover practices, which are likely to result in the production of either false or misleading information. Thirdly, insider trading and market manipulation need to be monitored closely by the appropriate statutory agencies, but that has not been happening in Ireland; even when evidence exists, there appears to be a reluctance in Ireland to prosecute, possibly or probably because prosecution could lead to major damages claims against the State.

But most importantly of all, in cases where there is a suspicion that there is either a restriction on the distribution of information, so that only a limited number of recipients are aware of certain material facts, or there is evidence of the dissemination of information, which is misleading, those matters are being taken more seriously and addressed more rigorously, on the western shores of the Atlantic than on its eastern side – specifically, in Ireland. Anglo Irish Bank is clear proof of that.

9. ANGLO'S ACCOUNTING AND GOVERNANCE PRACTICES.

It is against the statutory and regulatory approaches, and their legal implications, as examined in the preceding section, that the accounting polices and the data provided in successive annual reports of Anglo Irish Bank plc should be examined. Any such analysis must consider whether profit was being overstated, whether the Balance Sheet was fairly reflecting the real asset and liability positions, and whether all material facts were being disclosed. The accuracy of the reported profit figures and their implications are the focus of this section.

Previous sections have revealed that the alleged 'cash-flow based' lending model may have been an aspiration of Anglo's management, but that it was never a reality, and it certainly was nowhere near the truth in more recent years. Yet the canard was repeated in successive annual reports for over a decade.

As indicated above, the suggested model is likely to have defined the business for its investors; nothing else could have had a bigger impact on seducing them to invest. Once the model changed, Anglo became a completely different entity with a totally changed risk profile. Investors and the market were unaware of the fragility of Anglo's loan book, resulting from the difference between the advertised model and the actual model. The reality was that Anglo had a low volume/high value loan book, primarily in one industry sector, rather than a loan portfolio spread across many sectors of industry with an emphasis on the service sector. Of course, Anglo never defined what it meant by 'the service sector'; it could have included construction and property development – in fact, it obviously did. But most others may not have believed that to be appropriate, or may not have interpreted the term in that way.

As soon as investors discovered that Anglo's business model was not based on '*lending to those with secure cash flows*', a collapse of its share price became almost inevitable and absolutely inevitable at a time when the entire international banking system was in turbulence. That 2007 change in sentiment towards banks impacted on Anglo's position in the inter-bank markets too; the parallel fall in property valuations created a 'perfect storm' for which Fitzpatrick, his management team and his Board of Directors appear to have been totally unprepared. The Nyberg and PwC reports, commissioned by IFSRA, confirm that view.

Like shareholders in any other business, Anglo's shareholders had an indisputable right to full disclosure of the way in which 'their company' was being managed.

Anything less placed the shareholders in the category of 'outsiders' as opposed to 'insiders'. Misinformation, misrepresentations of the truth and/or lies would obviously have placed those shareholders in the 'outsider' category. But there appears to have been a problem in that some of Anglo's management never saw its shareholders as the real owners of the company. That may not be particularly unusual in small businesses, but Anglo was a quoted public company – among the biggest on the Dublin Stock Exchange; more than that, it was a bank, which was subject to statutory regulation and governance. Its shareholders should not have been ignored.

However convinced Anglo's management may have been about the validity of their model and even about the accuracy of the information, which they were producing for shareholders (though it is difficult to understand how they could have believed everything they were saying), they were, either consciously or inadvertently, deluding shareholders. But they had both a legal duty and a moral obligation not merely to act in the best interests of their shareholders, but also to keep them informed of what was happening within their company. The company belonged to the shareholders; it should never have become a fiefdom of those involved in running it.

Obviously, based on the cases considered above, the accuracy of the profit figures being reported is always a major issue, under company law and in equity. Starting from that perspective, there is no obvious reason to question most of the gross revenues reported by Anglo. But whether rolled-up interest and fees should be included in revenue is not at all clear, even if international accounting standards permit that practice. In addition, the value-for-money from some of its expenditures might warrant considerable scrutiny, though that sort of revisionism would add nothing, which would help in any sort of resolution.

Assuming that there is no clear evidence of corruption, the single biggest factor affecting the reported profitability in any bank, is the adequacy of the provisions for bad debts, ignoring the possibility that other provisions may also have been understated, but they would tend to be lower anyway. As indicated above, it is highly probable that the overall governance regime in this company did not involve adequate scrutiny of, or challenge to, those provisions; the comments of the Anglo representatives to the Dáil's Public Accounts Committee (cited above – Chapter 7) would suggest as much, though conclusive proof or stronger evidence might be contained in the minutes of the Board's Audit Committee. Otherwise, evidence of appropriate scrutiny, or alternatively the absence of scrutiny of these issues, could be made available only through an impartial enquiry.

It is accepted in banking that longer-term loans normally carry higher risk than short-term ones, though there are exceptions. Anglo's loan maturity profile, as indicated in its own financial statements (its annual accounts), is set out in the following Table:

TABLE 2					
MATURITY PROFILE OF ANGLO'S LOANS					
LOAN DURATION	**2004**	**2005**	**2006**	**2007**	**2008**
	%	**%**	**%**	%	%
On Demand	13.82	16.48	13.16	8.94	3.36
< Three Months	11.32	10.80	8.96	12.09	18.35
>3 Months & <1 Year	17.36	15.35	18.57	20.20	21.55
>1 Year & <5 Years	33.81	37.05	39.82	39.40	38.66
5 Years & Over	23.67	20.30	19.47	19.35	18.06
Total	100	100	100	100	100

There are no obvious reasons for major concern about such a profile, nor should there necessarily have been any major concern about the changes in it. While there was a comparatively significant decline in the proportion of 'on demand' loans, over four years, it was largely offset by a corresponding increase in the loans, with a three-month duration. And even though the average loan duration was extending, the difference was not particularly significant.

But that seems to tell only part of the story. What has subsequently emerged is that a relatively high proportion of the loans classified as 'Demand', 'Three Months' and 'One Year' were loans whose maturity dates had been extended (rolled-over) on an ongoing basis, with interest, and possibly fees too, being capitalised. That is a major difference, to which shareholders were never alerted.

In light of that knowledge, it is unlikely to be too big a jump in logic to assume that many of those loans could not be repaid without the bank's incurring significant losses. Hence bad debt provisions were required - not just 'kicking the can down the road' by rolling forward such loans. Normally, such a combination of loan assets would be interpreted as a loan profile, which demanded an increased level of provision against default; in Anglo's case it reduced.

According to Anglo's accounts, the annual provision for bad and doubtful loans was always very low. Others, especially their competitors, had previously expressed doubts about whether such rapid growth, in any bank's loan book, could be achieved without a comparatively high proportion of 'bad calls' in relation to one or more of: repayment capacity; bad assessments of the borrowers' management strengths; general market trends; or just simple misjudgements. We now know that there was considerable justification for that scepticism.

The bad debt provisions recorded as a percentage of the loan book, as per the bank's accounts, were as follows:

TABLE 3					
ANGLO'S BAD DEBT PROVISIONS AS A PERCENTAGE OF THE LOAN BOOK					
Accounting Year	2003	2004	2005	2006	2007
% Provided	1.6%	1.2%	0.9%	0.4%	0.4%

These seem extraordinarily low, at an average of 0.9% per annum over the five years, for a rapidly growing loan book – but crucially, given that the proportion declined over that time. For a constant loan book, that might have sufficed – but not for Anglo and not for a business, in any sector, which was overtrading.

But what is really extraordinary is that, as the loan book almost quadrupled (from €17.3 million to €67.1 million, between 2002/03 and 2006/07), the provision as a percentage of outstanding loans fell from 1.6% to 0.4%, or a relative reduction of 75%. That was four bad loans per thousand – to property developers, often in respect of properties, which had not yet received planning permission. Cue John McEnroe: '*You cannot be serious*'!

Note 1.8 to the 2007 accounts provides a detailed explanation of Anglo's approach to impairment of its assets i.e. mainly its loans to customers. That explanation includes the following comments:

"It is Group policy to make provisions for impairment of financial assets to reflect the losses inherent in those assets at the balance sheet date. …….. A financial asset or a portfolio of financial assets is impaired and impairment losses are incurred <u>if, and only if</u>, there is objective evidence of impairment as a result of one or more loss

events that occurred after the initial recognition of the asset and that loss event (or events) has had an impact such that the estimated present value of future cash flows is less than the current carrying value of the financial asset, or portfolio of financial assets, and can be reliably measured. (Underlining added.)

Objective evidence that a financial asset, or a portfolio of financial assets, is potentially impaired includes observable data that comes to the attention of the Group about the following loss events:

a) significant financial difficulty of the issuer or obligor;

b) a breach of contract, such as a default or delinquency in interest or principal payments;

c) the granting to the borrower of a concession, for economic or legal reasons relating to the borrower's financial difficulty, that the Group would not otherwise consider;

d) it becoming probable that the borrower will enter bankruptcy or other financial reorganisation;

e) the disappearance of an active market for that financial asset because of financial difficulties; or

f) observable data indicating that there is a measurable decrease in the estimated future cash flows from a portfolio of financial assets since the initial recognition of those assets, although the decrease cannot yet be identified within the individual financial assets in the portfolio, including:

- adverse changes in the payment status of borrowers in the portfolio; or

- national or local economic conditions that correlate with defaults on the assets in the portfolio." (Underlining Added.)

The '*if and only if'* criterion above suggests that the hurdle required for treating a loan as impaired was high – almost certainly far too high for a bank, which was funding speculative property transactions. Clearly, the primary risk factor in this case would have been (b) above: 'default or delinquency in interest or principal payments'. If Anglo was rolling-over loans, with or without capitalised interest, would that not have qualified as a 'breach' and should a provision not have been made? The evidence including the expressed opinion of its competitors suggests that such was not the interpretation used, in this case.

The rolling-over of interest, loan repayments or fees, would according to clauses (a), (b) and (f) above seem to provide *a priori* support for considering a loan as being impaired and that should have precipitated the making of a provision. Yet far too much of the informal feed-back on Anglo's loan book suggests that these policies were not implemented, or certainly not implemented in full. The overall result was therefore that the doubtful debt element of the impairment provision was likely to have been inadequate, in any circumstances, and that, if property values were to fall, they would certainly be inadequate.

In Anglo's case, the write-offs which ultimately occurred in 2009 and 2010, confirm that such was certainly the case; however, there was almost certainly enough evidence to justify a higher provision, long before 2009.

Nevertheless, the Board, the audit committee and the auditors, Ernst & Young, accepted what was being done. The audit committee, in particular, should have been more alert to this and should have been more critical in their evaluations of any loans, in respect of which DCF calculations had been prepared, where it was obvious that interest and/or fees were being capitalised; that should have been a core part of their role – in fact it was, under any reasonable terms of reference for such a committee.

That is a long way short of requiring them to assess the values of those loans – that might not have been part of their remit; but they had a responsibility to ensure that the provisions were appropriate. The question is: were they too intimidated to risk the ire of the 'main man' in suggesting any action on this issue?

While IFRS (International Financial Reporting Standards) require only the reporting of incurred losses, Anglo seems not to have had an adequate process for identifying or quantifying potential losses (as opposed to actual write-offs). It is difficult to comprehend how some of their figures could be accepted and published, given the proportion of the overall loan portfolio which was being rolled over – though investors would have been unaware of that. It makes no sense whatsoever and it begs the question: did the Audit Committee examine the loan book and the related provisions in enough depth? From a distance, the answer would appear to be in the negative.

We now know what the other sub-committee, the Remuneration Committee, was doing in those years; it was approving massively excessive bonuses for the senior management team, including the CEO and later the 'Executive Chairman', on the basis of the profitability of the bank, as it was being reported to them. But we do not know what the Audit Committee was doing. Any Audit Committee worth its salt (and its remuneration) would have queried the issues connected to the bad debt provision, but in this case, that challenge function appeared to be operating in neutral, if not reverse.

What appears to have been happening is that, from a bad debt perspective, the security on the property lending was being dealt with on a portfolio basis, but each loan was an independent event, to which conventional portfolio risk assessment procedures could hardly have applied, and the auditors should have recognised that and applied the appropriate audit procedures.

The repayment of loans and the making of provisions for bad debts, were never a priority for Fitzpatrick – and apparently doubtful debts did not exist, as far as he was concerned. He just constantly pushed his management team *'to make the numbers'* and, to do this, the team could not contemplate reporting negative results to him. Apparently, the concept of loan losses or provisions would have been anathema. This was a marketing-led business, wholly and entirely, with a CEO who would later become Chairman, and who had an exclusively marketing focus.

It has often been claimed that it only takes a small number of powerful people to capture and control a system, against the better instincts of the vast majority of staff. Where staff come to understand that to speak the truth to those in power, or to demonstrate unswerving allegiance to independence and probity, could be career threatening[35], there develops a vacuum, which is filled by those in positions of most power and their power increases to the point where they assume ultimate control. Did Fitzpatrick and Gerry Murphy capture Anglo's system from the time it was created? Or were such systems in place, until Fitzpatrick became Chief Executive? After Murphy retired, did Michael Jacob take over his role, on the same basis or with the same mindset? Jacob and Fitzpatrick were the only two directors to remain in office throughout the entire twenty-year period.

Given his apparent management style, Fitzpatrick had to be reasonably well aware of the financial status of the bank's individual borrowers – certainly of the bigger ones, and most of them were big. In reality, according to Nyberg, Anglo actually catered for a relatively limited number of customers – a small coterie of high-value, low-volume customers.

[35] Building Capacity, IPA 2007, Prof. John Murray TCD.

Based on what we are now being told by current and former employees, especially during court cases, an unusually high proportion of those loans were being rolled-over, almost certainly at higher interest rates; therefore, many of them had to be either 'somewhat suspect', or 'very suspect'. The provisions did not reflect that; on the contrary, the provisions indicated a progressively stronger loan book. In the absence of a detailed forensic investigation, we are unlikely ever to know what proportion of the assets those with rolled-up interest represented; however, it would not be at all surprising if it represented a significantly higher proportion than the bad debt provision – in fact, it would be a huge surprise if they did not.

Consequently, the reported growth of annual profits continued, reported bad debts were minimal, management received their bonus payments and investors were being seriously misled. At best, it was unethical, involving poor application of accounting principles and practices; at worst, it was illegal.

One way or another, the reality was that the reported profits reflected a massive, cumulative under-provision for bad debts. That was combined with increasing capitalised interest, which produced higher total asset figures, increased fees for rolling-over the loans and capitalising the interest on them and, predictably therefore, a reducing cost-income ratio – all good stuff for reporting to shareholders, who believed what they were being told, and predictably so.

The overall outcome was that the reported profit figures were 'not worth the paper they were written on', but they had the potential to attract new shareholders, who were investing on the basis of either untruths or half-truths, and would eventually lose their money – not that anyone in government, public service or the media cared. But actually, what was happening was not very far from theft - sophisticated theft, but, like the rose, '*a theft by any other name…….'*

Each year in Anglo's annual report, Ernst &Young outlined the risks and uncertainties of the bank but the issues outlined above were not flagged. Hence investors and potential investors would seem to have been exposed to losses, which the auditors should have identified.

As if that was not bad enough, there was an advert in the Sunday Business Post, dated 15th of May 2011, seeking Anglo customers who were of the opinion that they were overcharged.

That evokes shades of the action (a similar advertisement) which ultimately precipitated the establishment of the Planning Tribunal (originally called the 'Flood Tribunal', but later known as the 'Mahon Tribunal'). The starting point for that latter development was an advertisement in a national newspaper in July 1995, by Donnelly, Neary and Donnelly, a Newry-based solicitor's practice, which offered a £10,000 reward for information leading to the conviction of anyone involved in corrupt activities related to land zoning. The response, which created the biggest impact, was that from James Gogarty, who had formerly been Managing Director of Joseph Murphy Structural Engineering (JMSE); indirectly, it led to the jailing of two high profile politicians.

Guido, a former City trader, now a journalist, who runs a highly respected whistle blower internet blog, 'order-order', claims that he has been given documents, coming from inside Anglo Irish Bank's Treasury Department and dating back to 1997, which strongly suggest there was a conspiracy to over-charge corporate customers and that it was approved at board level. According to him:

The scale of the alleged fraud was massive and if it can be proved, it may have contributed up to 10% of the now nationalised bank's profits. If that allegation is true (viz. that overcharging was approved by the Board), it raises serious questions about the entire integrity of Anglo's banking activities, about the probity with which it was managed, up to and including Board level, and about the veracity of the debts allegedly due to that bank. Could that be why Alan Dukes is so busy deflecting attention away from the activities of the former Bank, of which he was, briefly, a Director, before becoming Chairman of its successor?

This alleged fraud by Anglo Irish Bank came through overstating the DIBOR base rate on which customer's loans were calculated. DIBOR is the Dublin Inter-bank Offered Rate, calculated and published daily like LIBOR (the London equivalent). It was supposed to be set in stone and used by all the Irish banks as the basis for the settlement of trades and financial transactions before Ireland joined the Euro. Essentially, what Guido is alleging is that Anglo-Irish lied to customers as to what the real base rate was – that this bank added between 0.25% and 0.35% to the official underlying rate, to which they added the usual banker's spread, which would have been contractually agreed with their corporate customers.

Since the customers were not aware of this extra charge, that was a fraud being perpetrated on the bank's customers, or on some of them at least. If it is true, it involved the dishonouring of a contract and the telling of lies to customers. In that event, can any such loans now be deemed legally valid? The new management is acting as if they know that all Anglo's transactions were legal; that takes some arrogance from people who were not there, when these things were allegedly happening, unless they can produce acceptable evidence to prove their case. What is involved in such activities has potentially very wide implications.

In March 2012, the Financial Services Authority in Britain asserted, in an action involving Bank of Scotland, that a 'MANDATORY COVENANT' existed between a bank and its customers, under which all banks and all their senior management MUST behave in a fit and proper manner, at all times, otherwise they vitiate the relevant contract(s). If that assertion is valid, it is likely to pose major problems for Anglo in its pursuit of creditors; there may be no valid contracts at this point.

Guido's source says that, inside Anglo Irish Bank, the false rate quoted to borrowers was known internally as "TIBOR" (allegedly after Tiarnan O'Mahoney, the Director and Chief Operating Officer to whom Des Whyte, the Treasury Manager, who prepared the figures, reported). Sources say that the "TIBOR" version of "DIBOR" was not used with sophisticated customers who would probably have queried the rate. Therefore, this fraud was perpetrated only on the less sophisticated borrowers; that raises very fundamental questions about the integrity and legality of Anglo's activities and about the rights of borrowers.

Who knew of these practices? Who approved them? Are there any Anglo customers, who got into difficulty because of these practices? What has the new management done about them? How many have received the refunds, to which they are entitled? What has Alan Dukes done to rectify the wrong perpetrated on Anglo customers? Does Mr. Dukes think he has any obligation to such customers? Is it not time for Dukes to speak up on this issue?

Guido further claims that he has done some 'back of an envelope' calculations based on the bank's 1999 Annual Report. The customer loan book is reported to have been €5.7 billion (IR£4.4 billion). Assuming that only half the clients were over-charged the average of 30 basis points, the bank's profits would have been increased by an extra €8.6 million (IR£6.6 million). That was approximately 10% of the bank's reported profits for that year. What was it in other years? Did it continue at 10%?

According to one source, the 'fiddle' continued throughout the late 1990s and into the early half of the next decade, as Anglo-Irish's loan book grew on the back of the Celtic Tiger. On that basis, customers could have been ripped-off by as much as €100 million, as a result of this fraud.

Guido claims to have documentation to back up his story – if the Dublin authorities want them. The question is: Do they? The probability is that they do not, that they, Dukes, Aynsley etc., would prefer if the issue went away; but it was 'their' bank, which committed this crime and they are the people who should now address that fraud.

Currently, an Anglo borrower is claiming in the High Court that he was overcharged - a counter charge to Anglo's demand for loan repayment. Almost certainly, he has a case, though the probability is that he will be 'bullied' out of it, by the combined forces of the legal and political systems, with the support of a supine media. It is unlikely that he is alone, in that respect. Sadly, not many borrowers check the makeup of the market based (DIBOR/LIBOR) rate, or check the calculation of their interest charges, so banks and others tend to get away with overcharging.

The Central Bank/IFRSA does not appear to be investigating the allegations regarding Anglo's manipulation of its DIBOR base rate, though it tends to be secretive about its activities in most instances. The recent revelations in relation to Barclays Bank's involvement in the manipulation of the LIBOR rate shows how easily fraudulent manipulation of interest rates can be undertaken.

However, the Central Bank's failure to address this issue is in marked contrast to the investigations regarding AIB's foreign exchange overcharging, Aviva's handling of customers' complaints and other similar actions. If it is true, the alleged Anglo overcharging would involve a much larger amount than was involved in the NIB scandal, which received a huge amount of publicity and led to the disbarment of that bank's former Chief Executive from acting as a company director (though there were also some other issues involved in that case).

Nevertheless, Anglo's alleged overcharging deserves to be investigated. If neither the bank itself nor the regulatory authorities are prepared to investigate it and the government, as the bank's owners, are not prepared to insist on an investigation, what will that say about integrity in Irish banking and Irish banking regulation? What will it say about integrity and morality at the top of Irish society? What are the implications for integrity and morality in the Irish political system, and about the honour and honesty of politicians? What will it say about the role being played by, by past and present Financial Regulators in protecting the public?

In September 2010, IBRC chief executive Mike Aynsley revealed in an interview that customers had been overcharged by €67 million between 1999 and 2004[36]. Asked if there was any evidence that it had been deliberate, he said:

"*We don't know yet. There is a statute of limitations and, theoretically, we're probably not compelled to go back beyond a six-year period, but because we believe there are important ethical issues around this for us and our customers, we're doing it and we will compensate people accordingly."*

Fianna Fail finance spokesman Michael McGrath described it as "deeply disturbing". *"I would like a comprehensive statement by the bank on the issue and the Central Bank also needs to investigate and confirm if other banks have been affected by interest rate scandals."* A Central Bank spokesman said "*We note that impacted customers are being compensated accordingly and that IBRC has made provision for potential liabilities with respect to this matter in its financial accounts*."

Based on the aforementioned Guido's findings, the €67 million provision appears very much on the low side.

Currently, the Central Bank is the only option available to financial services executives, who seek redress for wrong-doing. It is bursting at the seams with staff (its numbers have increased by close to 50% over the past two years) and has purchased the Anglo headquarters shell from NAMA. Whether it is despite that, or because of that, the highly regarded Jonathan McMahon, Director of Credit Institutions, recently resigned to return to the private sector. His duties have been combined with those of the recently recruited Director of Insurance Supervision, Ms Muldoon. At a recent insurance workshop in Dublin (April 2012), Ms. Muldoon borrowed a line from George Lee's 2009 election campaign, when she claimed that she had joined the Central Bank from Canada Life to make a contribution to the country for her children's future. Insurance executives are of the view that Muldoon's insurance experience is very narrow.

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[36] Anglo/IBRC disclosed details of the investigation in its interim report and accounts for the six months to 30th June 2010, and again in its 2011 interim report. A figure of €67m has been provided to cover the amount of any liability

In addition to its long established Financial Services Division, the Department of Finance is in the process of creating a new Banking Division, responsible for developing and delivering policy in areas such as lending to companies, mortgage arrears and consumer issues. Did McMahon feel that his position in the Central Bank would be overshadowed by this new division in the Department of Finance? While he was probably aware, before joining the Central Bank, that the Department of Finance always calls the shots (traditionally the Governor is selected from the Department of Finance), he would almost certainly not have been aware of the plans for the creation of a new banking division within the Department. It appears similar to the move by Minister Bruton to move the Forfas industrial policy division into his Department.

Speaking at the beginning of the Central Bank of Ireland Stakeholder Conference on 27th April, 2012, where he was outlining new legislation, which he claimed will "*reinforce*" the Central Bank's powers, Matthew Elderfield said that it was "....*vital that we do whatever is necessary to protect and improve the reputation of Ireland as a financial centre...*" Fine words indeed, but when will Elderfield deliver, or will he deliver at all? He has not inspired much confidence so far, though he talks a good fight. In fact, in his relatively short time in the post, he is already being viewed as a '*bit of a disaster*' in many quarters.

While the Central Bank/IFSRA is in the process of introducing a range of new regulations for the financial services sector, Minister Richard Bruton in his jobs strategy[37] stated:

"The Central Bank and relevant Government departments will consider and consult with industry, other stakeholders and one another in respect of the effects of new regulation on the financial services sector and the broader economy, and any potential overlap between new measures and related existing requirements. Action: cross-department/cross-agency action."

But he never indicated whether he had consulted with Mr. Elderfield before making this claim, or whether Mr. Elderfield would support any easing of the current regulatory rigidity. The probability is that Mr. Elderfield will continue to do his own thing, even if the Irish economy might suffer as a result.

The IFSC Czar, former EU Commissioner/EU Ambassador to the United States, John Bruton, appears to be very much in favour of the *status quo* for financial services.

[37] Action Plan for Jobs (Financial Services) (2012).

He probably has enough problems attracting custom at present, without any further tightening of the rules,

The upcoming court action by the Quinn family, regarding the legality, or otherwise, of the loans which were used to meet CFD margin calls, may threaten this cosy arrangement. However, Anglo appears intent on exhausting all that family's funds by initiating legal actions designed to ensure that they will never be in a position to have their case tested in a court of law.

That case, if it ever reaches court, has the potential to raise, in public, some serious regulatory issues that could materially impact on Minister Bruton and his financial services jobs target, as well as on the IDA and John Bruton's work, and on the outcomes they are all tasked to deliver; it could also prove, though it might not, that Anglo acted illegally. Justice demands that all such cases should be determined by someone who would deal with them according to the law of the land and not on the basis of who has the better P.R. machine. Anglo/IBRC has been winning all the P.R. battles to date.

Once Anglo's complex mirage unraveled, it exposed massive losses and gaping holes in both the bank's operations and its Balance Sheet, and huge inaccuracies in its reports to shareholders. In the property and banking downturn (for which Anglo itself cannot be held responsible), the high-value, low-volume loan strategy was exposed; so too was the real, but previously hidden, or at least disguised, business model; and most importantly of all, the absence of proper risk assessment within Anglo Irish Bank was laid bare for all to see. In the process, the absence of proper governance became obvious, the inadequacy of the internal audit processes, procedures and scrutiny was disclosed, and the poverty of the regulatory regime became evident. As Juvenal is alleged to have queried: "*Quis custodiet ipsos custodes*?" In this case, it seems the answer is: "*Nemo*".

Of course, ultimately the real losers were the shareholders, who had been hoodwinked for years, by a regulated company, overseen by the Central Bank, the Financial Regulator and the Stock Exchange, and which had produced audited accounts, which did not seem to reflect the real profit adequately. The shame is that none of those entities afforded the shareholders any real protection. There is good reason to believe that had the accounts of Anglo revealed the truth, that Bank would have been showing losses for five or six years before it eventually collapsed.

Why was that not disclosed? That is the real disgrace, in this case: the entire plethora of regulatory systems failed to deliver what they were designed to deliver – even what they existed to deliver. If there is one crucial lesson from this episode, that is it: REGULATION FAILED.

In that context, it cannot be a surprise to anyone that, according to the Sunday Independent, about 50 investors in Anglo's European Geared Property Fund have appointed solicitors to represent them in an attempt to prove that the investment was mis-sold to them by Anglo. Whether they will get any justice is doubtful; Ireland appears to have plenty of laws, but very little justice. There is clear evidence that the majority of people outside the Dublin media, political and judicial cliques, no longer believe that justice exists in Ireland.

All the recent government and bank publicity in relation to these issues has concentrated on the bond-holders and other creditors, but they did not fare at all badly. Instead, the real losers were the shareholders, some at least of whom had consciously decided to invest in an Irish company, when other alternatives were available. One would never think from the coverage of these issues, or from the *obiter dicta* of Taoisigh, Ministers of Finance or Ministers of Justice and Defence, that the shareholders lost money as a result of accounting that was not 'true and fair', and because of the inadequacies of a statutory governance regime, which failed to protect their rights. One would never think from the current blaming of developers and other borrowers, that it was the State, through its agencies and its political system, which had failed not just the shareholders in Anglo, but shareholders in the other banks too and, ultimately, the entire economy.

We have had massive national whingeing about the losses to the exchequer and the Irish taxpayer- and rightly so. We have had the use and abuse of fall-guys who had no hand, act or part in the charade that was Anglo Irish Bank. And we have had investors in Anglo, who lost the capital which could and would have been used by them to help in re-building the Irish economy.

But then, as Churchill said *"History is written by the victors",* though perhaps Joanne Harris was more accurate when she wrote *"Remember, it's the winners write the history books, and the losers get the leavings".* In this case, there were no leavings, and the losers got nothing, but abuse.

Neither were there any real victors – just some who escaped the bigger losses. Politicians and senior civil servants do not have to worry about shareholders – they have too few votes, even if, indirectly, they sustain the economy. And the media loves to have someone to blame – fall-guys sell papers and attract listeners and viewers. Meanwhile, the country needs that money, and the IMF and EU now run Ireland's economy and control its society.

One of the real mysteries arising from this saga, however, is why Ernst & Young failed to raise in any of its audit reports:

◊ the extraordinarily low bad debt provisions;
◊ the absence of an effective internal audit system;
◊ the inadequacy of the bank's entire governance protocols;
◊ the deficiencies in the bank's loan approval procedures;
◊ the deficiencies in the credit assessment system; and
◊ the inadequacy of its processes for finalising the documentation aspects of its loan security.

A related and equally important issue is whether they raised any of these issues with the management team or if they were raised in their annual management letter to the directors. Eventually, that information will probably become available through some court of law, assuming Dukes, Aynsley and Woodhouse do not succeed in stifling all court actions, by consistently opposing discovery of documentation, which could influence legal actions.

In the absence of detailed information, including much more management information than can be inferred from published accounts, it is difficult to determine precisely when Anglo ceased to be a viable, profitable bank (that is considered later in this report). Clearly, it had been overtrading for some time - probably a decade, at least – but that would not necessarily have made it unprofitable; but in that time, its consistent over-reliance on inter-bank funds was making it more and more risky.

Some of its investors may have understood that; certainly all of the more ones sophisticated ones did. But not all of Anglo's shareholders were sophisticated investors; many were people, who had been seduced by the rapidity with which its activity and its profits were increasing. The sustained trumpeting of 'another record year' was enough to grab their attention and ultimately make them poorer; for some, it would make them penniless and bankrupt.

10. DIRECTORS' LOANS AND INFLATED DEPOSITS.

In line with the 'equity release' loans, which Anglo was providing to its property developer clients, Fitzpatrick commenced following a reasonably similar approach in respect of his own borrowings from Anglo Irish Bank. However, he used Anglo shares rather than property, as his equity base. Until 2009, when the details were included in Anglo's annual report, after Fitzpatrick had resigned, shareholders were unaware of the existence, never mind the magnitude, of his borrowing against his shareholding.

He was not the only businessman, Irish or otherwise, to borrow money from the company for which he worked, in order to invest in either his company's shares, or in other assets. Whether it was either legal or ethical (and to the average person, it was neither), it appears to have been a fairly common practice. For example, it emerged, in December 2008, that the co-founder of Carphone Warehouse plc., David Ross, had taken out a number of major bank loans to fund property development, using his shares in listed companies such as Carphone Warehouse and Yell as collateral. He was a director of both companies, but he had not informed the companies of these loans. When the information became public knowledge, Ross immediately resigned from the board of both companies.

How much worse would it have been when the funds were borrowed by a banker, from the bank which he managed?

The simultaneous collapse in both share prices and property values, following the recent international economic and banking crises, has lead to the security of many directors' loans coming under pressure. While the legal position may still be the subject of dispute, the position in relation to quoted companies (which Anglo was) is very clear. Sources close to the Stock Exchange have said that: "*The situation regarding directors' shares being used as security against bank loans is the same in Ireland and the UK -- full disclosure is required. The requirement is covered in the Stock Exchange Listings Rules Model Code.*" That could not be clearer, but it was not applied in Anglo.

It is now clear that Fitzpatrick had consistently been warehousing most of his borrowings with Irish Nationwide Building Society (INBS), at each year-end, over an extended period, presumably in order to hide their existence from shareholders. But the shareholders had a right to know.

Normally only random checks are applied by the auditors of such companies, in relation to such borrowings, with the year-end position usually being subject to particularly careful scrutiny. We now know that the INBS auditors, KPMG, were aware of this chicanery, in relation to Anglo, but that they had learned of this from an INBS perspective.

The details, including the dates of the transfers have since been disclosed in Anglo's accounts by Deloitte and Touché, who have replaced Ernst & Young as auditors in 2009. Why did Ernst & Young not identify this practice, when they were the auditors to Anglo and why did they not list the sums involved? Any reasonable 'cut-off procedures' should have picked up on the transactions involved; if they were missed once, they should never have been missed several times. And if they did identify what was happening, why did they not mention it in the accounts, or comment on it in their report to the shareholders? They had a clear obligation to do so, if they were making a judgement on whether the accounts reflected a 'true and fair' view of the financial performance and position of the company.

Whether the rumour is accurate or not, it has been alleged that Fitzpatrick warehoused his loans from Anglo, through INBS, from 2001 to 2008, at least. The loan amounts were material in relation to both Fitzpatrick's earnings and the value of his Anglo shareholding; as such, they should have been disclosed in the published accounts.

It is not certain what the real *quid pro quo* might have been for this arrangement, but there have been suggestions (more accurately, they are likely to have been speculation, because they have never been supported by credible evidence) that there was probably some reciprocal benefit for INBS in order to justify such a transaction. If any concrete evidence exists to support this view, it has not yet come into the public domain.

Sunday Times journalists have claimed that the warehoused loans dated back to 1996, whereas most accounts refer to eight years of warehoused loans up to 2007, though the basis for that claim is somewhat unclear. The following table provides a summary of the alleged loans taken out by Fitzpatrick from Anglo, as reported by the Sunday Times:

TABLE 4			
SUMMARY OF FITZPATRICK'S LOANS FROM ANGLO			
YEAR	**VALUE OF FITZPATRICK'S LOANS**	**TOTAL ANGLO LOAN BOOK (€ millions)**	**FITZPATRICK'S LOANS AS % OF ANGLO LOAN BOOK**
1996	1,437,000	1,750	0.082%
1997	1,428,000	2,200	0.065%
1998	2,132,000	2,517	0.085%
1999	3,286,000	5,613	0.059%
2000	3,259,000	7,794	0.042%
2001	4,004,000	10,952	0.037%
2002	4,432,000	13,357	0.033%
2003	14,439,000	17,269	0.087%
2004	23,833,000	23,724	0.101%
2005	27,326,000	33,600	0.081%
2006	48,026,000	49,142	0.098%
2007	121,599,000	66,949	0.184%

Source: Tom Lyons and Brian Carey – "The Fitzpatrick Tapes" (2010); p. 98.

From relatively modest sums at the start, the amounts became very substantial in later years, and the increase was steady, before accelerating rapidly from 2003 onwards. The overall pattern supports the validity of the conservative maxim '*Beware of small beginnings*'.

According to media reports, some of the loans were used to buy Anglo shares, though clearly not all were used for that purpose. Nevertheless, since the borrowing was off-balance-sheet at times, it would be interesting to know if any of the share dealing represented share support activity; it certainly appears to have involved market manipulation.

Simon Carswell in his book '*The Bank that Broke Ireland*'[38], claims that Kieran Duggan of Anglo negotiated the loan warehousing deal with Stan Purcell, then secretary of INBS. For anyone familiar with how Fingleton and Fitzpatrick operated, and how they controlled their organisations, that claim lacks credibility; it is more likely that the arrangement was agreed between the two principals and that Purcell, as company secretary, processed the formal details, given that he had limited executive power.

[38] Carswell has written a great deal about Anglo, but has failed to support any of his conclusions with real data; he has simply used interviews in arriving at his conclusions. He should have done more and better analyses.

In 2004, prior to his retirement as CEO of the bank (to become its Chairman) Fitzpatrick sold €24,000,000 worth of Anglo shares. According to news reports at the time, Mr Fitzpatrick was not available to explain his motives for selling, but a spokesman indicated the proceeds would be used, in part, to pay down borrowings. However, Fitzpatrick actually increased his borrowings from Anglo, in 2004.

It is probable that the anticipated profits from Fitzpatrick's property investments were not being realised. Hence, he might have needed the Anglo share price to increase significantly in order to reduce his gearing. Essentially he needed an exit strategy for his shareholding that would allow him to repay a substantial component of his borrowings. The fact was that he was over-geared in exactly the same way as many of Anglo's major customers were.

There have been suggestions that Fitzpatrick would have been willing to unload all, or part, of his shareholding in Anglo and that he would have welcomed any 'potential bid' speculation, which would generate such an increase in the share price. That also seems highly unlikely; Fitzpatrick was very committed to Anglo – possibly, he saw it as his creation - and it is very doubtful if he would have wanted to dispose of his shareholding in it. Others however, might have had that agenda and would have wanted the sort of uplift in the share price, which could have been triggered by rumours of a bid.

It has never been clear why Fitzpatrick retired as CEO, when he did. One former executive believes that Fitzpatrick retired at that point, partly because he began to realise that Anglo was growing beyond his understanding of banking. '*Fitzpatrick treated the bank like his corner shop – he needed to know everything that was going on*', he said. '*As it got bigger I think he needed to hand over the reins*.'[39] In light of everything else which happened during his time with Anglo, handing over the reins would be difficult to comprehend. But then, he was not really handing over the reins; instead, he was driving from a different seat, because he effectively became the bank's Executive Chairman. In equine terms, he may have been using different reins, but his control of the bit was no less.

Media commentators have claimed that, in addition to Anglo/INBS borrowings, Fitzpatrick had further undisclosed personal liabilities, through shares held in companies financed by Anglo and/or through 'carried interests' in Anglo-funded

[39] Anglo Republic, Simon Carswell, Penguin Ireland, page 95

companies[40] such as the Atrium office block in Sandyford Industrial Estate in Dublin. Fitzpatrick's fellow investors in that deal included two former Anglo directors, Gary McGann and Lar Bradshaw. According to further media reports, the latter also jointly owned a retail unit at the IFSC, with RTE's Pat Kenny and builder/developer Dunne.

Danny Kitchen (the INBS Chairman) said that, in hindsight, it would probably have been better not to lend to Fitzpatrick, as the society had undoubtedly suffered reputational damage as a result. Auditor Vincent Reilly of KPMG was questioned about the treatment of the loan to Fitzpatrick, which had the effect of keeping his loans from Anglo out of the public domain. KPMG admitted that the auditors had noted the loan. Reilly said that they enquired about it and found that it lasted for no more than a week - just over the end of Anglo's Irish financial year, at the end of September, and was paid back shortly afterwards. Mr Reilly said the auditors had been told that the transaction was authorised by the society's board. But he said the auditors noted the 'reputational risk', given the short length of the loan.

The question is: should the auditors not have investigated the legality of what was being done on an annual basis? And if it was deemed to be legal, should they not have investigated whether it was ethical, or whether it was designed to give an unrepresentative view of the Balance Sheet, or whether the view was 'true and fair'?

Very interestingly, Mr Reilly also said that the Financial Regulator knew about the loan[41], though he did not indicate on what basis he made that statement, nor comment on the degree of knowledge involved. But what that comment does, if it was valid, is raise the whole spectre of regulatory involvement in, or at least knowledge of, something which was, at best unethical, and at worst illegal, but which might well have been seen by the authorities as necessary in the best interests of the 'green jersey'.

After Fitzpatrick's resignation as Chairman of Anglo, he sought to continue to influence public perception. In this regard, the Sunday Times (Irish edition), has over the past three years, published a considerable number of articles about Anglo, most of which has been uncritically favourable towards the new Anglo regime.

[40] Tysan Ltd, Balcuik Ltd - http://www.gavinsblog.com/category/irish-politics-and-corruption/anglo-irish/
[41] INBS AGM - http://m.rte.ie/business/news/2009/0512/irishnationwide.html

Most of that material has subsequently been re-used by both the Irish Times and RTÉ, both of which have also consistently adopted a very pro-Anglo attitude and sided with IBRC on virtually every issue. Outside Dublin (which is clearly their primary target market) they and their staff are seen as being entirely 'in Anglo's pocket' - particularly in the border area and the West of Ireland, as well as among the nationalist community in the North (to which they have never been favourably disposed anyway, in the majority view of that community). Other publications also felt free to reproduce the material from the Sunday Times.

With the publication of the book[42], 'The Fitzpatrick Tapes', it subsequently emerged that the source for the material published by the Sunday Times' was, in fact, Fitzpatrick himself; there has to be some possibility that his involvement in that publication was self-serving. Could he have been trying to find a fall-guy and deflect blame? Hence, media reports on the demise of Anglo and the claims that CFD activity played a central role in that event, have been managed by Fitzpatrick through leaking material to Tom Lyons, the Sunday Times reporter, who has recently joined the Sunday Independent. But the CFD activity was not responsible for the failure to make adequate provision for bad debts, or the failure to disclose the directors' loans, or the over-charging, or the warehousing of Fitzpatrick's loans, or the use of short term funds to boost the bank's deposits artificially, or the failure to apply the model provided to shareholders in its lending policy and activities, or the absence of proper regulatory oversight.

However, perception has become the reality and Fitzpatrick's leaks have become part of the Anglo 'reality' in the Irish media and in the political, judicial and legal systems, which use the media to their advantage.

Like many people who use their memoirs to settle old scores, ie could not help himself either and he had a pop at almost everyone, from the ex- financial regulator, Patrick Neary ("*I never thought he was over-endowed with grey matter*"), to his successor, David Drumm ("*He was running his own show*"). That latter comment seems odd, given that Fitzpatrick was effectively acting as Executive Chairman, at that time.

And while he does accept a certain low level of responsibility, he joins the long list of people at the top who believed: "*We were all in this together*" and "*It was only a*

[42] 'The Fitzpatrick Tapes' by Brian Carey and Tom Lyons (*Sunday Times Dublin journalists*), Penguin,

matter of time, really; most of us believe the banking crisis was the regulator's fault."[43]

It was, and clearly still is, in Fitzpatrick's interest to blame CFD activities for the collapse of Anglo rather than the various scams in which Anglo participated, while he was involved there as either CEO or Chairman – loan warehousing, the flawed business model, the falsified annual accounts, together with the untruths told to investors, regulators and the stock exchanges.

Although the new management of Anglo has purported to have disowned Fitzpatrick, both are at one in 'PR spinning', designed to blame one particular investor not just for the collapse of his businesses, but even for the problems of the entire economy.

That same line has also been taken up by the Irish Times; it is a paper which changed, during the tenure of its former editor, from a 'paper of record' to a 'campaigning issues publication', with a much more left wing flavour than that paper would traditionally have espoused. But it retained its Dublin-centric, anti-rural bias.

The basis for those changes in journalistic practice was explained by another journalist: "*There seemed to be an intimacy between journalists and senior business people in Ireland that didn't exist elsewhere. The objectivity that I had brought back from London would soon desert me*."[44]

That comment is largely accurate, but what is missing from it is that the 'intimacy' related only to carefully selected and mostly Dublin-based business-people, and that there are very unhealthy social and personal relationships between some of the Irish Times staff and senior people in Anglo/IBRC; to deny that those links would have affected the paper's reporting of these issues is just unbelievable nonsense.

In a later Penguin publication, the Fitzpatrick story-line was further highlighted with some material changes. Rightly or wrongly, the source for this book was claimed by journalist Shane Ross TD to have been David Drumm.

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[43] Maeve Dineen: 'Victim' FitzPatrick's book is just self-indulgent claptrap'; Irish Independent ,10th January 2011

[44] 'A Financial Journalist's Perspective on Debt and Default' by John Walsh, in 'What if Ireland Defaults?' Edited by Brian Lucey, Charles Larkin and Constantin Gurdgiev, Orpen Press, page 249.

Against the background of Fitzpatrick's use of the media to get his side of the story into the public's mind, it is hardly surprising that certain commentators have claimed that Fitzpatrick's actions in warehousing his director's loans were not illegal but were unethical. The Financial Regulator has agreed, but added that the Central Bank had indicated that "... *the practices surrounding these loans were not appropriate*". Had they been deemed illegal (as they should have been under Section 60 of the Companies Act and under European Market Abuse Regulations), it would have been impossible to portray Anglo/IBRC as it is currently being portrayed. In that respect, Dukes and Fitzpatrick have common cause with the Financial Regulator.

Whatever about where the line between illegality and breach of ethics may lie, Fitzpatrick's loan warehousing activities were a clear breach of Stock Exchange regulations. They explicitly forbid any director from concealing borrowings secured by shares in the company of which he was a director. In doing so, Fitzpatrick, firstly as CEO and later as Chairman, materially mislead investors and lied to them for possibly as long as twelve years.

Fitzpatrick was not alone in hiding his loans from public view; other directors were doing the same thing, On the 1st April 2010, the Belfast Telegraph carried a report indicating that Anglo Irish Bank was prepared to write-off €109 million-worth of loans, which former directors, including Fitzpatrick, failed to repay. That contradicted a view previously expressed by Finance Minister, Brian Lenihan, who had indicated that the bank would pursue former directors with outstanding loans to the "...*ends of the earth*".

According to the Belfast Telegraph report, the bank was preparing to write-off some directors' loans on the basis that the directors could not repay them, though it also reported that most former directors were co-operating with the bank, but that some were claiming that they simply did not have the money to repay them.

In quantifying the anticipated write-offs, the paper claimed that, at the end of 2009, the bank had €155.2m in loans outstanding from directors and former directors, but that after taking an 'impairment' on these, there would still be €46.3m (just under 30%) outstanding i.e. 70% was being 'written off' – a high proportion. The majority of these loans had been advanced in a 'personal capacity' to those directors and former directors.

While Fitzpatrick was the largest director debtor and Lar Bradshaw, who the Telegraph claimed was linked with Mr Fitzpatrick in a number of investments, was the second largest, Gary McGann had also borrowed large sums in loans from the bank, though the report contained no indication of any provision against McGann's loans.

Willie McAteer, a former executive director, who had by then (April 2010) been arrested and questioned, but not charged with any offence, also had loans outstanding, and the report claimed that the bank would be making a major provision against those loans. In addition, the former chief executive, David Drumm, also owed money on loans advanced to him. All those directors resigned when their loans became public knowledge. But Anglo pursued Drumm to the USA and used the media to demonise him - though the media also wanted a fall-guy.

Another issue which came to light in the later days of Anglo's life as a lending bank, was the exchange of loans between Irish Life and Permanent (IL&P) and Anglo. They were designed to show Anglo's deposit base as being significantly stronger than it actually was. The figure mentioned was €4 billion – a very significant injection into the deposit base of Anglo. In some ways, this was the most insidious offence of the lot, because it had one and only one objective: to hide the reality of the bank's weak deposit base from shareholders, investors and potential investors. Realistically, no other construction can be put on that action. Nor can that be deemed to be anything other than illegal, whatever the Companies Act might say.

Again this issue is being buried by the media – it is no longer being mentioned; why? And was Anglo the only Irish bank to be involved in such transactions?[45] That activity was particularly devious and had a major distorting effect on the published accounts. There is no evidence of the Central Bank's having expressed a view as to whether it was illegal or simply inappropriate. But there is also a suspicion that this transaction had the support of some of the regulatory authorities, as part of the 'wearing the green jersey' philosophy. Whether it had or not, it involved deceiving the shareholders about the financial strength of the bank; that was plainly wrong and actions like that undermine the trust which should exist between a public company and its shareholders. Volatility in the bank's deposits was subsequently one of the reasons why the Government moved to nationalise Anglo Irish Bank.

[45] That issue will be part of the subject matter of a later study, currently being developed.

Media reports indicate that a sworn statement from a senior official of PTSB (formerly Irish Permanent and TSB bank) indicates that Kevin Cardiff of the Department of Finance met with officials from PTSB and approved the back-to-back loans with Anglo[46]. Is this true and is it related to the moves, which Labour made to ensure that Cardiff was moved to Brussels, at the cost of an MEP?

Interestingly, KPMG was auditor to both IL&P and to INBS – the institutions, which provided the warehoused loans and back-to-back deposits to Anglo. They have also been appointed to manage a range of assets now under the control of Anglo. One would be prompted to wonder if that appointment was wise; they would appear not to have shown great judgement in those other issues.

When it eventually became necessary, Fitzpatrick's bankruptcy was very carefully orchestrated through O'Grady solicitors. In parallel, Fitzpatrick is alleged to have sought advice regarding his Anglo stewardship and his dealings with IFSRA, from a number of other firms, including Michael Staines, a leading criminal law solicitor. He also got his story into the public domain through the Sunday Times reporters. It was a very well managed exit, not seriously challenged by Anglo's new management. One has to wonder why.

They had no compunction about challenging others, who would seem to have been less culpable. Anglo/IBRC has claimed, in the now frozen Boston lawsuit, that it is entitled to unquantified damages from David Drumm over his conduct as chief executive. The bank has argued that "*his well-established pattern of concealment, deception, manipulation, falsehood and intentionally fraudulent behaviour...*" justifies such action. But IBRC has never made similar allegations against Fitzpatrick, or some other executives or directors. Why has Drumm been singled out for special treatment and made a scapegoat?

Similarly, Michael Fingleton was challenged over the watch, which he received on his retirement; Sean Quinn's bankruptcy in Northern Ireland was challenged by Anglo and eventually overturned there, so that they could exact their pound of flesh in the Republic; and David Drumm was pursued to Boston. It seems impossible to interpret that series of events in any way other than very selective actions by Dukes and his management. Dukes has denied that he has a vendetta against any of these,

[46] http://www.broadsheet.ie/2011/11/25/kevins-gate-the-back-to-back-loans/

but not many believe him. Fortunately for Fingleton, he has no borrowing, with which Anglo or Dukes can crucify him.

But this pattern of behaviour by Anglo begs a very important question: what was so exceptional about Fitzpatrick? He was canny and cute, but was he any more sharp-witted than many other businessmen who spot their chance in a flabby market, corner part of that market, or all of it, and exploit the consumer?

As Adam Smith[47] said of businessmen generally: "...*he comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it."*

The success of Fitzpatrick's business activities, when he was in charge of Anglo, was built on gaining an edge over his competitors, by evading regulators and telling potential investors and lending banks what they wanted to hear, even if it was not entirely true. However, Fitzpatrick appeared to do much more than that; his activities involved (possibly unwittingly) hoodwinking his own shareholders, breaching Stock Exchange and Central Bank rules, telling what were ultimately discovered to be lies (again possibly unwittingly, because he may have believed it) and finally presiding over the massive destruction of shareholders' wealth.

Simon Carswell, in his book 'Anglo Republic', gives the clear impression that David Drumm was completely under the control of Fitzpatrick. He describes how Drumm was persuaded, by Fitzpatrick in particular, to borrow extraordinary amounts of money to purchase Anglo shares, when the bank was clearly in decline and how Fitzpatrick continued to exert executive control, while acting as theoretically a non-executive Chairman.

Drumm is said to have told Carswell that Fitzpatrick pressurised him into taking the job of Chief Executive in 2004, even though Drumm himself was not particularly keen on it. Whether Fitzpatrick did that in order to thwart Tiarnan O'Mahoney or Tom Browne, is unclear, but there has long been a suspicion that he did not want either O'Mahoney or Browne as CEO, because he felt he would not be able to control either of them.

[47] Adam Smith, 'When Businessmen Propose Legislation'.

Even more interestingly, Drumm said that, immediately after he became Chief Executive, Fitzpatrick began to undermine his management of the bank - something which no Chairman in any organisation should ever do. Obviously Fitzpatrick could not cede control and Anglo staff began to wonder who was in charge; that was widely recognised and was being regularly discussed throughout the sector, including among the bank's customers. Fitzpatrick had an office down the corridor from Drumm's and his interference became so great that Drumm eventually made a formal complaint.

"*Perhaps his instincts kicked in and he could see trouble and couldn't just stand by and be a spectator. Whatever his reasons, he became more and more involved, and began to interfere in the day-to-day executive decision-making....... It was not only affecting me, it was also causing significant frustration among the executive directors and senior executives as they were getting constant calls from him, second-guessing their actions and decisions,"* Drumm is quoted as saying. "*It also created uncertainty in people's minds as 's increasing involvement in the day-to-day operations naturally created concerns about what was happening to the bank*...... *was on the receiving end of nothing – he was in control of everything*," said Drumm. He added: " *is a very capable, driven and fastidious operator, and unmatched in Irish banking. But he was also very controlling – it comes with the territory*."[48]

There are many who believe that the chief source from which Simon Carswell gleaned his information for his book, 'Anglo Republic', was David Drumm himself, but that has never been confirmed. It is understood that both Dukes and Aynsley attended the launch of that book.

At times, it appears as if that book describes Anglo through the eyes and emotions of a man who is now a fugitive in the United States. Carswell regularly describes Drumm's inner feelings — hardly emotions that would be gleaned from someone else. He charitably tells us that:

- Drumm, now one of the chief villains of our banking scandal, never wanted the job;
- Drumm took a decision to reduce lending for property development in his early days in the position, only to admit that he and his cohorts were unable to resist every tempting deal that came their way;

48 Anglo Boss Refutes Fitzpatrick Claims as 'bullshit'; Ireland Business Blog with Lisa O'Carroll, Guardian 11th January 2011

- despite Drumm's resignation in disgrace shortly after Fitzpatrick's exit, the Board — in particular chairman Donal O'Connor and senior independent director Ned Sullivan — urged him not to resign so soon.

According to Carswell, Drumm made the decision to quit despite their pleas, concluding that the media mob and the Department of Finance would come looking for his head within days, exposing his prior knowledge of chairman Fitzpatrick's burial of his director's loans in the accounts of Irish Nationwide, as the excuse for following him. Apparently, the Board thought highly enough of Drumm to ask him to help them to choose his successor.[49]

In regard to Fitzpatrick's loans, Anglo claimed, in a complaint to a Boston court regarding Drumm's bankruptcy proceedings, that:

"*He (Drumm) never disclosed the practice to the Board of Directors or took any action to stop or curtail the Chairman's loan manipulation, although he concedes that it was inappropriate for Fitzpatrick to remain as chairman in light of these practices*".

Given his chairman's involvement, that might just have been rather difficult; given that several other directors were also involved, that would have been even more difficult, since some of them would have to have known about these practices too. Therefore Drumm was probably right to assume that he would become the fall-guy.

In its complaint, Anglo alleged that Drumm's "*complicity*" in the loan warehousing scheme "*made possible a dramatic increase*" in Fitzpatrick's loans from about €22 million in 2004 to €122 million in December 2007. Drumm approved an application to Anglo's credit committee for new loans to Fitzpatrick on May 30th, 2007, which increased his credit limit from €75 million to €88.5 million. On the same day, Drumm approved a credit limit of €11.5 million for one of Fitzpatrick's children as well as the renewal of a joint loan of about €30 million held by Fitzpatrick and fellow non-executive board member at Anglo, Lar Bradshaw.

Two months later, Drumm approved another credit committee application, increasing Fitzpatrick's credit limit to €120 million, at which point his borrowings had reached €103 million. Anglo alleges that Drumm concealed and failed to act to end the annual warehousing practice and that his failure to disclose the full extent of these loans "...*constituted serious misconduct*..."

[49] 'Anglo from the Horse's Mouth'; Shane Ross 11th September 2011; http://www.shaneross.ie/anglo-from-the-horses-mouth/

Those actions might not have been prudent – clearly they were not - but it is a sad reflection on IBRC that, in a Boston court and in an effort to criminalise David Drumm, they would effectively ignore the power, which Fitzpatrick still had in Anglo Irish Bank, when those decisions were being made. There is little evidence of honour or real morality, in an organisation, which would stoop to such a level – especially if they had already managed to get public sympathy on their side and public support for their actions. They should occasionally remind themselves of the biblical adage '*Let he who is without sin, throw the first stone*'.

Anglo and their lawyers then proceeded to heap further odium on Drumm (they seem to be good at that) by alleging that:

"*As a direct result of Drumm's concealment and failure to act to end the annual warehousing practice, Drumm authorised or permitted Anglo to extend approximately €98 million in new loans to Fitzpatrick from 2005 to 2008 that would not have been made if, in 2005, Drumm had disclosed the loan warehousing and taken appropriate steps to stop the practice, such as requesting Fitzpatrick's resignation*". What about the other directors and their responsibilities?

The bank said that if Drumm had fulfilled his duties, Fitzpatrick would have resigned earlier and no further loans would have been made to Fitzpatrick after 2005. That may, or may not, be correct; but it is much more than likely that Drumm would have been forced to walk some form of plank, than that Fitzpatrick would have resigned. It may also be the case that they were asserting that, if his activities had been revealed, Fitzpatrick would have had to resign. But that was an opinion – not necessarily a fact. Most people would believe that it was a false opinion. In a Board level row between Fitzpatrick and Drumm, who would you put your money on?

The new Anglo/IBRC management seems to have some difficulty in distinguishing between their opinions and unbiased fact. Drumm is simply another easy fall-guy; he no longer lives in Dublin, which is the 'centre of the world' for some of these people.

The ethics and actions of the new Anglo management team have never been questioned. Neither has the Fitzpatrick account of the demise of Anglo been challenged in any way. The main challenge at present seems to be how to create an interest among media commentators in questioning his account of events; but

Anglo/IBRC is not raising that issue. The reality is that both sides have too much in common to break ranks on this issue.

But there are exceptions; some people do break ranks. On the 3rd July 2010 at the Irish Women Lawyer's Association inaugural seminar on white collar crime, Senior Counsel Mary Ellen Ring (since appointed a Circuit Court judge) asked: "*Wasn't Anglo Irish and its carry-on organised crime?"*

When the laughter had subsided, Ms. Ring continued by asking: "*Is there a way of taking what are clearly (regulatory) breaches, defining them as offences and bringing those offences before a court within a timeframe and in a way that would allow twelve members of the community (a jury) – or at least one member of the community possibly (a judge) – to make a decision before society's faith is totally undermined in the prosecution of criminal offences of this nature?*".

This time, no one laughed.[50] Ms. Ring was a bit too close to the bone, with that comment. Fair play to her for raising the issue and asking the question!

According to the UK Independent: '*The new Irish government has been looking at some of the terms of that rescue (IMF/EU) rather more carefully, in particular a deal to prop up an rampagingly corrupt property lender called Anglo-Irish*.[51]

In a new filing in the Boston court, Anglo (now Irish Bank Resolution Corporation) and Drumm's bankruptcy trustee have accepted, for the purposes of the trial, that in September 2008 Anglo faced *"enormous liquidity pressures, a plummeting share price, the prospect of government intervention and potentially the loss of its independence.*

Apparently the sides have agreed to limit the scope of the trial, which is due to be heard in January 2013, so that it can proceed more quickly and efficiently by focusing solely on Mr Drumm's finances and his conduct during the bankruptcy proceedings. In one of two lawsuits taken against Mr Drumm, the bank and trustee have made a litany of allegations against him over his conduct as chief executive from 2005 and 2008. The case may still be heard, even if they fail to block his discharge from bankruptcy.

[50] 'Bust': Dearbhail McDonald, Penguin Ireland (pages 232-233)
[51] http://blogs.independent.co.uk/2012/04/13/the-european-central-bank-shows-its-true-colours/Benchu

In its claims against Mr. Drumm (as detailed above) IBRC has effectively *"...denied him a right to a fresh financial start."*[52] But *"...Mr Drumm has rejected the allegations and is vehemently defending the actions against him."*[53]

Court proceedings are issued or defended by the new Anglo management on the basis that all Anglo's actions were above reproach, which clearly was not the case.

This approach has to be interpreted as both an extension of the fraud originally committed on investors and as a cover-up of that fraud. That makes them no better than their predecessors, on whom they frequently seem to frown. One wonders why they would feel that they have a right to do so.

It is difficult to determine how the questionable activities described in the preceding paragraphs gave rise to the overwhelming combined media-and-Anglo-led antipathy towards the businessman, Sean Quinn. He was Anglo's biggest customer and could reasonably have expected to take some of the blame for the bank's problems, but it is not clear that he was the author of those problems; in fact, as described above, it appears that he was not. What is clear is that there has been a strategy to make him take most of the blame. In implementing that strategy, Anglo (with the support of both Elderfield and the Department of Finance) apparently enlisted the support of some, who had been recruited to assist in resolving the problems of the Quinn Group, which were a consequence of his investment in Anglo. That includes some former directors of the Quinn Group.

....

It is claimed by a number of those, who were close to the Quinn Group, that certain members of the Quinn family had considerable reservations about some of the new board members, imposed on them by the Group's funders. The rumour is that none of the Quinns ever trusted Murdock McKillop, who, they claim, used the Quinn Group as a 'gravy train', extracting more than £1 million per annum from it, while working on a part-time basis only.

Sean Quinn's brother, Peter, had joined the Group Board some years earlier; apparently, he had virtually no direct involvement in the Group's activities over most of the preceding two decades. Some people have claimed that he chaired the

[52] Irish Times, 25/5/12
[53] Ibid.

Quinn Group from 2009, but according to Companies Office records, that appears not to have been the case.

He is known to have held a particularly negative view of Murdock McKillop, from soon after the latter's appointment, in the aftermath of the administration of Quinn Insurance. Reports suggest that Peter Quinn felt that McKillop was a 'bully' who misled the Board on at least one crucial issue, and that he was a very poor choice for the role of mediator (a role which Quinn himself had previously played in another milieu). It is also reported that he did not believe that McKillop had either the competence or the understanding of the issues involved, to be capable of resolving them, and that he was merely a Balance Sheet manipulator, with no understanding of how to generate profit, and was especially lacking in his understanding of manufacturing. He is said to have believed that McKillop had a strongly anti-Quinn agenda, and might even have wished to take over the business.

Quinn is also reported to have held a low opinion of some of McKillop's staff, who, he has suggested, simply did McKillop's bidding, without thinking for themselves.

Peter Quinn has enough experience of business, and especially of manufacturing, to make such judgements. It is believed that the greater part of his work for over a decade, had been in manufacturing, and local sources suggest that he continues to be involved in that sector, as an advisor to a number of companies. Apparently, Peter Quinn was never involved in the financial services side of the business.

It is known that Paddy Murphy had lost the confidence of both the Quinn family and the Group's senior management, from early in the process, following the appointment of administrators to Quinn Insurance. Members of the family are alleged to have accepted Murphy and to have been friendly towards him, but not to have had much faith in his ability. Equally, members of the Group's management were happy enough with Murphy personally, but considered him 'light weight'.

They are reported to have held (and to hold) a similar opinion of Paul O'Brien, who now manages the business, after he was appointed to the Board, apparently at the suggestion of McKillop.

What is certain, is that those three became entirely supportive of the new regime in the Group and have had no contact with any of the Quinns since then.

It is also reported that Peter Quinn was responsible for recruiting Pat O'Neill to the Board; apparently, they had worked together on G.A.A. committees. It is claimed he continued to support O'Neill, after he had replaced Sean Quinn as Chairman. According to inside sources, more than any other member of the former Group Board or Management, the senior Quinn has felt 'let down' by O'Neill; he believes that O'Neill bought into the attempt by Alan Dukes, Murdock McKillop and others, to shift the blame and demonise Sean Quinn and the Quinn family generally.

Peter Quinn is on record as having commented favourably on the Tallaght Strategy adopted by Dukes, when he was Leader of the Opposition in the early 1990s (e.g. at the McGill Summer School in Glenties and in his Erasmus lecture). It is not known whether the two have ever met and, apparently, Quinn has avoided any contact with Anglo.

Now that appears to have been a good idea. And one would also have to assume that he avoided having secret Directors' Loans and inflated deposits too.

11. MISSING! AUDIT AND REGULATORY OVERSIGHT.

Before he joined Irish Bank of Commerce, Fitzpatrick trained as an accountant with Reynolds McCarron & O'Connor (Reynolds McCarron), then a middle-ranking firm in Dublin. It became auditor to both Anglo Irish Bank and City of Dublin Bank. Through mergers with other mid-sized firms Reynolds McCarron was subsequently to become the core of Ernst & Young (E&Y) in Ireland.

As a former employee of Reynolds McCarron, Fitzpatrick had possibly more of an inside track than any of the other clients of that practice. But did he have enough of an inside track to get his own way on having the bank's accounting policies and governance systems accepted by that firm, when the annual audit was being undertaken? Or did this access ensure the continuation of the over-reporting of profits?

An auditor is entitled to rely on assurances from management about the information on which the accounts are based. Nevertheless, an audit has to be planned so as to ensure that it uncovers practices which are either illegal or unethical, and that plan has to take into account the possibility that the assurances from the management may be false. Therefore, the auditor is obliged to consider where and how corroboration of information could be obtained.

In the case of Anglo Irish Bank, if IFSRA allegedly knew of the large Fitzpatrick loans for years, why did Ernst & Young not know of them? It is known for sure that the loans were not reflected in the annual accounts and the accounts are required, by company law, to show a true and fair picture of the state of the company's financial position; that is precisely the averment required of an auditor in signing off on the accounts. In addition, auditors should be aware of the rules of the Stock Exchange and what is expected of auditors in that respect too. So, did Ernst & Young know of the loans and if they did not, why did they not? What added information did IFSRA have that Ernst & Young did not have? Or, if IFSRA could allegedly get the information, why did Ernst & Young not look to IFSRA, on a regular basis, to cross-check what IFSRA knew with what Ernst & Young believed to be the case? [54]

In hindsight, this failure to ensure the real strength of the Balance Sheet was not out of character. Over many years Ernst & Young had failed to raise any public objection

[54] http://www.mcgarrsolicitors.ie/; 30th January 2009; anglo-irish-bank-corporation.

to the audited accounts being presented to shareholders, in a published package which contained (i) a misleading description of the bank's business model, (ii) under-reporting of Directors' loans and (iii) misleading figures for the bank's deposit base. They attended Annual General Meetings at which all these matters were presented to shareholders as being 'true and fair' (probably using amended wording), either orally or in the Annual Report, or probably both.

But Nyberg appears to have little enough difficulty in discovering some, but probably not all, of these facts, as the following comment from his report demonstrates:

"*…as competition increased in Anglo's core lending markets, margins declined and greater risks were taken to retain customers. This is evidenced by material changes made to Credit Policy in 2005, 2006 and 2007 which relaxed key elements of lending criteria.*"

What examination did Ernst & Young undertake of the changes to Credit Policy, in 2005, 2006 and 2007? That is distinct from their having to make any judgement on the values of the individual loans themselves. They may not have been required to comment on the values of the loans, but surely they had an obligation to comment on any changes in governance procedures and processes, supporting such loans. One would have to assume that all the auditors to Irish banks had a duty to tell the Irish regulatory authorities, who clearly over-relied on the published accounts, if, or whether, banks were potentially not recognising their losses, in full. But did they?

The answer to some of these questions centres around whether Irish auditors and banks could rely on the argument that mechanical compliance with the IASB rules is sufficient to comply with Irish company law. Auditors may argue that it is, but legal opinion suggests that it is not.

In 2008 the accounting profession commissioned a legal opinion from Martin Moore QC, hoping that Moore would confirm their view that, as long as they complied with the IFRS rules, they met company law requirements. Moore instead said that "mechanical compliance" with accounting standards was, alone, insufficient to meet the requirements of company law (even if the IASB was willing to permit it). To the embarrassment of EU officials, Moore also warned that it was illegal for the EU to endorse any standards, which permitted entities to conceal losses (i.e. auditors cannot ignore the company law requirement to recognise losses). He presented case law to confirm that the concealment of losses was illegal.[55] Moore's opinion has not been well received in the auditing profession – in fact it is resented greatly. But it is still a *bona fide* legal opinion, which cannot easily be ignored. And more importantly, it is what the apocryphal 'man in the street' would reasonably expect in a developed economy.

Central Bank Governor, Patrick Honohan, has, in the past, publicly criticised the IASB's rules and has scarcely been capable of containing his anger at banks for not recognising their losses. Recently, the Irish Central Bank has asked for additional information on troubled loans. Like their British counterparts, Irish regulators are beginning to ignore published accounts, precisely because they now realise that they cannot depend on them. Is that not a massive indictment of the auditing profession and of those who practise it?

Commenting on the European-wide accounting rules, one regulator is reported to have said:

"*As with other regulators worldwide, the Central Bank used audited financial statements as a primary tool in its supervision of regulated firms*. *Despite receiving "clean" audit reports, they were "under-providing for impairment*"[56].

If they were under-providing, why were the audit reports 'clean'? And any excuse in relation to that issue certainly cannot be used in relation to the issue of overcharging, which should also have been identified, if the loan documentation had been properly assessed.

Even if, as some accountants and auditors allege, an auditor of a financial institution is not required to make a judgement on the value or quality of a loan, surely he or she has a duty to ensure that the underpinning documentation is both complete and accurate. For example, in a bank, that duty must incorporate an assurance that charges are properly perfected, with documentation which meets the needs of ensuring that borrowers have to repay. All the recent evidence indicates that, in Anglo, the administrative aspects of the charges was not always of the calibre one might have expected.

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[55] 'Accountants Ignored Company Law And Protected Bankers'; Cormac Butler, Irish Times Business Section 4th June 2012.

[56] Irish Times 6th February, 2012; Cormac Butler is the author of *Accounting for Financial Instruments* , published by Wiley

As suggested already, Fitzpatrick placed a much greater emphasis on selling loans, than on managing the processes normally associated with loan documentation or governance procedures and processes, though he may have felt that that was the job of someone else in the organisation. But the auditor had no right to make such an assumption; he or she had a duty to examine the procedures, to ensure that they are fit-for-purpose and to report to the management and, if necessary, to the shareholders, if they are not. There is no hiding behind any fig leaf, in relation to that responsibility. Ernst & Young would appear to have got off lightly in this case – at least so far.

Anglo directors Gary McGann (a former C&AG employee) and the late Paddy Wright had long-established relationships with Ernst & Young, as that firm was also the auditor to Smurfit Group during Michael Smurfit's tenure at the company, when both of them held very senior positions in the organisation. Since the Anglo collapse, it is understood that Ernst & Young - Ireland is managed from London. Whether that is a pre-emptive response to the possible consequences of future claims like those which were taken against Arthur Andersen, in the Enron case (or against others in the BCCI case), has to be a matter of conjecture.

Vincent Browne in his article 'Scrutiny of Audit Firms Over Crisis Is Critical' in the Irish Times of 30th May 2012, wrote that Anglo's audit report for 2007 (the year before the Irish public discovered that the bank was bust) stated:

"*In our opinion the Group financial statements give a true and fair view, in accordance with IFRS (International Financial Reporting Standards), as adopted by the European Union, of the state of affairs of the Group as of 30 September 2007 and of its profits for the year then ended*."

The financial statements to which that comment referred, had reported that Anglo had made a profit for the financial year of €1,243 million, that there had been growth in its customer deposits of €16.7 billion, that its 'high quality customer lending' had grown by €18 billion (up 37% on the previous year), and that the bank had achieved 30% return on equity. According to Browne, the auditors got €1.1 million for this opinion. [57]

"*The bank was headed for the rocks as Ernest & Young wrote its testimony, and collected its fee.*" Browne concluded.

[57] Irish Times 30th May, 2012

More recently, a High Court judge has expressed concerns about various professionals "*feasting on the carcasses*" of insolvent and semi-solvent companies, at a time when many sectors are 'taking a hit' and many people have had pay reductions. Commenting on the fees being sought by Ernst & Young (the former Anglo auditors) as special manager to Newbridge Credit Union, Justice Brian McGovern said that '*some professionals appeared to be getting good pickings from troubled sectors, when other people who are working just as hard are getting less*.'

What happened in Anglo in relation to its overstatement of its profits appears to be in sharp contrast to what subsequently seems to have happened in Quinn Insurance, when it was being prepared for sale with provisions, which were very much in excess of those originally assessed by PricewaterhouseCoopers and their actuaries. In that case, the provisions in the final accounts appear to have been designed to increase the attractiveness of the business (i.e. to reduce its selling price) to a purchaser, who would inherit a 'windfall' on the acquisition, with the State and the taxpayer (through the Insurance Compensation Fund) bearing unnecessary expenses, which are being used to fund the costs of people, who have nothing to add to such a business, other than their costs.

By comparison, in the Anglo case, the level of provisions/under-provisions was clearly designed to inflate the value of the business, to the ultimate detriment of shareholders and the Irish State's tax-paying public. Significantly, the major lenders, the bond holders, all of whom were overseas investors with serious 'clout', were not burned at all – the government and the Department of Finance were too scared and were happy to make sure that such powerful 'investors' would not feel any pain.

Both of those actions were equally scandalous, but for diametrically opposite reasons. In both cases, the State and its citizens have had to take the consequences; and in both cases, those consequences have been negative for the people of Ireland. The difference is that in one case, the powers-that-be found a scapegoat, on whom to dump the blame, while in the other case the consequences were buried by a motley combination of administrators, accountants, politicians and their allies.

The Chartered Accountants Regulatory Body (CARB) – the regulatory body for Chartered Accountants Ireland (formerly the Institute of Chartered Accountants in Ireland) – appointed the former Comptroller and Auditor General, John Purcell, to investigate a number of issues which have led to a *prima facie* case, arising from Ernst & Young's auditing of Anglo.

It is understood that the issues under consideration include the failure to disclose the loans advanced to both Fitzpatrick and Willie McAteer, as well as the failure to disclose the year-end transactions between Anglo and INBS. It is also understood that the issues of over-charging and of not identifying the probable overstatement of profits through inadequate loan provisions (caused by inadequate credit analyses and governance procedures) are not being investigated; why those latter issues are not being investigated has to be a matter of some surprise and major concern to the public, given that both have considerable implications for the firm's capacity to express a 'true and fair' view (although that term is no longer used, in the way it was in the past).

Equally, John Purcell has apparently no role in investigating any matters related to the purchase of Anglo shares by the so-called 'Maple 10'. That is much more understandable than the absence of any investigation into overcharging or overstating profits, though there are almost certainly legal issues which differentiate what he has been asked to investigate from what he has not been requested to investigate.

While Ernst & Young are planning to defend their position '*vigorously*' and no adverse findings have yet been established or published, this has to be an embarrassment for a major international audit firm; but it also has to be an embarrassment for the entire accounting and audit profession – specifically for its regulatory structures.

It is obvious from what has happened to the Irish banks generally and to Anglo Irish Bank in particular, that there is a fundamental need for those responsible for the determination of Accounting Standards (both in Ireland and internationally) and on those responsible for overseeing their implementation in practice, to ensure that the auditing standards in relation to providers of financial services are tightened. The evidence suggests that the lessons from the Bank of Credit and Commerce International case had not been fully absorbed by the accounting profession in Ireland, by 2008.

What is most extraordinary, when one considers what happened in relation to the reporting of Anglo's profits and its Balance Sheet, is that the Financial Regulator subsequently appointed Ernst & Young to report on the corporate governance at INBS, where Fitzpatrick had annually warehoused his borrowings.

12. HOODWINKING ANALYSTS, COMMENTATORS AND QUINN.

Fintan O'Toole, in his book 'Ship of Fools'[58] implies that Sean Quinn's purchase of Contracts for Difference (CFDs) in Anglo was a direct response to Minister Cowan's decision in 2006, following lobbying from stock exchanges, accountancy firms and from Davy stockbrokers, not to close a tax loophole regarding CFDs. This is a theme used by many media commentators. O'Toole provides no evidence to substantiate that claim and it does not appear credible.

Quinn had built a business empire, primarily based on manufacturing. He was no fool, notwithstanding the implication of the self-righteous O'Toole and others who have never created wealth or value in their lives; and clearly he was not in the least bit interested in politics or in lobbying by those involved in financial services. He had no background in finance nor in the use of sophisticated financial instruments. He clearly had a genius for making 'things' and making money in the process. In a very real way, he was the archetypal entrepreneur.

In all that has been said and written about him, it would seem that no commentator has yet captured the man's business philosophy, nor his commitment to his community and his staff. Instead, the emphasis has been on his lack of education, his spoonerisms and mispronunciations, his uncultured, West Cavan accent and his rural background and lifestyle. In addition, he was from the North, but he was not a unionist; that would also have rankled in some sections of Dublin society.

His lack of sophistication clearly indicated to people in elitist groups, that Sean Quinn had no right to succeed. So his success was resented by them. Isn't elitism wonderful in today's Ireland? It is still alive and well in Irish media circles, in Dublin 4 (the mentality rather than the place) and among those with 'old wealth' But the reality was very different, according to his local community. While he had always taken risks, they tended to be risks, over which he had some control and some capacity to minimise the downside effects.

It is understood that Quinn never became involved in serious share dealing until his insurance business began generating huge amounts of cash; there is no evidence that he was involved in share dealing with any surpluses from his other businesses. When he started his insurance business, he was required by Central Bank rules to

[58] 'Ship of Fools', page 203

invest the insurance company's cash in liquid assets and he wanted to invest it to the best possible effect. With no background in finance, it is claimed that he started to read the monthly reports produced by the various Dublin stockbrokers and he began to read the financial pages of the press – a section of the media, which he had completely ignored until then. Effectively, he was self-taught in the theory and practice of investing; but that is a mine-field even for those who have studied it for years.

Furthermore, he was clearly passionate about Ireland, the Irish economy and his local area. Relatively quickly, he developed a reasonably good grasp of several aspects of finance and investment. According to former executives of the Quinn Group, he could tell, without any documentation at hand, which companies were doing well, which ones were generating the best margins, which ones were the fastest growing and which ones had the best and most productive fixed assets. He also examined the ways in which those companies did their business – their business models, in effect, in so far as their published information revealed those models. He had a huge interest in how others did business and was keen to see if he could learn from them.

Unfortunately for him, he had a much better understanding of profit and profitability, than he had of investment theory or practice. It is said by some of those who worked closely with him that, within a short time, he had developed a great liking for the Anglo model and was highly impressed by Anglo's growth and its capacity to out-perform the established banks, in both market and profit terms. He would have been greatly attracted by such achievements; he himself had successfully taken on monopolies and monopolistic practices in cement, glass and insurance, and he admired Anglo's success in taking on and out-performing the 'big banks'.

His aim had always been '*to be the most efficient in the industry*'. He fully believed that a business driven by a focus on efficiency, productivity and community values, would always outperform those based on other models. Fitzpatrick's banking achievements were seen by him as being outstanding, although he hardly knew the man – they would certainly never have been seen as friends.

Whatever about his educational shortcomings, he was good at running businesses; he was liked by his staff; and he was popular with his customers. He ran a good business, doing the simple things right and keeping his customers happy. And he maintained good relationships with those customers, took personal phone calls from them, walked the shop-floor every day and oversaw all new developments.

By and large, he overcame problems as they arose and 'brought people with him' in the process; he was not a dictator, in his dealings with staff or customers. 'Tough but fair', is the most common description of Sean Quinn, the businessman, from those who worked for him, or dealt with him. But by far his biggest mistake was that he believed Anglo's reported profitability and the business model through which it was derived.

He would have known that such achievements were possible – he had done it himself in other sectors. But he was not aware that Anglo was not doing what it claimed to be doing. And obviously he did not have the ability to analyse a bank's performance in such a way as to discover that the promoted model bore very little similarity to the truth. But then neither did the vast majority of other investors – even the professional ones. In reality, those who did not invest in Anglo mostly resisted the temptation because of the negative comments of others who did not believe that such achievements were possible – not because of any great insights born out of expertise in financial analyses.

Sean Quinn, a major player in the construction materials industry in both the Republic and the North, was almost certainly seduced by the results, which Fitzpatrick had produced in Anglo and was induced to invest in Anglo Irish Bank. His view was being formed and confirmed by third parties, such as Quinn customers, Dublin and UK brokers, the Irish media and international investment banks. He started building a stake in what he saw as a very profitable bank, with even more profit potential.

He knew nothing about Fitzpatrick's undisclosed, warehoused loans secured against his shareholding in Anglo; he knew nothing about the false information relating to Anglo's business model; he knew nothing about the over-stated profits; he knew nothing about the overstated deposit base; he knew nothing about the inadequacy of the bad debt provision. He (along with many others, including the Irish financial media) was taken for a ride by Anglo's management and their liberal interpretation of 'the truth' – an interpretation which was supported by Ernest & Young, Dublin stockbrokers and the Department of Finance. If he can be accused of anything (and he can), it is of naiveté.

At the same time, it was likely that he was also taking huge consolation from the fact that former colleagues of Pat O'Neill (i.e. Ned Sullivan and Michael Jacob) were non-executive directors of that bank, though apparently he had already started investing in CFDs before he met O'Neill. He trusted O'Neill and, by extension, he trusted Sullivan and Jacob. All three had dealt with similar rural communities and similar customers to those, whom he had.

When the issue of the tax and cash efficiency of CFDs[59] and their vastly higher potential as an investment instrument, with greater returns, began to be promoted by the accounting firms, Dublin brokers and investment banks, he was probably easily convinced. Squeezing the best returns out of his investments in business, had always been part of his philosophy and he carried that philosophy into his share dealing activities too; for him, CFDs were a logical mechanism for maximising profitability.

He was not alone, in holding that view; by 2006, just over one-third of the total volume of trades on the Irish Stock Exchange was in CFDs.[60] – mainly in three stocks, Anglo, C&C and Elan.

It is likely that the case for Quinn's investing in Anglo through CFDs, in 2006, would have been based on the following aspects:

- The existence of high profile non-executive directors, Ned Sullivan and Michael Jacob, with a background in the co-op sector; Sullivan had succeeded Pat O'Neill (Quinn Group Director and later Chairman) as CEO of Avonmore;
- Twenty years of uninterrupted profit growth;
- Profit before taxation, which had grown from €133M to €685M over five years;
- Total shareholder return in excess of 800% over five years;
- A three-fold increase in dividend over the previous five years;
- The most recent dividend being covered 5.4 times;
- A business model involving secure cash flow lending, backed by a good deposit book;
- Its internationally respected management team; and
- Its substantial growth in both the UK and US markets.

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[59] CFDs were created in the 1990's by a London derivative brokerage firm called Smith New Court which was later bought out by Merrill Lynch.

[60] http://www.businessandfinance.ie/index.jsp?p=161&n=274&a=973

Stellar share price performance and glowing Dublin and international broker reports added further to the investment case. Furthermore, many of the customers of Quinn Group were also customers of Anglo.

From an industrialist's viewpoint, Anglo's business model had challenged the AIB/BoI duopoly and was succeeding. Quinn was probably attracted to companies, which successfully challenged monopolies, as he had done successfully against the cement monopolies of CRH plc in the Republic and Blue Circle (now Lafarge) in Northern Ireland; at that time, he was successfully challenging Ardagh Glass plc's glass-bottle monopoly in Ireland, and was making substantial headway in challenging the established general and health insurance companies, in both the Republic and the North. But he was not the only businessman who was attracted to the Anglo model; many others were too.

Given his own experiences, he was likely to have considered Anglo's proven business model to be the primary attractive feature of the investment case for buying that bank's shares. He would have laid great store by the experience of his own management team in successfully competing with monopoly players, and he would have assumed that Anglo could do the same, with its high profile management team. Additionally, such investment opportunities were very rare in Ireland.

In addition, Quinn was almost certainly reading Dublin brokers' reports, which were fulsome in their praise for Anglo Irish Bank and there was no shortage of them, at that time; the following is one particularly strong example:

<u>Seamus Murphy, Equity Analyst, Merrion Stockbrokers:</u>

"*The share-price performance of Anglo Irish since 2000 has improved by about 500% and can only be described as stellar. The group has delivered superior earnings growth, retains the lowest cost-income ratio and strong asset quality. A number of issues have aided this performance.*

The group has asset quality which remains good, built as it is on precise underwriting standards. In particular, we note that AIBC's lending for investment property lending is on pre-let properties and that its exposure to larger high profile properties is limited. Further most loans are secured on a portfolio of property cash flows.

One of the challenges for David Drumm, chief executive designate, is to ensure continuity in its senior management team. Anglo has benefited from the strong economic growth in Ireland. Anglo's target customer is also generally service based *so the move in Ireland towards a service-based economy provides Anglo with an additional boost.*

A negative real interest rate (interest rates minus the rate of inflation) in Ireland since 2000 has resulted in strong demand for commercial property, even as growth in the economy slowed. As Anglo's model is cash flow-based, asset quality should remain robust as interest rates rise. However, longer term, one of our biggest concerns for Anglo, is how demand evolves if real interest rates rise significantly.

Near term, the recent $600m non-equity capital issue by Anglo Irish intrigues us. The bank should be cash-generative in 2005 and 2006, and therefore, under our estimates, this capital was not required. While the pricing on debt issuance is currently attractive, this funding may also signal management's confidence on near-term earnings prospects.

At this stage of the interest rate cycle, we believe no further price/earning re-rating is likely. However, high double-digit earnings growth should still deliver attractive returns for shareholders.
Judgment: Buy."

It would be difficult to find a more glowing recommendation for any share, from a reputable analyst, who identified a number of strengths of that bank: **"..***asset quality which remains good", "built...on precise underwriting standards", "lending for investment...on pre-let properties", "exposure to larger high profile properties is limited"* and *"most loans are secured on a portfolio of property cash flows".*

Seamus Murphy's conclusions from his analysis on behalf of Merrion Stockbrokers, were echoed by the following upgrade from no less an organisation than Moody's Investors Service:

Moody's Upgrades to A2 / P-1 / C+
Global Credit Research: Rating Action: Anglo Irish Bank Corporation plc.
MOODY'S upgrades to A2 / P-1 / C+ from A3 / P-2 / C The Ratings of Anglo Irish Bank Corporation plc (Republic Of Ireland). London, 29th March 2004.

"Moody's Investors Service upgraded to A2/P-1 from A3/P-2 and to C+ from C the long term, short term and financial strength rating of Anglo Irish Bank Corporation plc (AIBC). The ratings had a positive outlook prior to the upgrade. The upgrade reflects the growth in the bank's franchise plus its continuing solid profitability which is built on strong operating efficiency levels and excellent asset quality. The new ratings have a stable outlook.

The upgrade takes account of the AIBC's on-going success in maintaining and indeed growing its position within the highly competitive Irish and UK commercial property lending markets. Importantly this growth has not been at the expense of asset quality which remains good, built as it is on precise underwriting standards. In particular, we note that AIBC's lending for investment property lending is on pre-let properties and that its exposure to larger high profile properties is limited. Further most loans are secured on a portfolio of property cash flows.

Moody's commented that AIBC does not have a retail branch network, but the bank has continued to strengthen its funding profile. It has grown its share of Irish retail and personal deposits, as well as retail deposits in the Isle of Man, Austria and Geneva. In addition a large proportion of the bank's corporate deposits as "sticky deposits" *as they are from Irish-based credit unions, charities, small and medium sized companies, and professionals. This is another factor underpinning the upgrade.*
Anglo Irish Bank Corporation plc, headquartered in Dublin, Republic of Ireland, had total assets of Euro25.4 billion as of October 2003.

London - Samuel S. Theodore, Managing Director, Financial Institutions Group Moody's Investors Service Ltd.
London - Edward Vincent, Vice-President, Senior Analyst, Financial Institutions Group, Moody's Investors Service Ltd."

But the most glowing report of all was that published in the New Statesman, which commented in the following terms, saying that Anglo was: "...*engaged in providing services that include business lending, treasury and private banking. The bank serves it customers directly through a product specialist and relationship manager. Anglo Irish Bank has a treasury relationship with a worldwide network of around 350 banks. The bank holds a joint venture interest in eight companies and has 17 subsidiaries. Anglo Irish Bank operates in Ireland, the UK, the US, Germany, Portugal, Isle of Man, Jersey, Switzerland and Austria.*"

Factually that was all accurate; but it then went to rank the Bank as follows:

- *Anglo Irish Bank Corporation Limited is currently ranked equal 15 out of a total of 35,419 included in the NS Company Index. This is in* ***the top 0.042 % of all companies****.*
- *Anglo Irish Bank Corporation Limited is currently ranked 2 out of 1218 companies. This is in* ***the top 0.164 % percent of Financial Services companies*** *ranked in the index.*

'Some recommendation' that - from an outstandingly reputable, international source!

Clearly the thousands of Irish and international investors were not the only ones to be fooled by Anglo, its model and its reported results. And not a single financial correspondent in any Irish newspaper dissented; that includes Carswell, Cooper and O'Toole, all of whom have since criticised Quinn. But neither did anyone in any other Irish media outlet or in the investment community.

Those were attractive comments for any investor. In the brokers' comments, the same strengths were identified, and they were taken almost directly from the published accounts. Even Moody's bought into the **"***continuing solid profitability....built on strong operating efficiency levels"* and the **"...***asset quality...remains good..."* image portrayed by Anglo; they also accepted the business model promoted by Fitzpatrick: *"precise underwriting standards", "lending for investment property", "lending on pre-let properties", "...exposure to larger high profile properties is limited"* and, most importantly of all "*most loans are secured on a portfolio of property cash flows".*

DBRS[61] in commenting on Anglo's interim results of March 2007 in its investor research report, wrote as follows: '*Whilst the Bank does generate a degree of fee and commission income stemming from its wealth management and treasury activities, this source of income is unlikely to increase significantly going forward, making the bank vulnerable to a slowdown in the domestic economy. That said, the Bank has diversified its operations into the United Kingdom and the United States, which currently remain good sources of income. However, it is worth noting that in the event of a severe economic downturn, the above three economies are not uncorrelated and thus a degree of contagion risk could exist. <u>We do however take comfort from the diversification in the Bank's loan portfolio, both by industry and client type</u> ....Despite its focus on commercial lending and its strong levels of loan growth, asset quality continued to remain sound with impaired loans as a percentage of customer loans standing at 0.50% for the six months ended 31 March 2007. Loan growth was strong across all geographies: 18% in Ireland; 17% in the United Kingdom and 30% in North America, with total customer loans of EUR59 billion (EUR49 billion at 30 September 2006). <u>Whilst strong loan growth does prompt some caution, we remain satisfied with the Bank's strong underwriting processes</u>*

[61] http://www.dbrs.com/research/211820/european-banking-weekly/1-euro-banking-outlook-update-2-france-s-livret-a-implications-3-seb-q1-4-anglo-irish-interims.pdf

and take comfort from the short-term nature of the Bank's loan.' (Underlining added.)

Probably another 'comfort factor' for investors was McGann's role as Chairman of the bank's Audit Committee, in which he was charged with identifying and scrutinising any unusual transactions. McGann was known as a tough and uncompromising character, who was one of the strongest members of the Anglo board, where he remained a director until it was nationalised.

So some of the best international investment analysts in the world were taken in by the PR spin too – strong underwriting, the short-term nature of loans, the diversified loan portfolio by both industry and client type. And they probably took comfort from McGann's role as Chairman of the Audit Committee too.

The letters column of the Examiner of 27th July 2012 from a Cal Hyland, of Rosscarberry, Co. Cork pointed out that his review of the internet coverage revealed that "...*Oliver Wyman named* (Anglo) *as "the best bank in the world" in a report to coincide with the World Economic Forum in Davos. As late as 11 days before nationalisation in 2009, Merrill Lynch said they were "financially sound" (this after receiving a fee over $11m).*" Clearly, Sean Quinn was not the only 'idiot' (or 'fool' on O'Toole's ship) who thought Anglo was a good investment.

What a scam! It fooled Sean Quinn; and it fooled some of the best analysts in the world too. But it would never have fooled the Irish Times, or its business correspondents, or the Irish Independent and its business correspondents, or the Sunday Business Post, or its correspondents, or any of the other omniscient reporters, who have since tried to destroy Quinn. Or would it?

While these newspapers claim to be independent, the interests of their shareholders and directors tend to shape their coverage. But so too does their dependence on advertising (particularly for the Irish Times, with its high dependence on property advertising, since its purchase of MyHome.ie) at a time when government advertising represents an unhealthy proportion of total advertising in Ireland. They are unlikely to take a strong stance against the government's wishes, on any commercial issues. So much for a so-called 'free press' and/or 'the national interest'. Incestuous relationships were widespread in Irish businesses at that time – and that position still obtains, even if not so overtly now – but they were also widespread in the media.

Both Tony O'Reilly and Denis O'Brien had (and may still have) significant borrowings from Anglo/IBRC; David Went former CEO of IL&P and Alex Burns,[62] former KPMG partner, were directors of the Irish Times; Ernst & Young are auditors to the Irish Times; and (to repeat), both newspapers were and are highly dependent on government advertising. Prior to the recent AGM of IN&M plc, Vincent Browne claimed on his TV show that, during O'Reilly's period of control, there was never any criticism of any of O'Reilly's business interests in the Independent. The power of O'Reilly was demonstrated by the sustained attacks in the Sunday Independent on Denis O'Brien. Clearly, he who pays the piper calls the tune.

Fintan Drury, a former RTE journalist, was an Anglo director for the period 2002 to June 2008. He was Chairman of the Risk & Compliance Committee and a Member of the Nomination & Succession Committee. Drury was appointed Chairman of the RTE Authority, during his tenure at Anglo. His former PR company, Drury Communications, provided PR services to Anglo from the early 1990s until recently, and possibly even to the present day. One would wonder whether RTE journalists were reluctant to criticise Anglo, while Drury was Chairman of the Authority; whether that was the reason or not, there is little evidence of any criticism from that quarter during that period.

Drury had been a close friend of Mr Cowen's since they both attended UCD in the early 80s. Another mutual acquaintance is Eugene McCague, chairman and senior partner at Arthur Cox solicitors. Arthur Cox was also used by Anglo and still is.

However, by investing through CFDs, Quinn was exposing himself in ways, which he probably did not appreciate. It has been described as gambling and, in a way, it was. But almost certainly, Quinn would not have been aware of the risks involved. He was using that mechanism, probably having been introduced to it by his brokers, as a way of increasing his return on the funds he was investing on behalf of the insurance company, and increasing his stake in the country's most successful financial institution and the one with the greatest future potential. And he could do it without major cash investment and without being seen as a major investor in the bank. Quinn might not have been shy or secretive, but he never courted publicity, and investing significantly in Anglo would certainly have attracted more publicity than he would have wanted.

[62] Burns also acted as a consultant to the Irish Times and resigned in 2007

What many in London and some in Dublin knew – and it is assumed that Fitzpatrick and his Board also knew – was that the shares bought to hedge the Quinn CFDs were loaned out, as was normal practice, to hedge the risk of holding an enormous amount of shares in one company. Almost certainly, Quinn would not have been aware of this, though only he can answer that. More than likely, he would have seen himself as having bought the shares and would never have envisaged their being 'lent' for someone else to trade with them. It is unlikely that he would even have understood its implications, had he been aware of it.

While Sean Quinn might not have understood that it could happen, it was inevitable that the size of his CFD transactions would have brought them to the attention of some City traders and more than likely that also brought them to Anglo's attention. The claim that Fitzpatrick and Drumm only became aware of the size of the CFD holding at a meeting with Quinn in a Navan hotel, does not appear credible. Fitzpatrick was regarded as a 'control freak' and it is highly improbable that he did not track the CFD purchases. It is even more unlikely that he would not have tracked Quinn's borrowings and how those funds were being invested. He might not have been aware of the full amount or other details, but he would certainly have been aware of most of it.

Fitzpatrick was also paying significant fees to stockbrokers and investment banks for fund-raising, corporate finance and advisory services. Dealers in stock-broking firms gossip as a way of generating trades; it is highly unlikely that he would not have heard about Quinn's trades. Fitzpatrick would certainly have been aware that Quinn had borrowed money from Anglo to invest in CFDs; to suggest that he would not have monitored those investments is a highly improbable claim. The idea of him blanching in a Navan hotel, when he heard the figure, sounds like a bad joke.

As the share price fell, Fitzpatrick and Anglo's management appear to have talked to the market, seeking a buyer for the Quinn CFD position, who would potentially push up the price through a further 'potential acquisition premium'. Obviously no such buyer emerged and Anglo was forced to lend more and more to Quinn, to support the share price. That is certainly true, as the Anglo response to interrogatories from the Quinn Family's (i.e. Quinn's daughters and his son) legal advisors, as sworn under oath by Richard Woodhouse (dated 21st November 2011) indicates, in the following terms:

Q 14. "*Were these funds not knowingly advanced by Anglo to meet CFD margin calls?*"

A. 14 (ii) "*In March 2008 the first defendant (Anglo) advanced funds to Quinn Finance, which funds were required to meet CFD margin calls*....."

A. 14 (iii) "*From May to July 2008, the first defendant (Anglo) advanced funds to Quinn Finance, which funds were required to meet CFD margin calls*....."

That is just about as clear an acceptance of lending for market manipulation and probably share support as it is possible to find, in any response, or in any forum. As the Quinns' Counsel so aptly put it, Anglo unlawfully tried to prop up its share price by 'shovelling' €2.34 billion in loans to the Quinn Group in an ultimately unsuccessful effort to prop up its share price and avert 'catastrophic' consequences; the bank, he claimed, was engaged in '*very serious illegal activity*' on '*a persistent on-going basis*' involving an '*egregious*' and '*almost deliberate*' breach of laws carrying penalties of €10 million and up to ten years in prison. On that basis, the Quinns' Counsel alleged that the loans provided on guarantees and share pledges were tainted with illegality. That claim appears difficult to dispute, but some court will eventually make that decision.

Nevertheless, it seems clear that these actions by Anglo Irish Bank involved '**share support**' and/or '**market manipulation**' of the highest order and were totally contrary to both Section 60 of the Irish Companies Act and the EU's 'Market Abuse Directive' (2003/6/EC).

But crucially, these 'tainted' acts were perpetrated by Anglo Irish Bank (which is now owned by the State) and not by any borrower. That explains what many people (outside media, Department of Finance and government circles) now see clearly as the 'corrupt conspiracy' designed to create a scapegoat for the collapse of the national finances; success for the Quinn children in their case that the loans were not just tainted, but were entirely illegal, could and probably would open up a 'can of worms' which would have hugely negative implications for the national finances.

Obviously, a negotiated settlement would have been much less risky for the State, but its representatives apparently refused all such offers; and the blame for that will probably be laid at Quinn's door too.

13. SHARE PRICE COLLAPSE LEADS TO MARKET MANIPULATION.

Anglo's share price started to fall in the second half of 2007. By then, there were considerable concerns about both the property market (where the decline had started in 2005) and the financial system in the United States, and an acceptance that the property sector in Ireland was 'over-heating'. Anglo's decline was not unique; the values of other bank shares had also started to wobble.

Moving into 2008, the concerns in the United States grew rapidly; property prices were under pressure and some Government Sponsored Enterprises involved in the funding of housing were being subjected to serious scrutiny. Ultimately that led to the take-over of the two biggest of those agencies, Fanny Mae and Freddie Mac, whose problems had earlier led to the enactment of the Housing and Economic Recovery Act of 2008, by the Federal Housing Finance Agency i.e. effectively their nationalisation, although it was referred to as 'conservatorship'.

By September of that year the entire financial markets were in turmoil. Lehman Brothers had filed for bankruptcy; AIG, one of the world's biggest insurance companies, was rescued by the Federal Reserve Bank, which took ownership of almost 80% of its equity (i.e. quasi-nationalisation); Merrill Lynch had been sold for half of what it was worth a year earlier; the price of other bank shares was in free fall; the financial services sector was matching the property sector in terms of upheaval and panic.

In that situation, Anglo was more exposed than most. Serious questions were being raised about its performance and the strength of its Balance Sheet. The adequacy of its bad debt provisions was being raised frequently. Market insiders began to realise that it was vulnerable and major questions were being raised about its exposure to the property sector. There are no recorded concerns about any CFD investments.

The hedge funds were the first to attack, short-selling Anglo's stock, which led to a 15%, or almost €1 billion, of Anglo's market value being wiped out on St Patrick's Day 2008, as rumours circulated widely about its exposure to bad debts[63] - rather than about any CFD position or insider trading. The source of those rumours has never been traced, but they appear to have been rife in the market. It is disingenuous to attribute that fall to CFD holdings, because all the talk in the market was about bad debts.

[63] http://www.irishtimes.com/newspaper/weekend (4th September 2010)1224278175197.html

It is understood that Cantor Fitzgerald and Credit Suisse were the main CFD providers. Every day, as the share price changed, Quinn would have had to revalue his holding, and pay the difference whenever the price fell, as well as paying the rollover cost of the 'loan'. That additional borrowing would probably have been priced at LIBOR +3% or +4%, or even more; over time, that type of borrowing becomes expensive, unless one has big gains to offset against such investments.

Eventually, as the losses became bigger and bigger, Anglo would have been forced to instruct Quinn either to close out his position at a massive loss, at wherever price he could obtain, or find the money to buy the shares outright. There has, as yet, been no disclosure of evidence as to which was suggested to him. Given their probable concerns about the effect of dumping shares on the market, Anglo is likely to have advised the latter – in fact, its management could hardly afford to have advised the former.

It is also highly likely that the Anglo loan was cheaper than anything, which could have been secured through a broker. Anglo then clearly needed to increase its security from Quinn. It appears as if it did that by taking charges over the shares of some companies, which had nothing whatsoever to do with Anglo shares, or with the CFD liabilities. Whether those new security charges were represented as being in relation to loans for the purpose of buying Anglo's own shares, or re-designated to indicate that they were taken out for other purposes, is presumably part of the tenor of the forthcoming case by the Quinn children against Anglo.

The evidence presented during the 2011 case in Sweden suggests that Anglo took charges over the shares of the companies that owned the Quinn's overseas property portfolio, as the justification for the loans made to meet the margin demands – even though those loans appear to have had no link whatsoever to the property assets and/or the loans may have been forced on Quinn by Anglo. That seems to be part of the basis for Quinn's determination to hold on to those assets. But he did not anticipate that the Irish courts would buy into the Anglo story, nor that Kenny, Noonan and Hayes would go to such lengths to support Anglo.

The Quinn children's case may never come to court, if Anglo's current strategy is successful in diminishing the Quinn family's resources, so that they cannot fight the case. IBRC also has a clear strategy of destroying the reputations of Sean Quinn and his family, so that, even if they could get the funds to fight such a case (which they might, given the support they have in some areas of the Country), they would now have little credibility in any Irish court – their reputations have been destroyed. In addition, Dukes and Aynsley also appear to have a strategy of making all members of the Quinn family bankrupt, so that they will not be in a position to fight a case. Is that an ethical or honourable approach?

It will satisfy Quinn's critics and pander to the anti-investor mood in the Country, but it will also be an indictment of Ireland's respect for the human rights of individuals who were coerced into signing documents, which some of them allegedly neither read nor understood, at the behest of their father. There may also be constitutional issues around the human right to defend one's property.

Whatever about the security implications, such lending would, in reality, have meant that, from Anglo's point of view, the financing of these transactions would have made absolute sense, in that it would avoid a collapse of the share price, even if, from an ethical perspective, any such support might have been highly dubious.[64]

But that led to another, bigger issue for Anglo: there could be no doubt that these loans and the related 'Maple 10 transaction, clearly meant that the bank was lending to support its own share price. In effect, it was creating a false market for shares quoted on the Dublin and London Stock Exchanges. Why Dukes is so keen to deny that reality, effectively protecting Fitzpatrick and others, is a conundrum which has not yet been solved. It might simply be that Fitzpatrick holds some 'explosive ace', or that there is a need to protect the clients of some organisation (like Anglo).

Any such lending by Fitzpatrick, or with his knowledge or approval, in order to avoid the cashing of the CFDs, would obviously have protected Fitzpatrick's own loans, which were underwritten by his Anglo shareholding. The same would apply to the shares of his fellow directors and the share options of the senior management. However one looks at it, this appears very like 'share support' and 'market manipulation' of the most massive and most blatant kind.

There was, therefore, both an obvious conflict of interest and a clear fraud on the market. From there on, Anglo was likely to have been effectively managing the CFD position and funding all margin calls to support its own share price - a variation of the actions which many believe were previously adopted by the bank in relation to the 15% stake of the Clegg family, in the early 1990s.

Furthermore, if as alleged, Fitzpatrick instructed, or requested (it is not clear which – if either) Quinn not to cash the CFDs, he would have been violating his 'duty of care'

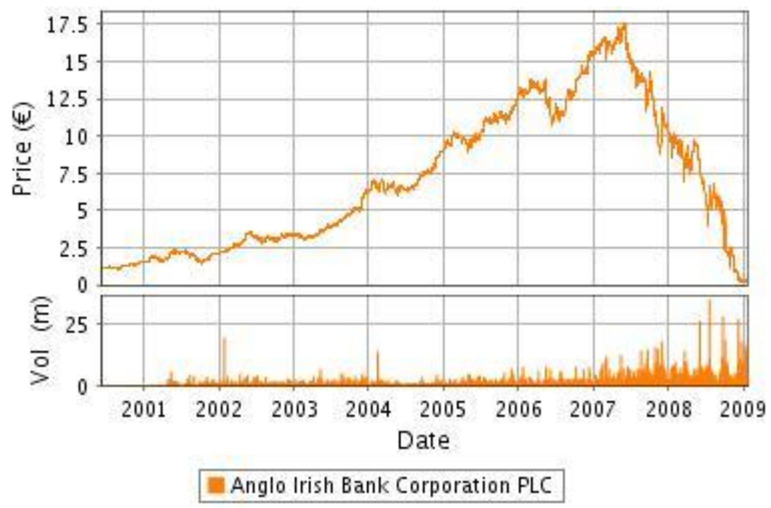
[64] See Ken Foxe journalist, kenfoxe.com

to other shareholders, as well as to Quinn. There is a very high probability that their 'duty of care' was abandoned by Anglo and Fitzpatrick, at some point during this process, whether knowingly or unwittingly.

As confirmation of the sequence of events at that time, it is reported that at one meeting, Pat Neary (then the Financial Regulator) told a member of the Central Bank's Board that Fitzpatrick was talking too much and too openly about the Quinn stake. This member was asked to tell him to *'shut his mouth'*. It was alleged that if 'it' got out "*there could be run on the system*". According to that source "*a member of the Central Bank Board had overheard ie* (Fitzpatrick) *at some party spouting on about Quinn and brought it back into the Central Bank's board room*".[65]

In that entire episode, there are so many unanswered questions, so many unclear issues, so many facts which are difficult to reconcile and probably so many secrets which have not yet been publicly uncovered. Did Fitzpatrick also talk to some of his former Directors, who would have had relevant information? Did any of his fellow directors talk to any of the Quinn directors, with whom they were likely to have had good contacts? Was there a whispering campaign against Sean Quinn? We will probably never know the truth, but we do know the outcome.

The Anglo share price started to slide from late 2007 and that slide accelerated throughout 2008: €17.53 in June 2007; €13.44 in August; €11.35 in October (35% in four months); €9.53 by January 2008; €5.77 by July; €0.92 by November; and €0.19 by December. The overall trend between 2001 and 2009 is demonstrated graphically, as follows:



[65] http://www.brucearnold.ie/files/shabby-state-extended.html

From 2001 until mid-2007, there had been a steady upward movement, apart from the normal fluctuations, which occur in all stock market values. Thereafter, it was rapidly downhill.

As the share price fell, Quinn was required to meet the 'margin calls' on his holding: a 35% decrease over the four months from June 2007; another 33% by the following July; and an ongoing drip-feed of need for money to cover the margin calls, until the bank's nationalisation. And Sean Quinn appears to have had no control over, nor input into, nor involvement in, any of those changes, despite what some people would want the citizens of Ireland to believe. Anglo was taking the decisions.

In the months, from mid-November 2007, Anglo was advancing very considerable sums of money to Quinn, on a regular basis. Internally at the bank, these were described as 'working capital'; in reality, they were nothing of the kind and the bank's senior staff would have known that. To make such a claim is laughable. The loans were being advanced to make sure that Quinn had enough cash to cover the margin calls on his Anglo CFDs – and those calls had been triggered by the falling share price.[66] It was as plain and as simple as that.

Concerned Irish Citizens, a group committed to the economic development of the border region (though Dukes and his media allies continue to treat them as a pro-Quinn lobby group - that seems somewhat unfair to them, given their role and their broader activities), has consistently argued that Sean Quinn "*invested in good faith*" in an Irish bank, which was regulated by the Financial Regulator and supervised by the Government, through its agencies. They claim that: "*He did nothing illegal or improper. He has been lacerated for the last two years for reckless gambling etc. but it now seems apparent from recent High Court actions that it was, in fact, Anglo which was gambling with the Quinn Group and the Quinn properties as they "shovelled" enormous amounts of money at Quinn and were in effect managing the Quinn account*"[67]. Leaving aside any emotive element in their comment (and it does include considerable emotion), it probably contains more than a grain of truth too.

The nationalisation of Anglo Irish Bank completely wiped out Quinn's CFD investment; that led indirectly to the administration of Quinn Insurance and eventually destroyed the Quinn Group - a cluster of viable, successful and expanding businesses, in what was once one of the most deprived parts of Ireland. Under the

[66] *Anglo Republic*, Simon Carswell, Penguin Ireland, page 128
[67] http://www.leitrimobserver.ie/news/business/take-over-of-the-quinn-group-one-year-on-1-3721605

new regime, staff dissatisfaction appears to have become rampant there, customers have left and are unlikely to return (and more would have left were it not for 'cartel' like agreements in some areas of activity and price cutting in others), and the businesses are now losing value by the week. Those who are prepared to talk about it claim that is now being run largely by security personnel and blow-ins, who intimidate and bully the longer serving staff, with no apparent constraints from the management team or the new 'owners'.

It is impossible to interpret lending to meet the margin calls, which were entirely funded by Anglo, as anything other than a share support/market manipulation scheme. Given the size of Quinn's CFD holding, on which Anglo paid the margin calls to the CFD issuers, Anglo was becoming heavily exposed on its own shares.

'Concerned Irish Citizens' has allegedly claimed publicly that Anglo rang Quinn Group head office to made it clear that, under no circumstances, were the shares to be put on the market and that Anglo would produce a scheme whereby the margin calls could be met and the shares retained[68].

Whatever case Anglo might have been in a position to make, if the money had been given directly to Quinn, evaporates entirely when it is accepted that Anglo remitted some of the money directly to the CFD brokers. It is believed that Anglo ultimately managed the disposal of part of the CFD position through a London based investment bank. This was also clearly and unambiguously share-support.

Those loans would have breached Anglo's internal guidelines and would have required Board approval. It is highly likely that any such approval would have occurred after draw-down, due to the speed at which 'cash was being shovelled'. In view of the large shareholdings of individual Anglo directors, such large advances would have involved major 'conflict of interest' issues. Minutes of credit committee meetings and Board meetings, in addition to records of decisions and those in attendance at the meetings, should also have recorded how the Board dealt with those conflicts of interest.

Any loans for the purpose of funding 'margin calls' would obviously have breached lending guidelines too; therefore an 'exception report' would have had to be submitted to the Board. A standard risk assessment element of any audit by the

[68] They have produced no evidence to support their claim, but they have reiterated it several times; in the production of this report no such evidence was uncovered.

Financial Regulator and/or by Ernst & Young would, or should, have involved a review of such papers. But did that review happen and if it did, what was the result?

Every bank should have carefully drafted procedures for the operation of its Credit Committee and equally clear processes for the ratification of the Credit Committee's recommendations by the Board, for any loans requiring Board approval. Normally those would be very large ones, or ones for particular purposes, which might be either politically or fiscally sensitive, or ones which would have obvious potential to go wrong, or for any other pre-agreed reason.

Until 2004, all loans required 'noting' by a non-executive director, before being drawn down by a borrower. In 2004, Pat Whelan[69] decided to establish a threshold of €25 million for loans, which had to be approved by Board members. Individually, Quinn's margin calls might not have breached that threshold, but cumulatively they clearly did. So why did the bank's systems not pick that up, why were the directors not informed, if they were not informed, and if they were informed, why did they do nothing about it? That begs a fundamental question: who was running Anglo?

Subsequently, Whelan decided that only loans over a certain percentage of a client's existing borrowings had to go for 'noting'. As the pace of lending growth soared between 2005 and 2007, the Credit Committee was increasingly being bypassed, according to many insiders. In practice, lenders orchestrated so-called 'corridor credits', whereby loans were informally approved outside the Credit Committee to get deals done before being formally signed off later.[70]

One might reasonably expect that any bank auditor would have an audit programme designed to assess whether the bank was complying with its documented loan approval procedures and processes, or not. There is no evidence as to whether the Anglo audit programme did that. It is accepted, but not necessarily acceptable, that auditors are not required to value the loan portfolio. But if their programme meant that the auditor was not in a position to assess whether certain loans violated the bank's credit systems, or worse again, broke the law, one would have to question whether that audit programme was adequate and whether the auditor/audit practice involved should be auditing the affairs of any entity governed by statutory rules.

[69] Whelan was head of group risk at Anglo before joining the Executive Board in 2006 and heading up its Irish operations.
[70] 'Anglo Republic': Simon Carswell, Penguin Ireland (pages 50-52).

One would expect that Ernst & Young's audit and working papers would have contained evidence as to whether the agreed processes were being observed. That, in turn, should have given them a basis for identifying any 'share support' or 'market manipulation' loans, through a review of the credit approval processes being operated within Anglo Irish Bank. If they did not, one would have to wonder why not. Good, in-depth auditing of all the bank's governance processes and practices should have been an integral part of the statutory audit undertaken by the auditor appointed by, or on behalf of, the shareholders, at the previous annual General Meeting.

In Anglo's case, it appears that the 'sector loan breakdown' returns[71] submitted to the Central Bank were also distorted; borrowers were not categorised according to the purpose of borrowing e.g. for a manufacturer obtaining a loan to develop property, the loan was recorded as a loan to fund manufacturing (which according to their model as described to shareholders, they did not do) and not as a property development loan, in the quarterly returns to the Central Bank. Nyberg commented adversely on such distortion; but crucially he accepted that it existed. Others should have identified that first.

The burden of proof for professional negligence in the High Court is understood not to be the paper trail (such as 'box ticking' and notes to file), but rather what a peer would expect. Hence, a legal opinion combined with an 'approval' from the Financial Regulator (more likely, a silent response to correspondence) and the engagement of an international investment bank to effect the transfer of the CFDs to the Quinn family and to the Maple 10, does not in any way protect Anglo from the 'share support' or 'market manipulation' charges.

Clearly some of those actions were designed to create a paper trail, but the underlying action was not what a peer would have expected. The market did not decide the transfer price; that was done by Anglo via the investment bank and was clearly a share price support operation. Finally, the Stock Exchanges were not advised. Both Fitzpatrick and Ernst and Young have very serious questions to answer in these respects; to date, neither has answered such questions satisfactorily.

[71] Basis of Central Bank Regulatory Control and Guide to Audit Frequency. Also used by CSO.

A letter dated 25th July 2008, which was reported as having been seen by the *Irish Times,* indicated that the former Prudential Director in the Financial Regulator's office, Con Horan, signed off on a €169m loan from Anglo Irish Bank to the Quinn Group to fund the purchase of the bank's own shares. The paper says the letter from Horan to Anglo's Chief Finance Officer at the time, Matt Moran, shows Horan telling Anglo Irish to adjust its capital levels to take account of the €169m loan. Any such correspondence would suggest that such an order represented an attempt by the Regulator to have Anglo refinance the debt with another lender; but it now appears that the order was never obeyed. Whether it was followed up by the Regulator's Office is not at all clear.

Under Irish Company Law, a business is not allowed to lend to an individual to facilitate him/her in buying shares in that same company, although certain exceptions are possible; there is no evidence that any such exception would have applied in this case.

Horan stepped down as Prudential Director at the Financial Regulator's office, when the Central Bank was restructured in the aftermath of the banking crisis. He took over the role of special adviser to the new Financial Regulator, Matthew Elderfield, in December 2009.

There are several clear similarities between the actions of Guinness directors, during the Distillers takeover, and Anglo's share price support schemes. For example, it is already known, from the accounts of Browne and McAteer, that pressure was exerted on Anglo executives to purchase shares to counter the price fall. Did the Maple 10, in addition to the loans being non-recourse plus a call option over the shares in favour of Anglo, receive inducements to participate in the share support or market manipulation scheme?

The highly unusual approval of a €15 million loan by Anglo Irish Bank to Belfast property developer, Paddy Kearney, to buy subordinated bonds in the bank, was all the more shocking in that it was sanctioned in February 2009 after the nationalisation of the bank and while Alan Dukes was a 'public interest' director (he had been appointed in November 2008).

If Dukes knew about that transaction, why did he not resign? It should have been a resigning matter. If he did not know, why did he not know? He should have known, if he was doing his job properly. In either case, Dukes should have resigned.

Why did the Government, or the Regulatory Authorities, or the Department of Finance not insist that he resigned? Could it be that there is still an ‘old boys network in operation, in Dublin’s financial and public service sectors?

That loan deal points to a pattern of support shown by the bank under the ‘relationship banking’ model, which ultimately destroyed it. The loan deal with Kearney showed that the lender was willing to lend to a favoured client for ‘a punt’ on the bank’s own subordinated bonds. The proposal is said to have been put together by the bank as a favoured loan and a *quid pro quo* for the support Kearney had shown the bank by his willingness to participate in the Maple 10 transaction. The developer had helped out the bank, in the previous July, by joining (unbeknownst to him) nine other trusted clients in agreeing to buy a 10% shareholding, through acquiring part of Quinn’s Contracts for Difference (CFD) position in Anglo[72].

Hence, it would seem that an inducement was made to at least one of the Maple 10, in return for supporting the share price, a similar tactic to that used by Guinness in the Distillers takeover. Did Fitzpatrick use the INBS loan warehousing scheme to disguise Anglo’s share price support activities? Were indemnities granted to anyone, or were overseas banks engaged in this process? Most importantly of all, will these questions ever be asked and answered in a court of law? And again, what was Dukes’ involvement in this process?

At that time, Anglo was making regular complaints to the Financial Regulator about ‘rumour-mongering’ by stockbrokers. The bank contacted those who were advising clients to bet against the bank, to inform them that their conversations were being recorded. Was that legal? Anglo also contacted international stockbrokers to reassure them that the bank was not running out of cash, in a so-called ‘closed period’[73]. Did this amount to indirect share price support? Whether it did or not, it clearly indicates the lengths to which Anglo was prepared to go, in order to support its share price. A preliminary view would suggest that it was at least as bad as anything, which had occurred in the Guinness case.

On 16th September 2012, the Sunday Independent reported that “*Anglo Irish Bank, now the Irish Bank Resolution Corporation (IBRC), offered a financial "incentive" to a*

[72] Irish Times, Cantillon column 21/12/12
[73] Anglo Republic, Simon Carswell, Penguin Ireland, pages 122-123

well-known property developer in Northern Ireland to wind up one of his companies, according to court documents seen by the Sunday Independent.

The payment was offered in February 2009 to Peter Curistan, one of the key players behind the Odyssey development in Belfast's docks............During...court proceedings, a former director of lending with Anglo confirmed that the bank had offered a payment to Curistan to wind up Sheridan Millennium -- but did not confirm the amount offered."

In the High Court, Justice Charleton queried why it was necessary to pay Curistan anything to wind up Sheridan Millennium.

"I still can't understand why you would actually pay money, three-quarters of a million pounds, that's nearly €1m, to Mr Curistan for his back pocket. I appreciate it is less than the €3m you would lend to him for the purpose of dealing with his creditors so that Sheridan Millennium would be able to carry on for a time until you could get an orderly takeover. Windups cause loss to creditors."

Was that offer legal? It certainly appears to have been unusual, if not unethical and possibly illegal, since it would amount to depriving creditors of their entitlement. More importantly, was Dukes aware of it? Such an offer raises the sort of questions which might well justify resignation on the part of a Director. But Dukes did not resign. One would have to wonder, why not?

In November 2007, at a time of negative press comment about the bank and volatility in its share price, four executive directors bought shares with loans from Anglo, as a demonstration of confidence in the institution.

Anglo has since claimed, in a complaint to a Boston court regarding David Drumm's bankruptcy proceedings, that those loans to Drumm, to the head of Anglo's Irish business, Pat Whelan, to the head of the UK business, Declan Quilligan, and to the head of US business, Tony Campbell, were provided without contemporaneous Credit Committee approval or loan documentation. All those loans were extended on a full recourse basis, meaning that the directors were 'on the hook' personally for repayment of the borrowings.

The bank has alleged that Drumm prevented these loans from being documented when they were made, by telling Anglo staff that he wanted to "regularise" the documentation of the new loans and all pre-existing loans of the directors. It claims that Drumm did this so he could wait to see how the share price would perform: if

Anglo's share price fell, Drumm had 'hatched a plan' to document all new directors' loans as non-recourse "*so that he and the other directors would not sustain personal losses*", Anglo/IBRC has alleged. How the new management can be certain of this is not at all clear.

Anglo/IBRC also says that Drumm repeatedly evaded requests to complete the loan documentation, telling a bank employee, who was reporting to him, to put the loan documentation process 'on ice' or 'park' it.

Again, this appears to be further evidence that a share price support scheme was in operation in Anglo. Is that why Alan Dukes and his staff are so aggressive in dealing with Sean Quinn? Are they worried that his family has a valid claim against the bank and are they trying to deny him and his family their rights to a fair hearing on the issues involved? Or are they even more concerned about the implications of a Quinn win in a court of law and the possible implications for the national exchequer?

The former Head of Lending at Anglo, Tom Browne, has claimed that various loans were issued to directors and officers within the bank, with the objective of artificially enhancing the bank's share price. Why would he make such a claim, knowing that it involved illegality, if it was not true?

Browne (originally head of its wealth management division) was appointed to the Board of Anglo Irish Bank in January 2002, at the same time as Gary McGann, was appointed a non-executive director. Browne was subsequently appointed head of Anglo's Irish lending division. Anglo and Browne are set to exchange crucial documents and witness statements ahead of his court hearing. Granting access to material generated by managers immediately below the level of Board of Directors, Mr Justice Kelly told Anglo's lawyers that the Board of Anglo did not have material '*magiced up*' to it i.e. that someone was responsible for the provision of such information..

Following his resignation from Anglo, having failed to succeed Fitzpatrick as CEO, Browne established a financial consultancy business. In addition, Browne and a former senior AIB manager have been engaged in property development in Galway, including the renting of offices to the Department of Agriculture and the Revenue Commissioners. These investments seem to mirror many of the activities of Anglo.

Anglo has since appointed KPMG as receiver over UK property owned by Browne, but not over his property in Ireland.

In April 2011, the High Court ordered Anglo to disclose minutes of Board and senior management meetings about the deterioration of its share price between 2007 and 2009. Tom Browne (as the bank's head of lending and a director, he would presumably have known what data were available) secured the discovery orders at the Commercial Court, as part of his defence to a case taken by the bank to recover €50 million in unpaid loans. As a result of that same court order, Mr. Browne will also be given access to information on Anglo's loans to Sean Quinn and his family. The bank had agreed to release some of the documents, subject to confidentiality obligations, but Mr Justice Peter Kelly said that Browne was entitled to more information.

It is also interesting that Browne's counsel has claimed that information has become unavailable because some people were suggesting that, since they have loans with Anglo, they are fearful of being seen to assist Mr. Browne, as they are concerned that any such assistance could prejudice them in future claims. But some of them might have other concerns too.

The court also ruled that Tom Browne was entitled to ask questions about Anglo's loans to directors and about the reasons for the movement of €7.3 billion in loans between Anglo and Irish Life and Permanent. The judge said that this information could be elicited through correspondence or 'interrogatories', and would not require an order for discovery. Tom Browne also alleges that Anglo engaged in wrongful and unlawful conduct, which undermined the bank's stability, and that it failed to inform him of these activities. He claims that he would not have executed his share options or borrowed money to buy shares in 2007, if he had been made aware of the full situation and would not therefore have suffered losses when the share price collapsed. He also claims that the bank engaged in deceit and fraudulent misrepresentation to induce him to enter into loan agreements, which he claims are now void and invalid, and should be set aside.

Justice Peter Kelly also ruled that Mr. Browne was entitled to documents revealing the 'full picture', concerning his own alleged involvement in the sanctioning of loans to Sean Quinn (although it seems that the loans were technically to the Quinn Group, which was wholly owned by Quinn's children and not by him). Would Sean Quinn not be entitled to that same information and much more, given that he is alleging that the bank involved him in its share support and market manipulation schemes, almost certainly unknowingly and possibly unwillingly?

Browne’s departure appears to have prompted a series of moves by other Anglo staff. Niall Tuite joined Warren Private in May 2012 as a director. His role there includes helping clients with large-scale debts to negotiate with their lenders. As head of credit risk at Anglo, between 2007 and 2009, Tuite had a central role in loan approval; from 2004 to 2007 he was Anglo's Lending Director. In 2009, he was put in charge of Anglo's liaison with NAMA.

During an Oireachtas debate in October last, Sinn Fein’s Pearse Doherty singled out Mr Tuite's NAMA role, in the following terms:

"*What he does is completely perverse... he makes recommendations to NAMA on loans he approved as chairperson of the credit risk committee before 2008. The idea that somebody at the centre of making these decisions is heading up the NAMA end of Anglo Irish Bank is wrong*."

Michael O’Sullivan, its Lending Director for Ireland, has recently stepped down from that position. His role at Anglo included managing the loans to Sean Quinn and his family. Others, in addition to Niall Tuite, to depart in the recent past include John Bowe and Eugene Murray.

In the latest hearing, reference was made to a September 2007 meeting of Anglo directors, in Heritage House, at which a document, outlining the Quinn CFD position, was circulated; that was previously set out in Carswell’s book *Anglo Republic*. Interestingly, Anglo is claiming legal privilege over that document. Why should they do that, in the current circumstances? Such an action would seem to raise serious issues about the role being played by the new management of IBRC in failing to disclose information, to those who should, in equity, have a right to it.

If something wrong was done in the past, it should not be covered up by the new management. But some of the events about which Anglo is now so secretive, occurred after Alan Dukes was appointed a Director. Where is the integrity in those actions? Why is it being done, or what are they trying to hide?

Equally, Anglo had a professional relationship with Sean Quinn and had a duty of care to him. That duty also extended to the ultimate shareholders of the Group and Anglo was duty-bound not to deceive them about key facts. Instead of avoiding the dissemination of information, it is now time for Dukes and Aynsley to come clean and let justice be done.

As indicated earlier, the Financial Services Authority in Britain asserted, in March 2012, in an action involving Bank of Scotland, that a 'MANDATORY COVENANT' existed between a bank and its customers. The consequences of that 'mandatory covenant, is that all banks and all their senior management MUST behave 'in a fit and proper manner', at all times, in relation to their customers. As set out in that assertion, failure to behave in a fit and proper manner' would vitiate the relevant contract(s).

If that assertion is deemed valid, and most bank customers and fair-minded people would believe that it should be, it is likely to pose major problems for Anglo not just in its pursuit of Quinn and its attempts to ensure that neither he nor his family will be in a position to pursue such a case in court, but also in relation to a range of other borrowers, possibly including some of its former executive directors. Any accepted legal validity of such an implied covenant would, one presumes, mean that there was no legal contract at this point and that the bank's right to repayment would be null and void.

In any event, those who were guilty of fraudulent behaviour should not be shielded in an attempt to put the blame on some other poor scapegoat. We are now learning that in the higher echelons of some Irish financial institutions, integrity may still be a very valuable commodity, but it also appears to be a very scarce one.

Questions about any form of insider trading belong, in a regulatory sense, to IFSRA and not to the Office of the Director for Corporate Enforcement (ODCE). But IFSRA was never intended to function as a protection for people like the Anglo Irish Bank shareholders. If the Government had intended it for any such purpose, it would have made provision for shareholders to bring a class action themselves and, just as important, it would have given them a specific right to cite breaches of statutory duty as a ground for a civil claim by them.

These issues have not yet been finally examined in a court of law, but Justice Peter Charleton in his landmark judgement on whether the Quinn children could plead their case that the loans from Anglo were in breach of the Irish Companies Act (Section 60) and the EU's Market Abuse Directive (2003/6/EC), made the following series of comments (selected from a 38-page written decision):

(Para A2. re. illegality and chicanery): *"The illegality claimed in this litigation is the wholesale manipulation of the price of Anglo Irish Bank Corporation Limited shares to the detriment of the plaintiffs; a scheme in which they say they did not participate and of which they were innocent even of any knowledge*";

(Para. A3 re. damage done to the Irish economy*)*: *"The Irish Bank Resolution Corporation Limited, the first defendant herein, was formerly called Anglo Irish Bank Corporation Limited. Under that name it caused incalculable damage to the Irish economy";*

(Para. D1 re. share loans are 'horrific'): *"If a series of transactions can be called horrific, that epithet would apply to the allegations made as plaintiffs by the Quinns against Anglo and against Sean Quinn."*

(Para. D4 re. Anglo's lack of contact with the Quinn children): *"Anglo never interacted with the Quinns in the sense of providing information or legal advice."*

(Para. D5 re. Anglo's motivation): *"It is pleaded that Anglo executives were concerned that negative publicity would further undermine its share price. Therefore, a further €200 million was to be advanced by Anglo, through various means, in order to avoid disclosure of this repugnant scenario."* [What does that imply about 'share support' and 'market manipulation'?]

(Para. D6 re. Quinn children were unaware of share loans): *"In distortion of the market, and in furtherance of the previously pleaded agreement to fund an interest in Anglo shares with the money of Anglo, in July 2008 the contracts for difference were translated into shares and split three ways.......None of the plaintiffs were even aware that this vast number of shares had been purchased in their name and, it is pleaded, they were never consulted about it."*

(Para. D9 re. attempt to get retrospective legal advice): *"It is claimed that by reason of the matters pleaded, the personal guarantees and the share pledges...are unenforceable as the suit of Anglo and of no legal effect. This is a plea of illegality made in a positive sense against the enforcement of share mortgages and loan guarantees with a view to ensuring that the second-named defendant, as receiver of those shares, is disempowered. The illegality pleaded is claimed not to affect the position of the plaintiffs because, it is alleged, they took no active role in any matter relating to Anglo lending and were dictated to as to the transactions, guarantees, purchases and share charges, receiving no independent or financial advice and in circumstances where Anglo never sought a single meeting with any of the Quinns, nor discussed any of the matter as pleaded with them. In 2009 it is alleged that*

Anglo instructed its solicitors to seek out the Quinns and Sean Quinn and to provide for them independent legal advice. The solicitor contacted in that regard was from another firm and he refused instructions on the basis that providing independent legal advice in relation to transactions that had long since taken place would be inappropriate."

(Para. E5 re. Quinns innocently purchased shares as price was being skewed): *"...the purpose of the enforcement and the effect of the enforcement through the share charge will be, on the case pleaded by the Quinns, to return to Anglo several hundreds of million Euros that was expended by it on market distortion which allegedly deceived the Quinn purchasers as to the value of the company. It is part of the case of the plaintiffs that monies innocently expended by the Quinns in purchasing Anglo shares were expended at a value which was propped up by market distortion. Had the skewing of the share price not occurred, any legitimate decision to purchase Anglo shares would have been at a much lesser expenditure."*

(Para. G3 re. Market Abuse Directive 2003/6/EC): "*According to the recitals to the directive, the purpose of the measure was to introduce integrity into the market in financial instruments, to protect market integrity in a harmonised way, to outlaw insider dealing and market manipulation, to avoid loopholes, to introduce transparency into the market, to ensure prompt disclosure of information, to introduce a single competent authority in Member States, to introduce a common minimum set of effective tools and powers for the competent authority and to have sufficiently dissuasive and proportionate sanctions."*

(Para. G6 re definition of market manipulation): *"The concept of market abuse is defined as either insider dealing or market manipulation. The latter is defined in the following way:*

(a) transactions or orders to trade –

(i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

(ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that the person's reasons for so doing are legitimate and the transactions or orders to trade, as the case may be, conform to accepted market practices on the regulated market concerned,

(b) *transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, or*

(c) *dissemination of information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.*

(Para. G7 follows directly from the foregoing definition, to confirm breach of regulations on the part of Anglo): "*What is beyond doubt is that false and misleading information signals were given to the marketplace as to the value of Anglo shares. Under Article 7 (*2005 Irish Regulations which implemented the EU 2003/6/EC Market Abuse Directive*) the Central Bank has responsibility to ensure that market operators structure their business so as to prevent and detect market manipulation and report regularly on their arrangements in that regard......The Central Bank is authorised to impose a penalty under Article 41 which can include a reprimand in private or in public, a penalty not exceeding €2.5 million and a disqualification order. On summary conviction those guilty of offences under the regulations may be imprisoned for 12 months, or fined €5,000 or both."*

(Para. G8 follows directly from the foregoing, to expand on the more extensive penalties available): *"Under the Act of 2005 (investment Funds Companies and Miscellaneous Provisions Act 2005), the penalties are more serious. Section 32 creates an offence carrying a 10 year penalty of imprisonment or a fine of €10,000,000 or both. This is dissuasive, no doubt, but in the context of all that has allegedly happened in this case, the contrast with the funds involved under the guarantees and share mortgages is marked."*

(Para. G10 re. abuses of market regulations should be open to challenge): *"...this Court balks at enforcing a contract, or depriving a plaintiff of the opportunity to challenge guarantees and charges based upon a contract, which has as its entire objective the doing of the precise action which the market abuse legislation outlaws. The legislation is plainly designed for the protection of the public generally."*

(Para. H1 re. prohibition on a company lending money for the purchase of its own shares, under section 60 of the Companies Act 1963): *"A fundamental rule of company law is that a company should not buy its own shares. In doing so it undermines the capital upon which remedies against it will be based. If any illustration of this as a danger to corporate regulation were required, this case may, if proved, provide an example."*

(Para. H5 re. Anglo's persistence in wrong-doing through the appointment of a share receiver): *"It should be remembered that Anglo is the perpetrator, together with Sean Quinn, of the wrong alleged by the Quinns. Anglo do not now seek to avoid a share sale, but rather to compound an alleged wrong by continuing and following through on the appointment of a share receiver in respect of debts incurred through illegality."*

The overall tenor of Mr. Justice Charleton's conclusions is that the Quinn children (Quinn Family) have a *prima facie* case, which is being ignored by Anglo and Dukes, who, according to the Judge, appear to be insisting on compounding a wrong by the appointment of a share receiver.

If Judge Charleton was right and Dukes, Aynsley and Woodhouse are now 'compounding a wrong', surely they should now resign, or be forced to resign. If he was right, they are now wilfully wasting public funds and destroying a formerly successful family and the businesses which they once owned, in the process; they are also putting innocent people in jail. That is a disgrace.

But Justice Charleton's main conclusion is 'conditional' i.e. that the Quinn children were wronged <u>IF</u> the monies were lent for share support or any other form of market manipulation. As indicated above, the responses (under oath) from Richard Woodhouse to the interrogatories (Requests for information) dated 21st November 2011 appear to answer that question conclusively. The following is an extract from his responses (as already quoted above – Chapter 12):

Q 14: *"Were these funds not knowingly advanced by Anglo to meet CFD margin calls?"*
A 14(ii): *"In March 2008 the first defendant (Anglo) advanced funds to Quinn Finance which funds were required to meet CFD margin calls..."*
A 14(iii): "*From May 2008 to July 2008 the first defendant (Anglo) advanced funds to Quinn Finance which funds were required to meet CFD margin calls..."*

To use an expression from mathematical logic, 'Q.E.D.' (*quod erat demonstrandum* – literally 'that which was to be demonstrated').

Woodhouse's responses demonstrate clearly that Anglo Irish Bank lent billions of Euro to Sean Quinn's family, through their father and without their knowledge, for the express purpose of supporting the bank's share price i.e. expressly for the purpose of market manipulation, which is illegal and punishable by very heavy penalties. Furthermore, they appear to demonstrate conclusively that by lending illegally, Anglo Irish Bank and/or its successor Irish Bank Resolution Corporation has no right to repayment of those monies and no legal right to activate the share pledges by seizing the assets of Quinn Group Ltd. That seems incontrovertible.

Furthermore, it is now becoming clear that Anglo, having lent the money for one purpose, then sought retrospective security over assets, which had no connection with those loans and that those guarantees were signed without legal advice, without being read by the signatories and without their having any knowledge of the content. Worse again, when Anglo requested the family's solicitor to provide such advice *post hoc* and he refused, they went ahead with attempts to gain possession of those properties and instigated a series of legal actions designed to have people imprisoned for non-cooperation.

....

One interesting aside to the Anglo story is that, while over the past 30 years, Dermot Desmond was according to media reports, a significant player in most quoted companies, when their shares became volatile (e.g. DCC/Fyffes, Barlo, Baltimore, Jurys Doyle Hotels, Greencore, Datalex, Golden Vale, BoI, AIB, Independent News & Media etc.) he does not appear to have become involved in Anglo. That seems strange, given that NCB had started out as an inter-bank money broker and Desmond would have had an insight into Anglo's funding mix and would have had considerable interaction with Tiarnan O Mahoney and Fitzpatrick over many years. But possibly, it is not so strange; Desmond might have known too much about Anglo's activities and decided to avoid it.

As a potential conduit for any relationships, contacts or informed opinion on Anglo's CFD problem, Dr. Michael Walsh, Desmond's fellow director for over 30 years, was Chairman of INBS from 2001 to 2011. Hence there is a possibility that Fitzpatrick might have contacted Desmond for assistance in resolving the CFD issue; but we cannot be sure. At present, there is no evidence of any such contact.

The only reference to Desmond's associates was on 13th December 2010, when Ivan Yates, on Newstalk, asked for the opinion of JP McManus on the possibility of 'burning the bondholders' of the banks. McManus said he could not possibly respond, as he might have a position in Irish bank bonds. He then proceeded to say that it was important for the country not to renege on its debts.

Fitzpatrick's friend and major Anglo borrower, Denis O'Brien, does not appear, according to media reports, to have invested in Anglo either. O'Brien has made many high profile investments in Irish quoted companies, including Aer Lingus, IN&M and has twice considered acquiring Eircom. O'Brien's investments tend to be routed through Isle of Man companies and hence can be difficult to track. However, as his ventures have utilised significant funding from Anglo, over the past twenty years or more, when combined with his close relationship with Fitzpatrick, it seems rather odd that he has never been mentioned in media reports as an Anglo investor. Did Fitzpatrick contact O'Brien, or his fund manager/associate since his time at Trinity Bank, David Sykes[74], for assistance in resolving the CFD issue?

The thrust of current government policy and of the approach of the Department of Finance, in Ireland, appears to be to prevent any actions of personal vindication. A senior Minister's recent attempt to censor all those who believe that the Quinn family has been denied justice, and to intimidate any who might wish to support them publicly, is a reflection of that political view.

But that is a totalitarian concept reminiscent of the former regimes in Eastern Europe. It is the sort of view which contributed to the injustices inflicted on the Birmingham Six, the Maguire Family and Giuseppe Conlon, in Britain and on the McBrearty family, in Ireland. One might have expected better in the aftermath of such clear injustices, which had complete official support, but which were later exposed as criminally corrupt actions. One might also expect that, in these particularly difficult times for the Country, such comments would be avoided by anyone with respect for human rights and human liberties. Not so, apparently.

It now appears as if the law in Ireland is not designed to prevent the exploitation of the vulnerable, especially of anyone who has money, however vulnerable he, or she, might be. Neither is the political system nor the main political parties interested in protecting civil or human rights.

That is not just wrong – it is immoral. More dangerously, it is also widespread and apparently co-ordinated. Rightly or wrongly, there is a widespread perception that Ireland's financial, regulatory, political and judicial systems are 'joined at the hip' and that such a conspiracy does very little credit to the Country or its people.

[74] He is husband of Justice Miriam Malone, former President of the District Court, and brother-in-law of Helen Malone who acts as director and secretary of O'Brien's Isle of Man companies.

14. THE DIRECTORS AND THEIR NETWORKS.

Gerry Murphy was the first chairman of Anglo Irish Bank Corporation Ltd. and, technically, the only executive Chairman, although it is generally accepted that Fitzpatrick acted as an unofficial executive chairman. Murphy was followed by Tony O'Brien (1999-2002), former chief executive and group chairman of C&C. Peter Murray (2002-2005)[75] was the next chairman prior to the appointment of Fitzpatrick (2005-2008). Murray's profile (former SKC/KPMG and McGrath/sweepstakes investment management) is at odds with the extensive corporate experience of either Murphy or O'Brien.

Fitzpatrick sat on boards with other Anglo directors, Gary McGann (Smurfit Kappa) and Ned Sullivan (Greencore). Other significant relationships include:

- Fitzpatrick, Ann Heraty (CEO of CPL Plc) and Gary McGann were members of the remuneration committee of Anglo; it set the payment for the chairperson, who was Fitzpatrick;
- Fitzpatrick as chairman of Anglo, was involved in setting the remuneration of the non-executive directors of Anglo, who included Ned Sullivan, Anne Heraty and Gary McGann;
- Fitzpatrick was chairman of Smurfit Kappa and was a member of the remuneration committee of that company; hence, he was involved in setting the remuneration of Gary McGann, who was CEO of Smurfit Kappa;
- Fitzpatrick was a member of the remuneration committee of Greencore, which set the remuneration of Ned Sullivan, Chairman of Greencore; and
- Ned Sullivan was a Director of Anglo and also a member of the remuneration committee of Greencore [76].

This interdependence in respect of the remuneration of various directors in different companies had clear potential to compromise the independence of McGann, Heraty and Sullivan, though there is no direct evidence of any mal-practice by any of those persons.

In addition, Lar Bradshaw[77] was in a business relationship with Fitzpatrick in Nigeria, and in the consortium which was involved with the Irish Glass Bottle site. Such links

[75] Murray is currently Chairman of Ardawn Development, which raised €157m from shareholders to purchase development land and is reputed to be close to wind-up, with shareholders likely to lose over 90% of their investment.

[76] Mapping the Golden Circle —*TASC 2010.* Tasc is a left wing think tank.

[77] McKinsey partner and Chairman of Dublin Dockland Development Authority

were not conducive to independent and impartial decisions on issues of major significance to the relevant shareholders.

Furthermore, Heraty[78] (who apart from her role as CEO of CPL, was also a director of Bord na Mona and Forfas) was selling recruitment services to Anglo through her company, CPL plc. Both Gary McGann and Bradshaw had invested in property with Fitzpatrick. In business terms, these relationships could be categorised as incestuous. And they were not necessarily in the best interests of shareholders.

Michael Jacob was appointed as a non-executive Director of Anglo in 1988, two years after Fitzpatrick was appointed CEO. In view of the long period of his business relationship with Fitzpatrick on the board of Anglo, it would be difficult to consider him entirely independent; he was the second longest serving director after Fitzpatrick himself. Subsequently he also became a FAS director, deputy Chairman of SIAC, Chairman of the RDS, Director of Dolmen stockbrokers (established by former NCB partners), Director of Dairygold Co-Op and Slaney Meats, Chairman of Lett & Co. Wexford.

Such relationships had the potential to affect the views taken by the different sub-committees of the Anglo board, although there is absolutely no evidence that they resulted in any form of malpractice.

According to the 2004 Annual Report of Anglo Irish Bank, the role of the Risk and Compliance Committee had been expanded to include Group 'compliance issues'. The Risk and Compliance Committee had three Non-executive Directors and one Executive Director. Its members were listed as Michael Jacob (Chairman), Fintan Drury[79], Patricia Jamal (UK) and Tiarnan O Mahoney. Its role was defined as:

◊ to oversee risk management and compliance;
◊ to review, on behalf of the Board, the key risks and compliance issues inherent in the business;
◊ to review the system of internal control necessary to manage the identified risks; and
◊ to present its findings to the Board.

Those were pretty standard terms of reference for such a committee and should have ensured that controls and governance in Anglo Irish Bank were up to standard.

[78] Heraty was named Ernst & Young (E&Y) Entrepreneur of the Year 2006
[79] Former Chairman of RTE Authority, director of Paddy Power; Drury and Fitzpatrick were allegedly involved as investors in a project to build a luxury Bernhard Langer-designed golf complex in Hungary

Unfortunately, we now know that they were not; what is much less clear is why they were not. There was, as there always is, the potential that personal relationships might blinker individual directors, when they have to take hard decisions, which might adversely affect a fellow-director; that would not have been helpful to any Risk and Compliance Committee.

The key elements of the procedures established by the Board to provide effective internal control included:

- An organisational structure with clearly defined authority limits and reporting mechanisms to higher levels of management and to the Board, and which supported the maintenance of a strong control environment;
- A Group Risk Management function with responsibility for ensuring that risks were identified, assessed and managed throughout the Group. The Group Credit Committee together with the Group Asset and Liability Committee provided support to the Audit Committee and the Risk and Compliance Committee in ensuring that efficient procedures were in place to manage risk; and
- An annual budgeting and monthly financial reporting system for all Group business units.

That was how the organisation was supposed to operate; the reality was more than slightly different, as the Nyberg Report indicated.

"*Reporting processes in Anglo in relation to the management of credit risk were deficient. The quality of information being presented to the Risk and Compliance Committee and the Board was not of the highest standard. For example, exceptions to credit policy were reported as a percentage of overall loans rather than by borrower and exposure. Also, reporting of arrears and impairments, which are simple but vital measures of portfolio quality, was inadequate. This weakness in reporting processes was combined with a lack of sufficiently extensive banking experience and expertise at board level of the type which would have allowed the Board to identify shortcomings in the information being provided. This meant that the Board may not have been conscious on a timely basis of the significant risks accumulating on the bank's balance sheet or of the deterioration in credit quality. Evidence of herding and groupthink…*

The board members were experienced and well regarded in their own fields of speciality. However, they were not expert in the field of banking and several therefore appear to have been dependent on senior management to assess the needs for the reporting systems and procedures necessary to contain the key risks identified. <u>Accordingly, there is little evidence that board directors at the time were</u>

active in challenging the bank's approach or its pace of lending growth. A number of Non-Executive Directors (NED's) and executives also had significant Anglo shareholdings, which indicates their confidence in the operations of Anglo and their assessment of the risks involved." (Underlining added.)

Being proactive in challenging the bank's strategy, where the pace of its lending growth is particularly rapid, and challenging its structures and its governance systems has to be part of the role of any audit committee. Highest risks derive from those sources and the audit committee has a responsibility to protect the business from risks which could prove fatal. If Nyberg was right, there was something wrong in that respect in Anglo.

However, no such committee can operate effectively, if there are doubts about the quality and reliability of the information being provided to it. Add to that the obvious inexperience of banking and of the peculiarities of governance requirements in financial institutions among the non-executive directors, and it was always going to be the case that the executive directors could (and probably would) 'run rings round' those whose knowledge of the technical aspects of the sector was deficient. The result was an entirely inadequate governance regime and an absence of effective control mechanisms. Equally, it inevitably produced a totally inadequate appreciation of, and control over, the special risks attached to this activity.

Fitzpatrick in his 'leak' to the Sunday Times referred to the ten large borrowers who comprised the 'Maple 10' as the 'Golden Circle'. In reality, they were unwittingly major contributors to Anglo's distorted profitability. Subsequently TASC, the left wing think tank, funded by Chuck Feeney, mapped the group of executives who acted as non-executives on multiple State company boards and on PLCs, under the heading of the Golden Circle. Many of Anglo's Directors, including Fitzpatrick, were identified by that study as holding multiple directorships.

If ever there was a concrete example of the need for the frequent rotation of non-executive directors, Anglo was it. The time limits suggested for such non-executive appointments, in quoted companies, need to be observed, not just in terms of ensuring better governance at Board level, but also in the best interests of the shareholders and the company.

After 26 years with Avonmore/Waterford Co-op and 15 years as Chief Executive, Pat O'Neill retired as Chief Executive of Avonmore-Waterford Group and was succeeded by Ned Sullivan. Subsequently, Ned Sullivan was appointed a Director of Anglo. Pat O'Neill became a Director of the Quinn Group and eventually its Chairman, when Murdock McKillop decided that Sean Quinn was not capable of managing it and neither was any of the other directors who had more executive experience of, and expertise in, the sector, than McKillop had.

According to reports, McKillop seems to have wanted to control the business, by proxy. McKillop himself is viewed as not having done a particularly good job in the Quinn Group, according to reliable reports from both staff and customers. Some of the comments from such sources are unprintable.

As of September 2007, Michael Jacob held 746,921 shares (worth almost €10 million), Ned Sullivan held 427,584 shares (worth almost €6 million) and Gary McGann held 140,028 shares (worth almost €2 million). In May 2012, the Financial Regulator advised stock-broking firms, that describing individuals as 'independent' even when they were 'significant shareholders', or provided services to the firm involved, was unacceptable.[80] Clearly, a different view was held by Anglo, in respect of its non-executive directors.

In recent court pleadings, David Drumm has claimed that, following his appointment as CEO, Fitzpatrick told him that he had to increase his Anglo shareholding '*in order to show confidence in the bank*'. With a €1.2m loan from Anglo, he bought 50,000 shares at €20.08 per share. Two years later Drumm exercised 200,000 share options at a price of €4.27 per share. Since the money was borrowed from Anglo, it is difficult to escape the conclusion that some of these investments (particularly the first one) amounted to support for the company's share price.

In January 2008, Fitzpatrick felt the bank's directors should make a show of confidence by buying the bank's shares or exercising their share options. Drumm agreed to exercise 500,000 share options and got a €7.65million non-recourse loan from the bank. How should that be interpreted and who was ultimately responsible for it? It is very doubtful – almost inconceivable - that Drumm would have incurred such a liability voluntarily; he would have known how the 'wind was blowing' in relation to Anglo's value and he would hardly have been happy about it.

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[80] Irish Independent 26/05/12

In late December 2008 and January 2009, amidst the furore arising from Fitzpatrick's loans, a review of all Anglo directors' loans was undertaken. Following the review, Anglo and Drumm – who had resigned and was unable to service his loans – then agreed that the loans were 'recourse' loans; Drumm would later tell Judge Peter Kelly that the non-recourse terms of the original 2008 loan facility were 'an error'.

It was crucial for both the bank and Drumm to clarify these errors; uncorrected, it might have left both parties facing difficult questions. This was because the Garda fraud squad had begun an investigation into the Maple 10 non-recourse loans, a scheme that, on the face of it, gave rise to suspicions that the bank had perpetrated a fraud on the market in a desperate bid to prevent its share price from collapsing. No detailed explanation was given by either party for the 'error', but both were at great pains to stress to the Judge that that was all it was.

On 7th January 2009, Anglo issued a new facility letter to Drumm, stipulating that it was a recourse loan. When negotiations over the repayment of the loan broke down, Anglo brought legal actions for its recovery.[81]

Following his resignation from Anglo, Drumm said that he formed the impression that by the time that the Anglo Board met, Fitzpatrick had already thrashed out the issues on the agenda. The decisions were being taken at informal dinners, with the key directors beforehand. They would all have agreed a position before going into the meeting; the outcome was therefore a foregone conclusion[82].

Over the years, the non-executive directors of Anglo included those with substantial executive experience of plcs: Garry McGann and the late Paddy Wright with Smurfits; Ned Sullivan with Grand Metropolitan; Anne Heraty with CPL and Forfas, and Michael Jacob with FÁS, Dairygold and SIAC. These executives were highly experienced as to how boardrooms operated or should operate, and of the workings of stock exchanges. Additionally, both McGann and Wright had experience of dealing with a dominant CEO, Michael Smurfit. Both Smurfit executives also had a relationship with Ernst & Young, who were auditors to Smurfit, during Michael Smurfit's tenure. They had more than enough experience to be aware of the dangers of permitting any type of duality of roles, or overlapping of responsibilities; nevertheless, they appear to have allowed such practices in Anglo.

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[81] 'Bust': Dearbhail McDonald; Penguin Ireland (pages 216-218)
[82] Sunday Business Post

Michael Forde and Hugh Kennedy in their publication entitled 'Company Law'[83] state that a director's duty of care requires not only skill and diligence but also a disposition to look after the company's money as if it was their own.

In a recent court case[84] it was found that the partners in an accounting firm were liable in permitting one partner duality of roles in promoting an enterprise and in advising and misinforming a client investor in that enterprise. On the basis that Anglo's alleged share support/market manipulation scheme could be categorised as 'an enterprise', could it not be argued that Anglo directors were equally engaged in a similar duality of roles in relation to the Quinn Group, Sean Quinn and the Quinn family.

All the former non-executive directors of Anglo have moved on following nationalisation and continued with their careers virtually unaffected by their Anglo role. The only one who appears to have been somewhat damaged is Lar Bradshaw. But that was mainly due to his involvement with the Glass Bottle site and with the Dockland Authority, and possibly because of his business links with Fitzpatrick. It appears that Jacob resigned in late 2011 from Dolmen Stockbrokers before the Central Bank started asking questions about probity.

As regards the executive directors, Fitzpatrick's lifestyle does not appear to have changed, although he was declared bankrupt. Drumm has applied for bankruptcy in the US and is under legal attack by Anglo. Matt Moran, has moved to Luxembourg and, according to media reports, does not appear to have cooperated with the ODCE/Garda investigation. McAteer appears to be in retirement.

The only significant business figure who has spoken publicly about Anglo's business practices during Fitzpatrick's stewardship, appears to be Ben Dunne. While he never borrowed from Anglo, Mr Dunne said he had one 'dealing' with the bank a number of years ago, before its collapse. "*It just frightened me. I was doing a sizeable deal and the way Anglo were doing it, I got a shock*," the former supermarket boss said.

However, he did not divulge details of the transaction other than to say he was the vendor. "*The one transaction I had with them was enough to stay a million miles away from them. Just the whole way I could see it (the deal) being done, from the way I'm used to doing business. I was selling something and they were the bankers*

[83] Published by Round Hall, 2007
[84] High Court Justice S Ryan, K McMoreland and Gilroy Gannon & Co Sligo v Gradys. 3/02/2012

on the other side. I was getting my money, I didn't mind, and I said to myself I'm not leaving any money with this crowd. I put it (the cash) in another bank and they (Anglo) wondered why. They wanted me to leave it with them "[85].

Ben Dunne was not alone. Although many hard-nosed business-people dealt with Anglo over the years, most of them had and have fundamentally strong, moral values and would not have endorsed the sort of 'skullduggery', which is identified in this report. Dealing with a bank is one thing; so is making mistakes. But supporting its involvement in any form of wrong-doing is a different thing altogether.

McGann, Sullivan[86] and Heraty continue to act as directors of high profile stock exchange quoted companies – Smurfit Kappa, Greencore and CPL. They resigned from state boards such as DAA, Bord na Mona and Forfas, but not from non-state boards.

In contrast, the new Anglo/IBRC management in recent weeks has commenced legal action against the directors of INBS, on foot of an Ernst & Young corporate governance report. Ernst and Young investigating the corporate governance of a financial institution! Just how far does Ireland's (i.e. Dublin's) 'old boys' network stretch?

As this report was being finalised, in London Asil Nadir had started a ten-year prison sentence for using money secretly from Polly Peck International, a quoted company, which he both managed and controlled, to buy shares to support the company's stock price; that was deemed to be illegal share support activity. Does that set a precedent? It should and it would anywhere else.

But in Ireland? Not if one has the right contacts; and not if one has the support of the Department of Finance. What a bloody awful Banana Republic!

[85] Evening Herald 17/4/10 – Cormac Murphy
[86] Sullivan is also Chairman of Eircom in addition to chairing McInerney and Greencore

15. SHORT TERM 'CAPITAL' AND CAPITALISED INTEREST.

In hindsight, it appears that, from time to time, but only rarely, Anglo's principal focus was on the funding of the business. Historically, funding was the main issue, which had hindered the growth and viability of most non-clearing banks in Ireland. In reality, for the main banks, lending had always been secondary, and that is certainly true at present, when the banks' support for economic development is pathetic.

In Anglo's case, lending had always appeared to investors to be the primary driver of the business. That was what was always emphasised in its annual report and everything we know about him suggests that it definitely absorbed most of Fitzpatrick's energies; it was what he was 'good at' and where he placed most of his efforts. Whatever shortcomings he might have had, he was a superb marketing man and he was better at 'selling' loans than anyone else in Ireland – ever.

Nevertheless, Anglo was continuing to fund its loan book with inter-bank, short-term money, rather than by way of depositor funds. However, the majority of its borrowing customers required long-term finance, in most cases with interest capitalised or rolled-up. There was no matching of assets and liabilities – not even the remotest sign of any 'balance' between them. The two sides of Anglo's Balance Sheet operated as if they were totally independent entities, with no linkages or relationships; that was never sensible in banking terms and it should never have been acceptable in regulatory terms either.

Unknown to existing and potential investors, year-end deposit totals gave a grossly misleading impression of the funding mix, as a result of the loan warehousing arrangement with INBS. Year after year, the year-end deposit totals continued to confuse investors, regulators and stock exchanges; and repeated 'fudging' distorted the true structure of its funding. From a funding perspective, Fitzpatrick and his bank were emperors with no clothes – or at best with very few clothes.

It is against that context that the relevance of the following report, or comment, from 'European Banking' can best be interpreted and appreciated:

"In H1 2007, Anglo issued the market's first commercial backed covered bond (a EUR2 billion programme), serving to increase the duration and stability of Anglo's funding base. Anglo has recently increased the size of its Euro Medium Term Note

(EMTN) programme to EUR30 billion from EUR20 billion. Whilst retail deposits have typically been regarded as more stable sources of funding, treasury departments of banks across Europe have increasingly been dipping in and out of the wholesale markets to take advantage of cheaper funding and to better align the maturity of assets and liabilities. Although we view the increasing duration and diversification of Anglo Irish Bank's wholesale funding positively, we remain mindful that this has to be balanced against the effects of a possible increase in the cost of funding on the Bank's net interest margin."[87]

Of course, what the writer of that comment failed to understand was that Anglo charged more for its loans, frequently adding an extra margin through 'overcharging' (using TIBOR instead of DIBOR), that it also underprovided for bad debts and that, as a consequence, it showed higher net margins than its competitors - predictably.

Despite its claims to the contrary, Anglo was almost totally dependent on inter-bank funds, due to the absence of a branch network, through which to gather deposits. But investors had also begun to understand the type of loans this bank was financing – a relatively small number of high value loans, lent against speculative property transactions and related situations – and some of them did not like what they were seeing. Predictably, as the recession gathered pace, this unbalanced structure stoked concerns within the investment community. That was particularly true in UK circles, where there were major concerns that Anglo could encounter serious financing problems should the international credit crisis escalate[88]. Of course, they had the Northern Rock collapse as a precedent.

Anglo used a very unusual method for calculating interest in its accounts. Effectively, its approach meant that all interest applied to loans was booked as revenue, without any distinction between loans which were performing and those which were non-performing. Furthermore, its reports provided no indication of the percentage of the loan portfolio, which was performing, or even more importantly, which was not.

The truth, as we now know, was that a large part of the portfolio was unable to service its interest payments as they fell due. In such cases, the 'payments' were simply being capitalised, even though they were not collectable. Similarly, and even

[87] http://www.dbrs.com/research/211820/european-banking-weekly/1-euro-banking-outlook-update-2-france-s-livret-a-implications-3-seb-q1-4-anglo-irish-interims.pdf
[88] www.finfacts.ie

worse in terms of disguise, loan fees and charges were being capitalised on a material element of the overall loan portfolio too; again these were included in the quarterly, half yearly and annual revenues. That was just accounting nonsense. While IFRS (International Financial Reporting Standards) required only the reporting of incurred losses, Anglo did not have any process for identifying loans, which would ultimately create losses; neither did its senior management have any interest in such identification. But IFRS's rules should have been tighter anyway. That is one clear lesson from this episode.

Capitalised interest and loan fees, including the additional margin on DIBOR referred to above (Guido's claims about the margins added to DIBOR), was a material element of the loan pipeline, on which market analysts focused when interpreting each half year's results. The loan pipeline was the best indicator analysts had, of the likely future performance of the bank – at least for the immediate future.

Out in the marketplace during 2007, as the property bubble started to deflate and the global credit crunch kicked in, Anglo's share price fell by nearly 50 per cent. The stock market was beginning to think that they were barmy, and some observers believed that the bank was releasing fantasy figures. Anglo was in big trouble long before anyone had heard of Sean Quinn's CFD stake, or of the Golden Circle (Maple 10), or of his (Fitzpatrick) hidden loans or even of the sham deal with Irish Life & Permanent (IL&P) to boost Anglo's balance sheet artificially.[89]

Not for the first time, but this time with greater vigour, serious doubts were being expressed about Anglo. For example, the Daily Telegraph described it as both "toxic" and "rather well-positioned" (surely an odd combination of adjectives). Hedge funds initiated the attacks; they began short-selling Anglo's stock. That led to the 15% reduction in the bank's market value on St Patrick's Day 2008, as the rumours began to circulate about its exposure to bad debts. It is still not clear how Anglo's exposure to bad debts was identified by the market, but clearly it was and the market reacted sharply.

But what is sometimes forgotten and what is equally (if not more) important, is that the change in sentiment impacted on its position in the inter-bank markets too and that was even more damaging. It was the beginning of the end for the bank – but, in typically bullish fashion, its management blamed short-sellers for the massacre[90].

[89] http://www.independent.ie/business/irish/implosion-of-a-legend-in-his-own-lunchtime-2106237.html
[90] http://www.irishtimes.com/newspaper/weekend/2010/0904/1224278175197.html

Short-sellers were an accelerant to its demise, but they were not the cause of it, just as Sean Quinn's holding of CFDs was a complicating factor, but again it was not the cause of the collapse.

That 2007 change in market sentiment, which impacted on Anglo's position in the inter-bank markets, occurred at almost exactly the same time as the huge decline in property valuations – 'the perfect storm' that even Fitzpatrick's flawed loan warehousing strategy and Anglo's business model could neither deflect nor weather.

Perhaps not surprisingly, the bank's treasury division had suffered the most upheaval in the regime change following the appointment of Drumm as CEO. O'Mahoney, seriously disappointed at being passed over for the top job, left to set up a new venture, International Securities Trading Corporation (ISTC), a specialist lender to financial institutions, in 2005.

Drumm then appointed the experienced Brian Murphy, who had previously worked in treasury for Citibank and ABN-AMRO, as Anglo's new head of treasury. Murphy and Drumm never established a good working relationship; the result was that Murphy resigned in June 2006. A spokesman for Anglo, speaking to the Irish Independent, described Murphy's departure as '*something of a cultural thing*'. The spokesman claimed that Murphy had joined Anglo from '...*a big bank environment and was more used to the slightly slower attitude to business in such organisations than that which he found in Anglo*'.

Whatever the reason for Murphy's departure, Drumm never replaced him. Murphy then went to work under Michael Somers in the National Treasury Management Agency, as chief executive of its state infrastructure expenditure advisory division.

Equally oddly, the Chief Risk Officer (CRO) role at Anglo was transferred to the Finance Director, during 2007. An outsider would have to question whether the Finance Director was likely to have the time to undertake the additional work; this was no part-time job and presumably neither was that of Finance Director. The decision is likely to have reflected Anglo's long established attitude to risk – it appeared not to accept its existence! That was certainly unusual for a bank. At that point, Anglo's property-related exposure in Ireland, the UK and the US had grown very significantly, and the need to monitor and manage the attendant complexities and risks had grown proportionately, or possibly more than that. The decision to combine those two roles would suggest that risk management was not appropriately prioritised within Anglo Irish Bank.

Both Anglo and Fitzpatrick had repeatedly put on public record that the bank's business model was based on '*lending to those with secure cash flows*'. Once that assertion was exposed as a lie, the negative reaction from investors immediately led to the exposure of the fictitious year-end deposits. That, in turn, produced the spectacular collapse of Anglo's share price.

In a desperate attempt to stem the tide, Anglo lent €4 billion to Irish Life & Permanent (IL&P) for one day, which happened to be the date of its 2008 year-end, by way of inter-bank loan. In return, a subsidiary of Irish Life placed a deposit of a similar amount with Anglo, which was recorded as a customer deposit; that was bending the truth well beyond breaking point. Anglo then lied to the Dublin and London Stock Exchanges in its Interim Statement by claiming that its deposits had increased whereas, in fact, they had fallen, if the €4 billion was excluded – as it should have been. These were desperate actions by desperate men, involving seriously 'off-the-wall' strategies for the third biggest bank in Ireland

Goodbody stockbrokers, said the IL&P transactions "*...mean that almost 14 per cent of customer deposits at Anglo at its (2008) period end were accounted for by these (IL&P) funds".*

Put another way, €1 in every €7 of the single most important component of the funding base of that bank was being erroneously designated as available to support lending. Paddy McKillen or any of the other borrowers could not be held accountable for that; that was bordering on criminal.

Anglo had also benefited from loans of about €1.2 billion from AIG Financial Products, shortly after the bank suffered serious deposit withdrawals due to the collapse of its share price over the St Patrick's Day week, when stock market rumours circulated about the financial health of the bank. As a *quid pro quo*, Anglo later provided support to the insurance company's French lender, Banque AIG, in another back-to-back transaction. These were clearly window-dressing transactions designed to mislead investors about the strength of the bank's deposit base; that too was lying to shareholders, a fraud on investors and criminal. The reality was that Anglo Irish Bank had always had a very weak deposit base. To claim anything different had to be a blatant lie.

Unfortunately, too many investors did not understand that. How could they, if the Regulator appeared not to have understood it? Both the 'new' Anglo (aka IBRC) and Fitzpatrick were going to have some explaining to do. They needed a scapegoat and they needed a chairman who could identify one and 'nail' him. He succeeded.

Northern Rock had also been highly dependent on the inter-bank market but its business model was transparent: it was an "*originate and distribute model*", which had never claimed to be anything else. Why could Anglo not have accepted a similar role? The answer is obvious: Fitzpatrick could not have produced the growth he sought, under such rules. Northern Rock went 'bust', without overtrading; Anglo overtraded to accelerate and complicate its demise.

According to the Northern Rock model, the bank originated loans or purchased them from specialised brokers and transferred them to a Special Purpose Vehicle (SVP). That SPV then packaged them into collateralised debt obligations (CDOs) for sale to other investors. 'Granite', the Northern Rock's Vehicle was located in Jersey and provided around 50% of Northern Rock's funding by way of securitised notes.

The counterpart of this rapid and huge growth in wholesale funding, was a parallel decrease in the proportion of retail deposits in its funding. Thus, as a percentage of total liabilities and equity, retail deposits and funds at Northern Rock declined from 62.7%in late 1997 to 22.4% at the end of 2006. That information was publicly available, and lenders, depositors and analysts all had access to it and could make their judgements and their decisions based on it and informed by it. Similar information, about similar issues, was not available to Anglo investors.

High-value/low-volume lending obviously should result in lower administration costs than a high-volume/low-value strategy. But it also carries huge risk. Such risk needs to be offset by very high margins; but in reality, high value is usually associated with low margins, as bigger borrowers push for more economies i.e. cheaper loans.

Therein lay one major weakness of Anglo's strategy. Unfortunately, Fitzpatrick never disclosed to investors the implications of Anglo's low-volume/high-value strategy. Disclosing it would certainly have led to the identification of the previously undisclosed and seriously misrepresented business model by some investors, and would have led to questions about the accuracy of the accounts – specifically in relation to the profit being reported, but probably in relation to the asset quality too.

This failure to disclose the operation and the implications of the model represented a further serious misleading of shareholders, potential investors and analysts. Proper disclosure would probably have saved some, possibly many, investors from ruin too; the directors had a duty to those investors and failed them; so too did the Financial Regulator. Such an issue went far beyond what could be interpreted as arrogant executives shouting down anyone who tried to question their activities, or top management who failed to ask questions, as long as the money kept rolling in. On any analysis, the evidence suggests that Anglo was willing to be disingenuous or untruthful, when it suited the management.

Simon Carswell in a column entitled *'Absurdities Permeate Bailout Logic and Application'* wrote that at a conference, an accountant told him a humorous, if shocking, story. On Monday, September 29th, 2008 – as Anglo was being drained of cash – that accountant had received a call on his desk phone, from a contact in the Treasury Department of the bank. The caller wanted to know whether the international insurance company, where he worked, had any large sums he could deposit at Anglo. The banker promised him a very good rate of interest if he placed money straight away. He had access to tens of millions, which he could place with institutions for a short period. He told the Anglo official that he had a large sum at his disposal, but given the rumours circulating about Anglo's financial position in the market, he would need clearance from his Board before placing any money with the bank. Nevertheless, he indicated to the banker that he would get back to him, and their call ended.

The Anglo banker called him back straight away, this time calling from his mobile to his contact's mobile at the insurer. Under no circumstances was he to place any money with Anglo, as he could not guarantee the company would get its money back, he told him. Anglo's management had asked treasury staff to ring their contacts to see what corporate deposits they could round up and, on the instructions of his boss, the banker made the call from his desk phone on a recorded line. But, on an unrecorded line, he could say what was really going on at Anglo.[91]

The real question is: Did any, or many, Dublin stockbrokers operate similarly in respect of Anglo share recommendations? Did any brokers give 'off the record' briefings to favoured clients, that were contrary to the research notes they were circulating?

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[91] Irish Times, Business section 30th May 2012

Ultimately, the difference in their respective deposit bases was one of the main factors which distinguished Anglo from the clearing banks, and it had serious implications, when things started to go wrong. Both AIB and Bank of Ireland had access to deposits through their extensive branch networks, from current account balances and from transfers of cash in transit; they were far less reliant on the inter-bank market. More importantly, NTMA was comfortable in depositing funds with them.

Secondly, both AIB and BoI had a much more diversified range of business units than had Anglo; they included home mortgages, current accounts, corporate finance, trade finance etc. Even more significantly, the business models of both those banks were transparent and supported by appropriate management structures.

While both followed Anglo into extensive property development finance, it appears that such diversification was overseen within a tiered credit committee structure, with main Board oversight, supported by internal audit and risk management structures. It was a totally different approach to that adopted by Anglo. In addition, loan pipelines were not critical to either of the main banks and they had no need for any form of 'pyramid building'. Those were all critical distinctions and they had a significant impact on how the different banks were treated, when the wider economic and financial problems struck.

In the Dail, in September 2012, the Sinn Fein finance spokesperson, Pearse Doherty, asked Minister Noonan to identify those responsible for the audits in Anglo and in Irish Life and Permanent – the two banks where €7.4bn of deposits were transferred at year-end, in order to enhance the apparent financial strength of Anglo. It was KPMG, which audited Irish Life in 2008 and the Minister identified the partner responsible for the audit as Alan Boyne. However in the case of Ernst and Young, which audited Anglo, the response was that Anglo was "*not in a position to positively identify all the principal persons at that company who were responsible for the conduct of the audit*". Could the Minister now indicate why the people of Ireland are expected to believe that explanation? From a distance, that appears to be just plain nonsense. They must and should know who signed-off those accounts! It is bad enough to be protecting wrong-doing and wrong-doers, without protecting their auditors too.

During Paddy McKillen's legal action in London, in April-June 2012, against the Barclay brothers, the court heard that Tom Browne, former head of lending with

Anglo Irish Bank, had introduced McKillen to Och-Ziff. The court had previously heard that Browne, while he was an executive director of Anglo, had helped arrange the original loan for the redevelopment of the Connaught Hotel in London. Och-Ziff is the US hedge fund, which, according to a combination of belief and rumour, is said to have been involved in the short-selling of Irish financial stocks in 2008, including Anglo's shares. Browne's introduction of Och-Ziff into the equation, unwittingly allowed the metaphorical fox into the chicken-run, though, as is now clear, the chickens would never have roosted safely anyway.

An interesting, but important and revealing aside to the Paddy McKillen case, is that Alan Dukes is alleged to have told Finance Minister, Michael Noonan, that he would not put anything in writing, regarding the controversy over the bank's relationship with that developer. Chairman Dukes is reported as having contacted Mr. Noonan to say that he was not prepared to divulge any information, by letter, in case that the correspondence would enter the public domain through a Freedom of Information request. Instead, Mr Dukes suggested 'a private conversation' regarding the controversy. No records, memos, or minutes of the discussion between Mr Dukes and Mr Noonan were kept, raising concerns that the Department of Finance was, and is, party to efforts to circumvent Freedom of Information legislation; in that case, so too is the Minister for Finance. There is clearly collusion, if not worse, in high places in Ireland today; and Dukes' communication is a reflection of that.

It has been claimed that, in the discussion, Mr. Noonan was assured that the State-owned bank would take more care with how it communicated with its clients in future. That controversy arose because private communications – in the case quoted, it was text messages – became public. They emerged during Mr McKillen's high-profile court action against the billionaire Barclay Brothers over control of three prestigious London hotels.

All of that raises serious questions about the *bona fides* of Alan Duke. He is working for a nationalised company and has a duty to be transparent about what he does; clearly, he does not accept that. Consequently, there are many people who have serious reservations about him. But it is worse than that: he now has the sort of power, which the Irish electorate never afforded him, in his days as an elected politician. He has a duty to exercise that power with due regard to the rights of others.

Part of Anglo's problem was that there was just too much being concealed - too many untruths and too many half-truths; inevitably the real story was going to break at some point. Unfortunately, what was happening in the past is still happening today in the new IBRC. Alan Dukes might like us to believe differently, but even he cannot prevent such views being aired, despite his P.R. spin and Wilson Hartnell's support, as well as the spin from Drury Communications.

16. WHEN IS A 'PROFIT' REALLY A LOSS?

Virtually all of the commentary over recent years has assumed that Anglo was solvent and profitable, almost from its inception in the form, in which it ultimately existed. But that perception was based primarily on highly manipulated annual accounts and what shareholders and the investment community were being told via Fitzpatrick's spin. It is highly likely that Anglo was insolvent, long before its ultimate demise – certainly months earlier, and probably years earlier. That can now be proved, without any shadow of a doubt, in any court of law.

As corroborating 'evidence' there is the fact that, when the original Asset Covered Securities Act was introduced in 2001, Anglo was specifically excluded; it is not obvious why, but comments earlier in this report might provide a clue.

Then the Asset Covered Securities (Amendment) Act was introduced in 2007, at a time when Anglo was having MAJOR problems in accessing funds. That Amendment – it should have been called the 'Save Anglo' Amendment - was pushed through the Dail, almost surreptitiously, with virtually no debate, in order to allow Anglo to raise money through bonds – just shortly before Paul Gallagher was appointed Attorney General, by Bertie Ahern. While the legislation passed through the Dail before that appointment in June 2007, the question should be asked as to whether Gallagher had any input into its subsequent implementation, after he assumed office a few months later.

That Amendment was an initiative from the Department of Finance. It was introduced in the Dail, by the then Minister. And it was designed, wholly and entirely, to save Anglo not just from potential collapse, but actually from probable collapse.

How then can that same Department expect people to believe that they did not know what was happening in Anglo?

How then should the Irish people be expected to accept that officials in that Department were not complicit with Anglo in hoodwinking the public?

How then can anyone be expected to accept that that Department and its Minister are not still involved in a conspiracy to hide their actions from the electorate and to find a scapegoat, who can be destroyed, financially and in terms of reputation, in order to save both the Department and the State from the consequences of that Department's failures?

And most crucially of all, how profitable were the other banks at that point – or long before then either? There is good reason to believe that the accounts of the other banks for the past decade should be subjected to forensic analyses too. That is a story for another day, but it too needs to be told – and it will be.

But there is another side as well: how come that the media has never raised this issue in all that has been written about Anglo and the financial crisis? Does the '*ADVERTISING IS KING*' attitude dictate that they cannot do, or say, or write anything which would embarrass their medium's paymaster? Where have Carswell, Cooper, McDonald, Murphy, O'Toole, Whelan and all the others been hiding, while this issue was being buried?

It is ironic that the only objections to the passing of that Bill were raised by Joan Burton, whose stock would not be particularly high within the business or financial community; but she called that one right.

Anglo succeeded in convincing far too many, for far too long, that it was solvent, before it needed to use bonds to improve its liquidity and its solvency ratios. Again it appears that someone with a regulatory role failed to fulfil his/her responsibilities properly and that the Attorney General's Office should possibly have scrutinised the basis for the new legislation more carefully (and possibly monitored it afterwards).

On the 26th January, 2012 Minister Noonan TD in a written answer to a question from Catherine Murphy TD (Independent) stated:

"*In the case of Anglo Irish Bank the Department knew, prior to nationalisation, that capital would be required, that funding at the bank was problematic and that certain risks, including governance issues, could, if not mitigated, materially impact on the bank. However, the bank was not adjudged insolvent at that time. The audited accounts for the period, and assessments by the Financial Regulator, PricewaterhouseCoopers (PWC) and Merrill Lynch all indicated that the bank was solvent and could absorb "stress level" losses over the period of review and projected strong capital adequacy ratios out to 2013. Anglo Irish Bank was nationalised because of governance issues, and funding problems in particular which would very quickly have placed the bank in a position of inability to repay maturing debt including deposits, with a major and immediate knock-on impact on other banks and on the State. Further, there was strong negative market sentiment towards the bank which was impacting on the banking sector generally.*

With the benefit of hindsight, however, it is now clear that the full extent of the evolving problems in global financial crisis or the property market were not envisaged in any assessment of the bank at that time. In the course of 2009/2010 the extent of the problems became clear and the level of impairments on assets increased substantially necessitating further injections of capital to sustain the capital position of the bank."

One has to recognise that Ministers for Finance read into the record replies, which have been written by senior civil servants. But for sheer naiveté, that one takes the biscuit.

Of course there was strong negative sentiment towards Anglo; why would there not be? Investors and analysts had 'rumbled' them by 2009/2010 - especially the inadequate bad debt provisions, as property values fell dramatically. But there was also the loan warehousing to disguise the reality of the capital position, the market manipulation, the share support, the directors' loans - they were all beginning to become transparent. Any assessment, which indicated that Anglo could absorb 'stress-level losses', was miles off the mark – so far off that only an idiot would suggest it.

Why did market sentiment turn against Anglo? The answer is obvious: the market began to recognise that Anglo's reported profits were fictitious, that its Balance Sheet was riddled with holes and that its management had created and sold a fiction to investors. Fortunately, the script-writer did not attempt to put the blame for that on any of the bank's major debtors.

But sentiment was also then turning against the other Irish banks too. Anglo was not alone – it was just worse. AIB, Bank of Ireland and Ulster Bank were also losing money then; but that is a story for another day.

Later, in a pre-trial hearing in the High Court, before Judge Peter Kelly (on the 29th January, 2012), in relation to a damages claim, for work undertaken on Anglo's proposed new headquarters at the IFSC, Metallbau Fruh GMBH claimed that:

"*Anglo became insolvent in late 2008 and had to be nationalised as a result, primarily or in large part, <u>due to irresponsible banking practices having been carried out over a long period of time</u>*". (Underlining added.) Even that was almost certainly a liberal estimate of Anglo's solvency; it was insolvent long prior to late 2008 – not weeks or months earlier, but years earlier.

It is true that, in the absence of proper regulatory insight or a forensic investigation, no one can be absolutely certain when Anglo first became insolvent, nor confident that the reported figures had any validity. But Stephen Kinsella of UCD, is definitely closer to reality than Michael Noonan (or his script-writing civil servant), when he suggests that the sharp decline in property, starting in mid-2007, had exposed reckless lending practices and funding models across the banking system.[92] Any reasonably adequate provision for bad debts would have produced losses in Anglo by then. But it was almost certainly making real losses long before then.

The probability of Anglo's being insolvent by its 2007 year-end was heightened by the absence of an effective risk management system, the absence of a logical bad debt provisions policy and the inclusion of loan fees and interest on potentially bad debts in the revenue figure, over many years. More importantly the IL&P back-to-back arrangement was a very short term measure and there was no fall-back position except Central Bank intervention.

In reality, the possibility that it was insolvent prior to 2007 cannot be discounted. An internal investigation at Anglo, following nationalisation, is alleged to have found that it had similar short-term deposit arrangements with a large number of other financial institutions across Europe, including Lloyds, Credit Suisse, Rabobank, RBS and HBOS. The amounts involved have not been detailed, but clearly they augmented the IL&P funds. In aggregate, these arrangements are likely to have been massive – far bigger than anyone has assumed thus far – and to have filled a far larger hole in the Balance Sheet than we have been led to believe until now. They clearly helped the bank to improve its deposit figures at key reporting dates.[93] Consequently, Anglo could have been insolvent long before it became unprofitable.

Former Minister Eamonn Ryan has even claimed that he knew the Anglo Irish Bank model of lending was wrong for more than ten years, and we now know that that belief was entirely justified. But he did not claim to know when that 'wrong' model had produced insolvency, though that was certainly several years before it ultimately collapsed, and neither did he claim that it could have absorbed 'stress-level losses'. Anglo's management (via Fitzpatrick) had a strategy of ensuring that, whatever happened, the bank would show consistently increasing profits from one year to the next, even if that meant reducing bad debt provisions to 0.4% per annum from the end of 2005 onwards.

[92] http://stephenkinsella.net/WordPress/wp-content/uploads/2011/02/Lecture-2_Regulatory-Failure_VOS.pdf
[93] Anglo Republic, Simon Carswell, Penguin Ireland, page 166

If there is one riddle which is more baffling than anything else about Anglo, it is why no one queried the reductions in its bad debt provisions from 1.6% in 2002/03, to 1.2% in 2003/04, to 0.9% in 2004/05, to 0.4% in 2005/06 and thereafter. Why did no media commentator spot the problem? Why did no analyst raise the issue? Why did no one question whether Anglo was profitable for 2005 onwards, if not earlier? And why did no one, apart from Joan Burton, question its solvency, even in 2007, when the Amendment was being considered in the Dáil? Why did the media not raise that issue? Surely, some of them must have considered it. Hindsight is a wonderful thing, and it is now very easy to ask 'why?', but it is still a valid question.

Had there been no reduction in those provisions, from 0.9% to 0.4% in 2005/06, the reported net profit in the 2006 annual report would have been just under 30% less than that actually reported. If the average for the five years 2002/03 to 2006/07 had been applied in the two years (2006/07 and 2007/08), the reported pre-tax profits would have been 30% and 27% lower respectively; but that average would still not have been enough to be realistic, much less adequate.

Add to that the effects of capitalised interest and fees on the profit figure and what does that tell us about Anglo's capacity to absorb "stress level" losses? Clearly those who were in charge had no understanding of the combination of links between solvency and profitability and of the differences between them. In the absence of such knowledge, why were they in those positions?

But Noonan's response above to Deputy Murphy should not surprise us; it was 'par for the course'. On 14th April 2011, Mr. Noonan announced in Dáil Éireann that the banks and bondholders who were lending to the Quinn Group, had 'taken a hit' and had written-off approximately 50% of their loans, and that a good deal had been negotiated for the Irish taxpayer. The reality was that not a single cent had been written off; some of the borrowing had been moved to a different level within the Group, but none was written off.

That was lie, which is still on the record of Dáil Éireann, though anyone would accept that Mr. Noonan was simply reporting what he had been told and that he may have believed it to be true at the time, but he had, and has, a duty to correct the record and he has not done so. Subsequently, Paul O'Brien, CEO of the reconstituted Quinn Group, repeated that comment at a Dublin business conference, in September 2012. It was still a lie then too.

What is absolutely certain is that Anglo Irish Bank had been manipulating both its Balance Sheet and its Income Statement, for many years before it was deemed insolvent. As shown earlier, the mechanisms used to hide any potential lack of profit and/or insolvency included:

◊ understating, if not avoiding, bad debt provisions;
◊ the inclusion in revenues of interest and loan fees charged on bad and doubtful borrowers (which would never be received);
◊ overcharging borrowers, which should have led to claims against it, had it not been nationalised;
◊ showing figures in its Balance Sheet, which should never have been there; and
◊ not showing figures in its Balance Sheet which should have been there, and/or should have been shown elsewhere in the accounts.

Any reasonably sceptically-based reconciliation of the changes in its cash position, with its reported profitability, demonstrates a strong possibility that, in the absence of these 'fiddles', when taken together with the re-designation of its deposits, Anglo could have been either insolvent or non-profitable, or both, any time from 2005/06 onwards, but that, from 2007 onwards, that possibility was so high, as to be a probability – so high a probability, that it was becoming almost a certainty. Otherwise why would it have been necessary to introduce the Asset Covered Securities (Amendment) Act in April 2007[94] (Number 13 of 2007)? That decision needs to be investigated.

In that context too, the role and performance of both the regulatory authorities and the accountancy profession warrants some very serious forensic consideration and investigation.

Against that background, why would the Minister for Finance make the comment referred to above, or how could he make it? Could it be that he wanted to show that instead of 'fiddled' accounts, Anglo failed because of stock market activity? That sounds like total rubbish.

It is interesting that politicians from all sides have been so adamant that borrowers should and would be pursued vigorously for the money they owe; so too would certain investors. No one can argue with that as an objective, provided it is done fairly and equitably.

[94] The Bill was published on 23rd February.

But where is the complementary assurance that those who failed to protect the rights and livelihood of employees in Anglo itself and in its customer companies, who failed to protect the capital of businesses which were creating jobs and exports and contributing to national income, who failed to protect the national exchequer and the citizens of the Country, and who failed to protect Ireland's image as a provider of invisible exports, would be pursued with equal vigour? Where is the commitment to pursue the Directors, the Auditors, the Regulators, their bosses in the Department of Finance? It is not there. Should there not be a policy of following all, or none? And nobody who wants to see 'fair play' would suggest 'none'.

But that is not the only question, which needs to be answered; there are other fundamental ones too, of which the following are merely a sample.

When and where has the investigation into the role of the Department of Finance in these issues been undertaken? *It hasn't.*

And should it be investigated? *It certainly should; the people there are very well paid - overpaid for what they deliver - so they should be accountable too.*

Why should the Department of Finance be immune to scrutiny? *It shouldn't.*

Where and when was the Department of Finance's internal bench-marking performance assessed rigorously and published? *It wasn't.*

Who now runs Ireland Inc. and has been running it for decades? *The Department of Finance.*

Who has been primarily responsible for the collapse of the Irish banking system, by failing to ensure proper regulation? *The Department of Finance and its off-shoots.*

Who in Finance was fired for sleeping through the Anglo fiasco? *No one; instead one person was moved to a very well-paid job in Brussels.*

Who advises the Minister for Finance on most things, and all the other Departments on all financial aspects? *The Department of Finance.*

Who takes the blame when the Department of Finance fails in its duty? *Not the Department of Finance, for sure; probably the best scapegoat they can find (i.e. the one which will have the support of the Irish Times).*

Why has Honohan, the Central Bank Governor, in his review of Anglo's failure, never mentioned the failings or the role of the Department of Finance? *Now that's a good question! And a highly relevant one too!*

According to a source who knew the late Brian Lenihan well[95] "*Brian wasn't impressed by his officials (at the Department of Finance) and distrusted some of them.....His view was (that) there were officials who worked incredibly hard during the crisis but there were also other senior civil servants who were more concerned with protecting their own asses than the country*." Things got so bad, the source said, that Lenihan held many crucial meetings with senior banking and business figures in the run up to the bank guarantee, outside the walls of the Department, in order to prevent damaging leaks of his real fears.

Speaking of his time as a Junior Minister, John McGuinness TD (one of the few Irish politicians who knows anything about business) in his address to the McGill Summer School said: "*Every obstacle was placed in my way – preventing a politician from involving himself in public service matters was more important than serving the needs of the country***."** What a way to run a country! And the current lot are allowing it to continue – if not compounding it.

The evidence uncovered during this research indicates clearly that, in Ireland, the Department of Finance is a very real and major problem. Why do our politicians kow-tow to them, apparently not realising that they could not run the proverbial piss-up in a brewery. They may even be worse than the stupid bankers. (Is there any other type of banker?) It is time for our politicians to wise up to this issue.

To paraphrase Richard Wilson's very irascible, but wonderfully funny character, Victor Meldrew, in the BBC sit-com, 'One Foot in the Grave': "*I do not believe it!*" The people who failed in those areas are more likely to get jobs with big fat salaries for various categories of work, for which they are entirely unsuitable and of which they are totally incapable. One must understand the issues before one can be expected to resolve them; there is no evidence that those given these roles have that understanding, but plenty of evidence that they do not have it.

Another arrogant former Fine Gael Minister, Ivan Yates, appeared to support that view[96], when he wrote:

"*In my view, the biggest vested interest in this country is the banks. They have taken an iron grip on the Government to such an extent they will stymie any attempts at reform. The banks have lobbied successfully to stop real changes. They want to scare*

[95] Sunday Independent: 23rd September 2012

[96] 'AIB tried to serve a summons on my mother, 80, as she left Mass'; Sunday Independent 2nd Sept., 2012.

the bejaysus out of debtors and reduce them to a lifetime of serfdom -- and it's working.

"In my despairing situation, I'm not going to lecture people but I'm sufficiently cynical to take the view that the only core value of the Irish establishment is their own survival on a day-to-day basis and the prolongation of their careers. Their ethos is 'live now and let the future look after itself'."

Ultimately, what Anglo was doing bore remarkable – indeed uncanny - similarities to a 'Ponzi' scam i.e. it had to generate more and more revenue and tell bigger and bigger lies, in order to demonstrate profitability and viability, but more importantly, in order to remain solvent. Such a scam requires compound growth; any reduction in the main parameters of the system would cause it to collapse. So loans were 'rolled over'; interest was capitalised; the rolled-up loans were added to the pipeline; Anglo was reported as being profitable; and the auditors were happy. Well done, 'thy good and faithful servants'!

Being based primarily on *Property Lending*, a serious down-turn in the property sector was guaranteed to produce just such a collapse for Anglo. Having a *Balance Sheet*, which totally ignored the matching of assets and liabilities in terms of 'time' was only going to accelerate any collapse. Having a *Capital Base*, which included non-existent capital (in this case non-existent retained profits, after dividends, plus spurious deposits) was, in itself, a recipe for such a disaster. Having *All of Those*, was more than any corporate structure, much less a banking structure, could withstand.

In successive Annual Reports, Anglo consistently referred to its primary activity as 'Business Lending' which gave the impression to investors that it was lending to businesses; that implied established businesses and/or trading companies, rather than companies, which were not generating cash flow, created solely to acquire individual properties for development. However, the growing profitability, year on year, combined with the restatement of the business model and statements such as '*Our organically focused growth will be delivered with full regard for all matters concerning risk*[97]' in each year's annual report initially disguised the 'property development/capitalised interest' practices. That aside, there is also very little evidence of '*full regard for all matters concerning risk*'.

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[97] Chairman's statement, 2005 Annual Report

Anglo's model of focusing primarily on proven operators, with transactions that were supported by secure cash flows and strong collateral'[98] was untrue for a material proportion of its loans, as outlined in previous sections of this report. Loan interest and fees due from a major proportion of its borrowers were being capitalised on the loan accounts and included in Profit & Loss Account's revenue figure as interest and fees received. Such capitalisation was eroding Anglo's security margin in respect of individual borrowers on an annual basis, thereby challenging a further element of the model viz. secure collateral.

'*Secure cash flow*' lending implies that the borrowers were generating sufficient cash flow to service the debt - both interest and capital. It was not meant to imply that further loans were being provided to enable borrowers to comply, over a period of time (possibly years) with the stated entry qualification of the model i.e having positive cash flow from operations, from which to make interest and loan repayments.

It now seems obvious that since its formation, Anglo had manipulated its profits through the under-provision of bad debts and through the inclusion in annual revenues of loan fees and loan interest on customer borrowings, whose repayment in full was very doubtful. It also seems certain that this had been going on for several years. Add to that the fact that, essentially, a portfolio management view was being taken of the security supporting customer advances, even though one security could not be offset against another to even-out exposures to potential loan shortfalls. This funding strategy continued to attract money from the markets year-on-year and the share price grew, thereby underpinning executive share options, salary and bonus payments, plus non-executive directors' fees.

It would be interesting to know what proportion of each year's projected new lending (work-in-progress) in Anglo's accounts was accounted for by the rolling-over of existing loans, plus the capitalised interest on existing loans, which were not being repaid, rather than through new monies advanced for new projects; but none of the annual reports refer to capitalised interest. Instead, there were comments like "*Lending work in progress of C8.7 billion at the end of September 2006"* in the 2006 Annual Report. Based on what we now know, that was essentially a meaningless comment.

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[98] 2006 Annual Report, Group Profile page 4.

The cash flow statements in Anglo's annual accounts did not disclose the 'wash through' of capitalised interest and fees as non-cash items. In view of the material amount of the capitalised interest, investors and potential investors were being seriously misled.

Misleading too was Anglo's claim that about 60% of new lending was '...*repeat business with existing customers...*'. The reality was that some, may be most, of it was probably also property or development based; and some of it was really rolled-over loans, often with rolled-up interest, not new lending, as the description in the reports implied, even if it was not stated explicitly.

Obviously therefore, not all of Anglo's loans were generating the cash flow needed to fund interest due on the customer deposits, inter-bank loans and the bonds that funded the loan book. As a result, Anglo would have had to source additional deposits, inter-bank loans and/or bonds to service payments to depositors and to other banks. Treasury and wealth management profits were insufficient to fund the combination of these interest payments and the financing of ongoing overhead costs. Hence a following funding gap emerged:

1. **The Loans** were mainly for property development with a considerable portion of the interest and fees being capitalised during the term of each loan;
2. **The Financing** was typically 3-month and 6-month inter-bank loans and customer deposits, supplemented by a smaller profit than was being reported;
3. **The Need** was for the quarterly and half-yearly interest on the inter-bank loans and customer deposits, since any other income (i.e. from treasury and wealth management) was needed to fund administration; in tandem, the mismatch between these three created:
4. **A Funding Gap**, which was filled by additional inter-bank loans and customer deposits, as well as new funding sourced via the permission allowed under the Asset Covered Securities legislation. All of these had to be serviced at a future date.

The evidence would suggest that what Anglo was doing was 'not very' different, in practice, from what Bernie Madoff and the others, who have been convicted of promoting pyramid or ponzi scams, were doing? In effect, it was a scam which was endemic and systemic within Anglo, and which pervaded that bank's activities from top to bottom.

In Fintan O'Toole's book 'Ship of Fools' he states that '*institutionally, Anglo was as bent as a Brazilian free kick*.'[99] It would be difficult to argue with that conclusion.

In fact, Anglo's scam was uncannily similar to the activities of Bernie Madoff, on several dimensions. Madoff was faking investment returns, while Anglo was faking its profits; Madoff required new investor money to fund the returns to existing clients, while Anglo required new investor money to pay the interest on existing funds from investors and the money market.

Even the two principals shared many features: the same era; the same lust for dominant control; the same emphasis on secrecy and need-to-know. Both were outsiders, who were not trusted by the industry; both had an inherently selective approach to their customers; both offered a consistent story for investors (even though it was not always true, though Fitzpatrick may not have realised that); both had an ever-increasing need for inflows of money; and both used auditors, from whom they could hide information, if not either control them. Ultimately, both sets of operations became uncontrollable and collapsed.

In addition, neither of the principals garnered great wealth for themselves, but both ultimately resulted in massive losses for others. However, where Anglo differed from Madoff's ponzi scam was in the use of a share support and market manipulation schemes to distort the market and prop up the bank; whether that was a conscious part of the plan or not, is difficult to judge, but it may not have been – in fact, initially at least, it probably was not.

But the one aspect on which they were entirely similar was that they were both on a treadmill. Neither of them could stop it and neither of them could get off it. Pyramid schemes are like that.

There is also one other crucial difference: Madoff's $50 (€38) billion scam landed him in a U.S. jail; Fitzpatrick's €35 billion accounting scam led to Greystones and playing golf, and to Poland, to watch soccer with Denis O'Brien.

Anglo's initial scheme to support the share price was the Clegg one, even if it was on a much smaller scale and did not develop the hugely negative consequences of the later one. But it developed into the untrue business model with the fictitious profits,

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[99] Ship of Fools, Fintan O'Toole, Faber & Faber, page 195

leading eventually to the funding of the CFD margin calls. In the end, the unwinding of the CFDs represented a further share support scheme, with devastating results.

There is another, almost peripheral, dimension to this aspect of Anglo's profitability. Given how much it trumpeted its growth in those areas, the bank could reasonably have expected its 'other income' (mainly fees and commission) to be capable of funding most of its administrative overheads; after all, it was lending in huge chunks, which should have required less administration and less other costs too. Otherwise, the funding of administrative costs would have had to come out of the 'interest received' figure. And that is precisely what happened in 2005 or 2006, as the following table indicates:

TABLE 5				
Year	**2003 (€millions)**	**2004 (€millions)**	**2005 (€millions)**	**2006 (€millions)**
Other Income	157	200	147	171
Administrative Expenses	155	185	252	311
Net Cost	2	15	(75)	(140)

While this is not a hugely important issue (very few banks cover their administrative costs from fees and commissions, but Anglo was operating an entirely different model and might reasonably have expected such an outcome), the overall strategy was misplaced. As the bank expanded, it required more and more market funding annually, to avoid illiquidity and ultimately insolvency, because the artificially inflated revenues were not producing cash. That was wholly typical of a business, which was overtrading, and Anglo was certainly 'biting off more than it could chew'.

Worse than that, what it was doing was also entirely illegal and a fraud on the market; and it bore all the hallmarks of a pyramid scheme. Not what one would have expected from a bank. Furthermore, these problems were entirely unconnected to anything, which was happening in the market for its shares; these problems derived directly and entirely from how it implemented its business model and how it massaged its results to convince the various interests, on which it was so reliant.

In response to the collapse of Anglo, many people have claimed that they were betrayed and fooled by the most devious and cunning business executive of his time. But in order to be fooled, regulators, auditors, directors and senior executives, had to believe what they were being told. Unless it was disguised to an extent, which is difficult to imagine, some of what was being done had to be at least partially visible to those interested parties, especially to those from the statutory sector, with a regulatory role. And if identified, its legality could never have seemed acceptable to people of their standing.

On that basis, there has to be a strong possibility that any in-depth analysis would have shown that the issue may not simply have been innocence but might have incorporated wilful ignorance too – that it may not just have been wrongdoing but that it is likely to have involved passive collusion too.

Currently, Anglo (now IBRC) through its Chairman and possibly other members of its Board, its Chief Executive, Mr. Aynsley, together with Mr. Woodhouse, are attempting to cover up these actions through court affidavits, omitting any references to the scam. In public, they are putting a revisionist spin on what was happening during the tenure of the former management, in an attempt to legitimise past actions. In that, they are supported by press releases from Wilson Hartnell, of which Mr. Dukes is a director, and from Drury Communications. And they have the support of KPMG, a major 'packager' and channel of loan applications during the Fitzpatrick era.

But in his response to interrogatories in November 2011, Mr. Woodhouse accepted unequivocally (twice) that Anglo had made loans expressly for the purpose of supporting its own share price. That raises some major questions, as follows:

Why is the main Quinn Family case not being heard at the outset?

Why are the courts colluding with Anglo in putting people in jail on the basis of potentially invalid debts?

Why are the core issues not being sorted out?

The current approach is hardly designed to ensure justice; instead, as Mr. Justice Charleton indicated, it is an extension of the fraud committed on investors by the former management. Anglo/IBRC may be State controlled at present, but that does not imply that past actions were not illegal.

What has been happening recently is, in effect, a cover-up of the original scam, involving further passive collusion. Morally, such cover ups are even more offensive than the original misdeeds.

Unfortunately not much has changed, with the advent of the new regime – certainly not enough has changed. One example is the bank's relationship with Denis O'Brien, who is now the 'real power' in Independent News and Media, which according to many in rural dwellers, has run a concerted campaign against Quinn Group for the past decade. KPMG also works closely with Denis O'Brien who holidays with Woodhouse.

Anyone being pursued by Anglo/IBRC should not expect any significant change in IN&M's attitude in the future. According to Broadsheet[100]:

"A feature of the past was that Denis O'Brien regularly entertained Anglo's senior management; that has increased significantly since Mike Aynsley, Tom Hunnersen (Group Executive: Corporate & Institutional Recovery) and O'Brien's personal friend, Richard Woodhouse, have joined the Bank.

Recently, O'Brien and his wife were seen on the town with Mike Aynsley, Tom Hunnersen and their wives. While in Ireland, Denis is regularly chaffeured by Mike Coughlan (a former Anglo employee); he is a regular visitor to the Anglo offices in Burlington Road, and spent, according to reliable sources, most of a morning down in Burlington Road, in the first week of April (5th), having a one-to-one with Mike.

Potentially even more worrying in governance terms is that the management of O'Brien's account has been moved under Richard Woodhouse, a close personal friend of Denis. Then the Siteserv account has also been moved over to Richard Woodhouse's management.

An interesting aside is that O'Brien's initial bid for Siteserve was too low to be included in the second round of bidders and was not initially included in that round; it has been alleged that Denis eventually got the 'heads up' to increase his bid. Even in the final round of bids, O'Brien was not the highest final bidder, but IBRC asked for the production of a letter, showing that O'Brien's lower bid was 'the best bid'.

Another account, which has been moved to Richard is the personal borrowings of Brian Harvey (CEO of Siteserve) and it has been widely rumoured that, in return for Harvey's support for the O'Brien bid, Anglo will do a deal on Harvey's debt.

The independent consultant to Siteserv is also a long time friend of O'Brien and is also heavily indebted to Anglo. It is alleged that arrangements have been promised, which will result in that indebtedness being sorted out too.

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[100] http://www.broadsheet.ie/2012/04/02/denis-obrien-and-that-siteserv-deal/whistleblower

Then the management of the Niall McFadden/Boundary Capital relationship has also moved to Richard Woodhouse. Anglo is allegedly now looking to sell the debt of Niall McFadden (a close friend of Denis O'Brien) to O'Brien for a fraction of the original amount, in order to allow Niall McFadden to frustrate National Irish Bank's bid to secure his bankruptcy.

More worryingly, IBRC (when the case was being managed by the Personal Lending team) initially decided that forbearance was the best option in the management of the Tony O'Reilly relationship – O'Reilly has long been a bitter enemy of O'Brien. Then surprisingly, when the case management was moved to Richard Woodhouse, the new team decided to take a more aggressive stance against O'Reilly and the case is expected to 'go legal' shortly."

That penchant for legal processes is a reflection of the failure of Anglo/IBRC to date. Dukes, and his management team should first be ensuring that the justice which was not applied in the past, will be applied in the future. There is NO indication that they hold that view.

17. QUINN'S CFDS - WHO KNEW WHAT?

It is believed that, in aggregate, Sean Quinn may have accumulated a stake of more than 28% in Anglo Irish Bank, mostly through Contracts for Difference (CFDs), which were bought through Quinn Group. Quinn had become a client of Anglo when it took over Smurfit Paribas in 1999. Michael O'Sullivan, Anglo's lending director for Ireland, who has stepped down, as part of the exodus which has occurred recently, was responsible for managing the loans of Quinn Group and Sean Quinn's family.

Much of Quinn's stake in Anglo is believed to have been held in the names of individual family members, mainly his children, so that it now seems that no one individual held more than 5%. There has never been any suggestion that, in aggregate, they breached the 30% figure, at which point the family, being connected parties, would have had to make an offer for the entire capital of the bank. Whether that was Quinn's ultimate objective is still a matter of conjecture, since he has made no definitive comment on that possibility, though such comments have been made by others.

When the pressure on the bank to continue funding Quinn's 'margin call' payments became intolerable, as the share price fell, the bank would have wanted to force Quinn to dispose of part of his holding. But placing a large number of shares on the open market would certainly have precipitated a major fall in the share price. So Anglo decided to enlist the support of some of its wealthier customers. That resulted in the now infamous 'Golden Circle' or 'Maple 10' deal.

The 'Golden Circle'/'Maple 10' referred to the group of ten investors involved in a transaction whereby the bank lent a total of €451m to some of its major clients, to buy part of Quinn's shares in the bank. It is believed that the transaction related to 10% of the bank's capital (1% to each investor), or more than one-third of Quinn's holding.

It now seems that the 'Maple 10' deal is being considered as a stand-alone transaction, by both the media and the ODCE in their investigations into Anglo; that is just pure nonsense. It has to be treated as an integral part of the Quinn CFD story; it is not stand-alone. It has in effect become one of the more contentious aspects of the entire Anglo-Quinn saga. It is clear from the issues raised by then Deputies Kenny and Gilmore in the Dáil on 17th February 2009 that both of the main opposition parties in the Republic initially saw these transactions as entirely related to the Quinn case (before they were in government); the then government was not so definitive on that issue.

On that occasion, in a bad-mannered exchange, which included interruptions and snide remarks, and involved several opposition deputies, Deputy Kenny suggested that the then Taoiseach might be "...*protecting the interest of....Anglo Irish Bank*." He also suggested that "*Others were gambling or suggesting that the share price would go down. These were in hedge funds or whatever"* to which Deputy Joan Burton, now a Government Minister, interjected that "*They were gambling*", without defining who 'they' were.

Clearly, the hedge funds were gambling on a fall in the Anglo share price; that was entirely predictable, whoever owned the shares. Shares in other banks, both in Ireland, Britain, the USA, Europe and the Far East were also losing value rapidly, as investors anticipated serious losses through bad debts, with most global economies going into rapid decline. It was inevitable that a bank, which investors had discovered was highly exposed to a property sector, which was then in free-fall, would decrease more rapidly that most. And it did. But so did banks throughout Europe and North America, albeit somewhat more slowly; and so did the other Irish banks, which converted into 'penny shares'.

Anglo's response was to engage in one of the most blatant share support/market manipulation schemes in history. By comparison, the Guinness-Distillers case was 'in the ha'penny place'. The 'Maple 10' deal was part of that, but by no means all of it. However times and circumstances have changed, and Messers Kenny and Gilmore are now doing exactly what they castigated their predecessors for doing.

There were several interesting points, which arose from that debate; they include the following:

(i) The then Taoiseach's comment that "... *I received a telephone call in Japan from the Minister for Finance. His discussions with me at that time related to the need to proceed with the nationalisation on the basis of what was emerging in regard to directors' loans and other corporate governance issues which he said had been referred to the regulator*." THE CFD POSITION WAS NOT INCLUDED AS ONE OF THE BASES FOR NATIONALISATION.

(ii) The comment from the same source to the effect that *"...as Minister for Finance I became aware, from contacts between the Department of Finance,* *the Governor and the Financial Regulator over the course of last year, that a large overhang of shares were held by the Quinn Group and related persons in the family.*" This was obviously known when Cowan was Minister for Finance and he had learned about it from the Department of Finance, the Governor and the Financial Regulator during the previous year; so THIS WAS KNOWN TO THE RELEVANT AUTHORITIES FOR A LONG TIME AND THEY TOOK NO ACTION.

In that event, how could the Financial Regulator then claim not to have been aware of the transaction? He must have known about it and, therefore, he must have given his imprimatur to it, either explicitly or implicitly.

(iii) Deputy Kenny's comment that "..*As the Taoiseach knows, there is no trust and no confidence in Irish financial institutions among the markets*"; in that respect NOT MUCH HAS IMPROVED, except that Kenny is now Taoiseach and he is arguing the opposite; plus ça change, plus c'est la même chose.

(iv) Deputy Kenny's comment that "*It is patently wrong that the regulatory authority should be investigating these matters when it is a fundamental part of the problem*". That was a valid comment. Unfortunately, Taoiseach Kenny is now allowing IBRC (Anglo reconstructed) TO CONTINUE ITS FRAUD....*"BY CONTINUING AND FOLLOWING THROUGH ON THE APPOINTMENT OF A SHARE RECEIVER IN RESPECT OF DEBTS INCURRED THROUGH ILLEGALITY"* as Judge Charleton indicated (para H5) in his judgement.

(iv) Three of the questions asked by Deputy Gilmore, as follows:

Did they Financial Regulator, the Department of Finance or the Minister for Finance know about the arrangement involving the ten individuals when the decision was taken to proceed with the bank guarantee in September?

Were details of the arrangement included in and described in the PricewaterhouseCoopers report...?

Did the Taoiseach and the Government know about the arrangement involving the ten individuals when the decision was made to proceed with the nationalisation of Anglo Irish Bank?

From those exchanges, it is almost certain that THE FINANCIAL REGULATOR MUST HAVE KNOWN ABOUT BOTH THE QUINN CFD HOLDING AND THE MAPLE 10 TRANSACTION, but, at this point, there is no direct evidence to that effect. Deputy Gilmore's three questions cannot be answered with any conviction, without coming to the conclusion that the Financial Regulator and the Department of Finance both knew about the share support being provided by Anglo and they could not have construed it in any way other than as 'market manipulation'. Were they not aware that share support/market manipulation was illegal?

In the course of a judgement concerning a dispute between Anglo and a firm controlled by Belfast businessman, Peter Curistan[101], Mr Justice Deeny, a High Court Judge in Belfast, said that this particular controversial deal by Anglo Irish Bank appeared to be "...*prima facie improper and unlawful*...". In his legal submissions, Curistan had referred to the "...*suppression of allegations as to Anglo's Golden Circle illegality...*" He has long claimed that Anglo's legal action against him and his company was designed to prevent disclosure of information in respect of the Golden Circle transaction. It is not clear what, if any, the connection is between the two issues.

Sean Quinn makes a different, but equally serious allegation. He has been arguing that Anglo's pursuit of his family and of their overseas property portfolio, is based mainly on ensuring that his children will not have the resources needed to fight any case, in which the legality of Anglo's loans for the purpose of allowing him to meet the margin calls on his holding of CFDs in Anglo, would become an issue. If that is the case, there would appear to be an argument that such actions would imply an abuse of the legal system, but no Judge has yet indicated that evidence of such abuse has been proved in court. However, Anglo claims that it is simply attempting to secure assets on behalf of the Irish people, but whether they have a legal right to those assets has also not yet been determined by an Irish court (though a Swedish court has suggested that they may not have all the rights they claim).

The most recent reports suggest that they have spent, or are in the process of spending, €80 million on these issues, with no return to date, and the probability that a final court decision will give them no rights over the assets involved.

What pressure the bank or members of its management team brought to bear on those ten businesses to persuade them to invest in its shares has never been disclosed, by either the bank or the ten people involved, though that will probably come to light in some forthcoming legal case(s).

[101] In April 2012 Curistan, in a further action, requested the High Court in Dublin that Mike Aynsley be called as a witness, Anglo's counsel stated that it would be unacceptable if he was subpoenaed just because he signed a letter produced in evidence. That is, at best, an odd claim, which is at variance with some of its claims in the Quinn case.

It has never been clear whether Quinn sought to dispose of part of his holding (though it has frequently been suggested that he did, but according to Concerned Irish Citizens, he was ordered not to), or if Anglo took the decision to dispose of it, in order to alleviate concerns, which were being expressed in the market place, or in order to take pressure of the share price. But is has also been suggested that he was reluctant to sell and that Anglo forced the issue. One clear certainty is that Quinn was never involved in the sale, nor in the identification of the target investors; in fact, it is alleged that he did not even know most of those involved. Therefore, there is no doubt that this was entirely an Anglo initiative.

What appears to have happened is that Anglo had secured control of the CFDs, in return for funding the margin calls, and was in total control of the Quinn share position. What is not publicly known is how long that situation had pertained. The bank's main concern would probably have been that the CFD overhang was contributing to the depression of its share price. In order to address the overhang, it appears that Anglo came to the view that the only option was to 'create' a purchaser for the CFDs. This reflected the 'can do' and 'control' attitude of Anglo's management. Whether its legality was considered is not known. Clearly, more than one purchaser was desirable; they decided on ten.

Once Anglo started to fund the margin calls, it was on a thread-mill, unless the share price ceased to fall. But the ultimate reason that the margin calls were required was that the market had ceased to believe in Anglo's model – Anglo had been 'unveiled'. Rather than addressing that issue, Anglo continued to tell lies, as a way of getting out of the mess, it had created for itself; but it was too late, the markets had moved on and Anglo was finished, though its management may not have accepted it at that point.

The final phase of the share support scheme devised by Anglo, having commenced with the funding of margin calls on an unsecured basis, appears to have involved:

(i) lending funds to the Quinn family on a full recourse basis to purchase the 15% stake (i.e 'going long' on the shares);

(ii) lending funds to ten existing Anglo borrowers to allow each to purchase a 1% stake in the bank's total capital, with at least 75% of the borrowing, if not it all, being non-recourse; and

(iii) engaging a London investment bank (Morgan Stanley) to 'front' the transfer of CFDs into share purchases by the various parties.

The whole scheme appeared to be designed to avoid market notification. However the Quinn family subsequently issued a statement advising of its 15% holding.

It is not known who purchased the remaining 3%; they ultimately became worthless, but Anglo has never disclosed who holds those shares. Neither is it known whether the investment bank fees were bundled into the price struck for unwinding the CFDs, or why the Quinn family loans were on full recourse, whereas the others were not, or how precisely Anglo sourced the hundreds of millions needed to fund the unwinding of the positions. All of these are important issues, with potentially massive legal and regulatory implications.

What is known is that Anglo engaged the investment bank, sourced the ten borrowers (Maple 10), forced the Quinn family to take loans to fund the 15%, took additional security (apparently without the full safeguards) from the Quinn family and managed the price of all those transactions. But crucially, it is also clear that the share price was established prior to the transactions occurring, as loan facility letters had to be drafted and accepted prior to the deal. That was clearly contrary to both national and European law.

That also appears to be the point at which Anglo took a charge over the shares in the companies, which held the Quinn property assets in Eastern Europe, but it now appears that those assets were not what the bank was funding – it was funding a share support scheme and manipulating the market for its own capital.

So in essence, Anglo finished up financing an 'off market' transaction for about 28% of its equity, involving an artificial price, without any Stock Exchange disclosure. By any standards, that was a fraud on the market. It was a multiple of the size of the DCC/Fyffes case, which resulted in a court appointed inspector. The reality was that, indirectly, Anglo had borrowed funds in the market to acquire 28% of its own issued share capital. A further 2% and Anglo would have HAD TO MAKE A BID FOR ITSELF under Stock Exchange rules! But Anglo appears to have been in constant breach of such rules throughout its history.

Several commentators have since claimed that those selected for participation in the Maple 10 scheme may have already been in breach of Anglo loan covenants and had no option but to participate; but there is no clear evidence to support that. Even if that was true, overlooking covenant breaches could be deemed a 'consideration' and, therefore, illegal. There is now clear evidence that at least one of the Maple 10 received a 'benefit' afterwards.

It also seems unbelievable that none of the Maple 10 was told the names of the other 'investors', but that appears to have been the case. These were very experienced businessmen; if they were not told, why were they not told? And why did they participate, in the absence of full knowledge of the transaction?

It has been suggested that Anglo sought legal advice on only certain aspects of the Maple 10 arrangement, rather than on the entire CFD unwinding transactions. If that is true, it would seem to indicate that Anglo was aware of the share support implications of its actions and sought to distance itself from such implications, through seeking advice on a selected element of the scheme only.

It has also been reported in the media that the Dublin law firm, Matheson Ormsby Prentice (MOP), "*advised the board of Anglo Irish Bank in July 2008 that the loans to the children of Sean Quinn to buy shares in the bank did not breach company law or constitute "unlawful financial assistance*". Odd as it might sound, it seems that MOP[102], whose Chairman, Tony O'Reilly, was a major Anglo borrower, may actually have put their advice in writing to the Anglo Board. It would be interesting to know what the precise advice was and what information was provided to MOP.

Commentators have also claimed that the scheme to unwind the CFD position was approved by the Financial Regulator and possibly by the Department of Finance too; that was also implied as a possibility in one of Deputy Gilmore's questions of 17th February, 2009. But how could those authorities approve what was clearly a fraud on the market? How could they approve actions which clearly breached the Companies Act, Stock Exchange rules and European legislation? Were the agencies of the State acting illegally and is that why so much blame is now being assigned to Sean Quinn? If it is true, would that not be State-sponsored corruption – if not criminality?

Moreover if it occurred, would the ODCE not need to be undertaking an investigation into the actions of a Government Department? That raises the question as to whether the ODCE investigation could have been designed to find a scapegoat and protect the civil servants and their political masters. The Director of

[102] NAMA has so far paid €994,000 to MOP for due diligence work undertaken during the acquisition of loans from banks. MOP is a member of NAMA's enforcement and financing panels

the ODCE has now retired and it appears that 'the decks are being cleared'. But the Department of Finance should still be subjected to an independent, forensic investigation.

There is then the issue of where the funds came from to unwind the CFD positions? Anglo was then 'ducking and diving' in the inter-bank market in an attempt to roll-over its maturity commitments and to meet interest payments, while at the same time, sourcing additional funding for the new loans it had approved. Suddenly a €billion was required to unwind the CFD positions. It seems extraordinary that Anglo had the capacity to source such funding, at that time. So who assisted Anglo in sourcing the funding of that €billion plus?

A project name does not emerge from the ether; it normally comes from the initial project concept meeting. Random names are not often applied to business projects. To be credible, the name must somehow relate to the underlying task/issue. So where did the 'Maple' name come from? It is suspected (though there is no proof) that it may have come from the name of the Stephens Green based legal firm Maples and Calder, which opened a Dublin office in 2006. In 2007, it was the 'new legal kid on the block' located on the other side of Stephens Green from Fitzpatrick's office. At that point, it was normal to consult a legal firm for an off-the-record discussion on how to structure a new project. So did Anglo initially consult Maples and Calder and then use part of that firm's name for the project name?

In the end, the two really crucial questions arising from all of this are (or should be):

Is Sean Quinn and his family being made the scapegoats for the State, in order to protect people in senior responsible positions, including both past and present politicians and senior civil servants? and

Is the current vindictive pursuit of Sean Quinn and his family a conspiracy by the political, legal and regulatory systems, with the wholehearted support of the media, in order to protect the State and its agents and agencies, from exposure as participants in illegality?

There is plenty of evidence to support such a theory, but it will not be allowed to surface, and Quinn and his family will be made to take the blame. There is an old saying in Ireland that 'You cannot buck the system'; we now know that it is patently true. But such a view has always been accepted as true in corrupt systems and corrupt societies.

The majority of people in that part of the Republic, north of a line from North County Dublin to Galway, together with a large majority in the North, believe that the answer to both of the above questions is an unequivocal 'YES'. They believe that we now live in a country of State-inspired corruption and collusion, which has the almost complete backing of a legal system, which does the State's dirty work for it.

The evidence collected during the production of this report indicates that it would be hard to disagree with that view. How else could we have a situation in which, when a senior political figure is caught *in flagrante delicto,* in a public place, by someone in authority, a decision is taken that it "...*is not in the national interest*..." that he should be arrested, named and prosecuted. What does that tell us about integrity in Ireland? And why should anyone, who has been found in such a position, be awarded a well-paid job, on top of a state pension, with massive power and influence, by the State? It is a question which is not easily answered by Sean Citizen.

Not many people have any doubt that the Maple 10 transaction represented a share-support scheme, designed to prevent a large number of shares being sold (or 'dumped') on the open market. However, it is highly unlikely that any Irish court will ever reach such a determination; even if a judge wished to reach such a conclusion, would he, or she, be allowed to do so? In theory there is a clear separation of power and authority, between government and the judiciary in Ireland; in practice, many people, possibly a majority, believe that there is absolutely no truth in that claim, as they are all political appointees. All the available evidence suggests that they are inextricably intertwined, and that they both use the media to promote their respective positions.

In any event it is obvious that, in the circumstances then prevailing, a conventional sale would have depressed the bank's value (its share price) even further, because its value was already in something approaching free-fall, by early summer 2008.

It also now seems clear that Anglo lent the money involved in the Maple 10 transaction on either a largely or an entirely non-recourse basis, meaning that, if the borrowers could not repay the bank (which would happen if the share price dropped significantly or collapsed entirely), the bank would simply take back the shares and either hold them or find other buyers. In the event, it is now generally accepted that Anglo lost all this money, though there remains the possibility that some of the 'Maple 10' may have invested a small amount of their own money, but that is considered unlikely and the predominant view is that Anglo has lost the entire amount (€451 million) invested by the 'Maple 10'.

The 'Maple 10' solution implemented by Anglo was remarkably like a repeat of the strategy adopted by Fitzpatrick and the bank in 1992, in respect of the 'Clegg 15% shareholding', though the circumstances were very different.

What is particularly interesting about the Maple 10 scheme is that it was exposed primarily, over a series of weeks, by the Irish edition of the Sunday Times, rather than by any Irish-owned newspaper. One would have to wonder why that was so. Rightly or wrongly, there is a strong suspicion that the source of the leak to the Sunday Times was probably Sean Fitzpatrick.

The Maple 10 scheme seems to have been dressed up with a legal opinion and was again presented as having the 'approval' of the regulators. When legal advice was sought, it is likely to have been on certain aspects of the Maple 10 arrangement only, rather than on the entire CFD unwinding transaction. That would confirm the dominant view that Anglo was aware of the share support implications and sought to distance itself from such implications through seeking advice on a selected element of the scheme only.

Whether the Financial Regulator was involved in the decisions surrounding the introduction of the 'Golden Circle' or not, is a potentially crucial issue, with possible major legal and financial implications for the State, as well as for Anglo. Even if he approved them, either formally or informally, without becoming directly involved, or if he knew about the transaction and failed to intervene, the State could have a legal exposure. While the main, initial, legal implications are those which are likely to affect Anglo's management, there is, at this point, no guarantee that liability will stop there. That is a further reason for creating a scapegoat and preventing disclosure.

To a non-legal member of the public, all the evidence would suggest that both the Maple 10 and the Clegg disposal were clearly share support schemes; so was the payment of the margin calls on Quinn's shares, as well as the final purchase of that family's CFDs. In all these cases, it appears that Fitzpatrick and Anglo set the price of the transfers and that they sourced the investors. Whether, in the earlier scheme, they also provided the funding, is unclear, but so far as is known, there has never been any allegation to that effect.

In the more recent case, the objective was certainly to shore up the share price, or more accurately to avoid a decline, which is effectively the same thing. That would have had two very different consequences: firstly, it would have protected the executive share options of Fitzpatrick and other members of Anglo's management; secondly and possibly even more importantly, it would have avoided disclosure of the warehoused loans and their legal, financial and governance implications. Both had significant implications for Fitzpatrick and other members of his management team; they would also have had some implications for certain members of the Board of Directors. And they would have had other implications for certain public officials too.

Whether those latter implications were the main purpose or simply an ancillary effect is impossible to say, in the absence of judicial findings – and even then we might not be sure. But clearly in light of more recent revelations, including Fitzpatrick's own comments, that may well have been seen within Anglo Irish Bank, as much more important than was limiting Quinn's losses, which was unlikely to have been a high priority, at that stage. That said, the bank still had a mandatory duty to Quinn and all its other shareholders.

The UK Financial Services Authority has recently described as a 'mandatory covenant' the need for banks to behave with propriety, in relation to its borrowers – otherwise they vitiate the legality of the loans. Is that policy being pursued on the basis of Dukes' recently increased vindictiveness towards Sean Quinn? More importantly, is the government and the Department of Finance putting pressure on Dukes to make sure that the Quinn Family cannot fund an action against Anglo/IBRC?

By mid-October 2008, two weeks after the bank guarantee had been introduced, the investors, according to Anglo's complaint to a Boston court regarding Drumm's bankruptcy proceedings, were concerned that the bank's share price had fallen significantly. Anglo claimed in its complaint to the Boston court that, to protect the investors from enforcement on the 25 per cent recourse, on or about October 13th, Drumm and Pat Whelan, who had assembled the investor group, agreed to modify the recourse element of the loans. The bank said that a letter was put in each of the investor's files amending the original 25 per cent recourse "...*for the sole purpose of creating ambiguity as to the recourse provision and impairing AIBC's enforcement of the loan*s..."

Those letters were allegedly backdated to July 17th, 2008, and were intended to supersede the original loan letters to the investors of July 10th. The new letters never went to Credit Committee for approval. Six of the investors signed and returned the modified letters. "*The sole purpose of the modified recourse letters was to look after the high net-worth customers rather than the best interests of the bank*," Anglo claimed. Who said that Anglo was a 'bad bank'? It looked after some of its customers very well indeed.

But even that pales into insignificance when placed alongside the highly unusual approval of the €15 million loan by Anglo Irish Bank to Belfast property developer Paddy Kearney, to buy subordinated bonds in the bank. That transaction was a sanctioned in February 2009 after the nationalisation of the bank. Who authorised that? Did Dukes know about it? If not, why not? He was a director then. Has Dukes 'dirty hands' in relation to these issues? There is an *a priori* case that he has, but that needs to be confirmed.

Is that why he is so defensive and clearly needs a scapegoat? Is that why he has made such strenuous efforts to focus media attention on Sean Quinn? If it is, as it probably is, he has succeeded.

That Kearney loan deal points to a pattern of support shown by the bank under the 'relationship banking' model that ultimately destroyed it. That deal showed that the lender was also willing to lend to a favoured client for 'a punt' on the bank's own subordinated bonds.[103] That involved an inducement to at least one of the Maple 10. A similar tactic was used by Guinness in the Distillers takeover, with 'interesting' consequences.

On a similar comparison, would the highly favourable treatment of McKillen by Anglo's Dukes and the new management, disclosed in the London court case, not also amount to a 'benefit in kind' for the share support he provided for the old management of Anglo? It all appears very similar to the Guinness/Distillers activity.

David Drumm's interpretation of what was happening in Anglo at that time is revealed in an interesting interview with Niall O'Dowd and Molly Muldoon,

[103] Irish Times, Cantillon column 21/12/12

published in 'Irish Central' on 26th November 2011[104]. There, Drumm is quoted as claiming, firstly that '...*there is a witch-hunt*' and secondly that '...*he felt he was part of Team Ireland, trying to salvage Anglo and the Irish banking system*'. He suggests that the Lehman collapse had been recognised as being a mistake and that '...*all the major decision makers from the Taoiseach on down were fundamentally motivated by a belief it would be an equally fatal error to let any Irish bank fail'*.

Even more significantly, the article goes of to say that Drumm believes that *'... in terms of Anglo, every decision, including the deeply controversial Maple Ten funding to buy up Sean Quinn's shares, was known about and approved at the very highest levels of the Irish government'*. He is quoted as having claimed directly that **"*Everyone was on the same team back then; then came the scattering match*"**.

Obviously, that casts serious doubts on any claim that certain people in the public sector were not aware of what was happening at that time, or that State agents and agencies were not involved. The authors suggest that '*Decisions were made in that frenetic period that will haunt the Irish for decades to come. The decisions made will certainly haunt David Drumm*'.

The reality is that these decisions will haunt both David Drumm and Sean Quinn and his family, because they are now being made the scapegoats for all Anglo's ills and problems. And Alan Dukes is now leading that process, with the support of the country's legal and political establishment, and the collusion of its media.

But the challenge for Anglo/IBRC is how to respond to the Quinn's legal action without disclosing, or admitting, the illegal acts of the original Anglo. Added to that challenge is the fact that the majority of executives of IBRC are non-nationals, who are unused to dealing with Irish rural community action, but who are now reporting to politicians, many with rural bases and populist agendas. By comparison, these newly recruited IBRC executives are used to dealing with politically 'well connected' businessmen, such as Denis O'Brien and Tony O'Reilly, to whom they can relate, and who are continually seeking to secure competitive advantages from the IBRC loan portfolio. So far, Anglo/IBRC is winning legal battles but it is not certain that they

[104]http://www.irishcentral.com/news/There-is-a-witchhunt--I-convince-myself-that-this-will-pass-134533003.html#ixzz1zN02IQLi

are winning the war. Moreover, despite Anglo/IBRC's 'no-expense-spared' PR campaign, the Quinn story has been gaining considerable traction.

Community action or, as Fr Brian D'Arcy would put it, '*showing solidarity to neighbours in need'* is considered very old fashioned in modern Ireland. But it has long sustained rural Ireland and the neglected areas of the border and northern counties.

But many in Dublin 4 still view border areas as 'bandit country'. That has been a major obstacle to any potential resolution of the urban-rural divide, which continues despite the Programme for Government's claim of '*a modern, fair, socially inclusive and equal society'*. There is still much to be done before that claim becomes valid; we are still very far from socially inclusive or equal.

18. PATHETIC PERFORMANCE TO DATE.

Tom Browne, the former head of Anglo's Irish lending division, has claimed in court that he was "...*instrumental...*" in introducing a "...*more conservative...*" lending policy in that bank. Judge Peter Kelly's response was terse and pointed: he told Mr. Browne that he had "...*presided over a 287% increase in lending...*"

Judge Kelly also stated, in his May 2011 judgment, on refusing to grant a six- month extension to the Director of Corporate Enforcement for the Anglo investigation:

"*The Anglo collapse….has had profound and serious consequence for the economic well being of this state and its citizens…caused hardship for shareholders and played no small part in seriously damaging Ireland's business reputation throughout the world*." Judge Kelly appears to have a very clear view on the Anglo collapse.

The infamous building earmarked as the proposed flagship headquarters for Anglo is according to Judge Kelly a "...*more fitting tombstone to the supposed Celtic Tiger*.." That comment was made in the pre-trial issues in proceedings by a German company, Metallbau Fruh GMBH, against Anglo on 29th January 2012.

An even more clinical view was expressed by Judge Charleton, in his judgement on the case: Irish Bank Resolution Corporation Limited -v- Cambourne Investments Inc & Others (14th June 2012):

"*Since the court has heard extensive expert evidence on proper banking practices in the context of the kind of heedless lending behaviour that has caused fathomless damage to the Irish economy, a brief comment may be apposite. It became obvious from the testimony that there must be guidance, and more, provided to banks as to when to loan money. More essentially, <u>banking culture must become honest and prudent</u>.*

This case was one of an optimistic developer meeting with a bank that was intent on lending money without proper analysis. Through countless repetition in other similar instances, such activities have caused ruination to not only those involved in imprudent transactions but also to the wider community that has been required to assume responsibility for debt on a gigantic scale for fear that banks, with their cross obligations through mutual loans to each other and the risk of wider contagion to the international banking industry would, through failing, undermine more than the Irish economy." (Underlining Added.) It would be difficult to quibble with Judge Charleton's assessment.

Details of the incentive offered to Curistan were also heard during the court proceedings in the High Court, in the case taken by the IBRC against Cambourne During. A former director of lending with Anglo confirmed that the bank had offered a payment to Curistan to wind up Sheridan Millennium -- but did not confirm the amount offered.

The former Anglo also director explained that he made the offer, as it would make financial sense for the bank to have Sheridan Millennium wound up. Anglo had previously agreed to support creditors of Sheridan Millennium to the tune of €3m. To save the €3m in creditor funding, Anglo considered it in the bank's interest to talk to Mr Curistan about the possibility of his voluntarily winding up Sheridan Millennium.

"*In financial terms, it would have been obviously better for the bank* [to have Millennium wound up] *because they were going to pay €3m to his [*Curistan's*] creditor."* said the former Anglo executive*. "It was a price for him [*Curistan*] to exit voluntarily*."

As described above (Chapter 13), in the High Court, Judge Charleton, asked Anglo why it was necessary to pay Curistan anything to wind up Sheridan Millennium.

"*The normal rule in corporate law -- Anglo is a corporation -- the corporation is not entitled to spend money on anything which doesn't give the corporation a benefit or a potential benefit. It includes, in terms of commerce, that a corporation doesn't have the capacity to simply give away money."*

He then proceeded to query why Anglo would give nearly €1 million to Mr Curistan *"...for his back pocket...",* even though it was less than the €3 million which it would otherwise have to pay to creditors. Curistan told the Sunday Independent (16th September 2012) that he was "shocked" to receive the offer. IBRC declined to comment – why? This case demonstrates the real ethics being applied by IBRC and how Anglo's code of behaviour has been carried forward by the new regime.

In the early 1970s, Northern Bank Finance Corporation (NBFC)[105], a Dublin based bank involved mainly in providing finance for speculative property development, encountered difficulty with the late Hugh Charleton. NBFC and Charleton were involved in protracted litigation, which arose from the takeover, in 1972, of the Mooney chain of pubs in Dublin by Pat Quinn Holdings (PQH), of which Charleton

[105] Since subsumed into NIB

was a director. PQH was advised and financed for about £2 million by NBFC. When NBFC, with the assistance of SKC (now KPMG), took Charleton and his fellow takeover promoters to court in relation to the £2 million loan, the court decided the bank had been guilty of ***fraudulent misrepresentation*** over its part of the takeover. The legal proceedings ended in 1979, after Charleton and his partners were awarded £425,000 damages by the High Court – a huge sum at that time.

While Anglo, unlike NBFC, did not have a corporate finance division, it did create and structure deals to generate lending, including those involving the Maple 10 and the lending to fund margin calls and loans to cancel Quinn's CFDs. On those issues, did Anglo also engage in fraudulent misrepresentation? The evidence would suggest that that needs to be investigated.

Minister of Justice and Defence, Alan Shatter has claimed that many of those who were complaining of being rendered insolvent "...*voluntarily placed themselves in positions...in which they raised money from banks and money that may have been very unwise to raise.*" He went on to say that "*Some individuals who now are trying to wash their hands of personal responsibility for borrowings at levels that were verging on the insane, deserve little sympathy*"[106].

That comment was typical of those who have contributed little to national output – never created a job, nor taken a risk in the interest of raising national wealth. The individuals about whom Mr. Shatter was so disparaging, have invested time, money and effort in building businesses, which provided jobs and economic prosperity in various parts of Ireland; and not all of them became rich. Mr. Shatter has never made a similar contribution to his country, though he is probably misguided enough to believe that he has, by 'spouting off' rubbish (or worse) in Dáil Éireann! Despite what he might think, that is not a very productive activity.

Mr. Shatter and the other self-important members of Dail Éireann should recognise that those who invest, whether in physical or financial assets, are also those who create the wealth and the tax revenues, which provide his and their salaries, or the repayment of the loans borrowed on international markets to pay for those salaries. It is difficult to understand the arrogant, condescending and self-righteous attitudes of those who publicly decry enterprise, but accept, as the source of their income, the products of such enterprise. Mick Wallace may be an outsider among the

[106]' Bill will cut bankruptcy term for debtors to five years or less' - Irish Times 19th January, 2012

national 'crooks in suits', but at least he did something for Ireland and for his community, apart from talking sh-te articulately.

Predictably, in light of his paper's attitude to some of those involved in these issues, the Irish Times columnist, John McManus[107] has suggested that the ultimate purpose of Anglo/IBRC is:

"*...to serve the taxpayers who now own it and nothing epitomises its new mission better than its resolute pursuit of Sean Quinn, which some would argue has gone beyond what makes commercial sense. IBRC's attitude towards Quinn makes perfect sense for what is, in effect, a State agency with a clear mandate to get every penny it can back for the taxpayer and to ensure that those responsible for the taxpayers' losses are held to account as fully as possible*."

Clearly neither McManus nor the Irish Times/IBRC Times are big supporters of Sean Quinn, who upset the legal 'crooks in suits', by cutting the cost of insurance and depriving lawyers of potential income – the same lawyers, who now form the judiciary. And they have neither forgotten nor forgiven him. However, McManus then goes on to say:

"But what really sticks out from the evidence given last week (Paddy McKillen London court case) is the alleged reference by Dukes to the 25-year relationship. If he said it, we can only hope he was not thinking about what he was saying. Otherwise, are we to assume he has stepped seamlessly into Sean Fitzpatrick's shoes as banker to Ireland's elite?

The simple sentence cuts to the very sensitive issue of IBRC's relationship with its legacy Anglo clients and what the rules of engagement should be.

One view – and that apparently enunciated by Dukes to McKillen – is that the relationship is ongoing, evolving and also supportive. This is in keeping with the notion that while the State may own Anglo, it is independent of the Government and operates on a commercial basis.

Indeed, this would seem to offer an explanation for why IBRC facilitated the €45.42 million takeover of Siteserve[108] by one of its biggest Anglo legacy clients, Denis O'Brien. The deal saw IBRC write off debts of more than €100 million (70% write off) while the Siteserve management got a €5 million payoff and kept their jobs."

[107] McKillen case dredges up memories of Anglo culture, Irish Times 26th March, 2012
[108] Hugh Cooney of KPMG is the Chairman of Siteserve Plc and Robert Dix of KPMG is the senior independent Director – the sale of Siteserve Plc was conducted by KPMG and Davy.

Mr. McManus was clearly wrong on a couple of issues: firstly and most importantly, it is patently obvious that IBRC is not independent of the Government and that it does not operate on a commercial basis, however loudly it and the government may claim otherwise.

Secondly, it is not at all clear that Anglo or the State is owed money by Sean Quinn or his family, since the evidence suggests that it appears to be owed by a company which was taken over by the State and its agents. Who actually owes the money has not yet been decided in court and neither has the legality of the entire lending to Quinn and his businesses – or whether it was 'lent' as part of a criminal act, by Anglo.

Thirdly, if IBRC financed the sort of deal suggested by McManus for one of their favourite clients, why is it so difficult to get settlements in other cases, where relationships are less cordial?

Aynsley says that he told Minister for Finance Michael Noonan that for all the people who are successful in buying assets from the State-owned bank, there is a bigger list of people who lost out. "*They are not always happy they have lost and they will question the process with a view of opening it up again, so that they can get in and put something else on the table,*" he says.[109]

Aynsley declines to say how McKillen and O'Brien, two of the bank's biggest borrowers, are meeting a repayment schedule to reduce their debts to the bank. He defends the bank for having a close relationship with them both. "*We want to work with them on a consensual basis to have these facilities paid down so that we can eventually close the bank. It is a simple process, so it is natural that we have this*," he says. But he is not prepared to work with the Quinn family. Why?

On a broadly similar issue, the namewines[110] blog commented as follows:

"*The jury is still out here as to the wisdom of Minister for Finance, Michael Noonan, setting up a NAMA advisory board which is chaired by career-banker, Michael Geoghegan, and also includes Denis Rooney and NAMA's own chairman, Frank Daly. The terms of reference for the board are pretty light, but that may change in future, and the board was seen here as a political encroachment on NAMA's freedom to*

[109] 'Don't mention the A word',;Simon Carswell, Irish Times 7th September 2012

[110] http://namawinelake.wordpress.com – 10th April 2012 'Why Doesn't Minister Noonan have a IBRC Advisory Board?'

pursue its objectives set down in the NAMA Act. The Department of Finance already has a staff of 700 and you would have thought it might have been able to muster the skills to properly advise the Minister. Seemingly not.

But whilst NAMA continues to attract intense scrutiny of its operations – oftentimes repelled, it should be said by the opaque agency which oftentimes, and with justification, uses the NAMA Act which mandates confidentiality, as a shield – IBRC which is very similar to NAMA, see below, continues to operate largely beneath the radar.

The two organisations have approximately the same size of loan portfolio, but IBRC has 50% more staff and far higher provisions, so that NAMA has significantly higher 'Net Loans' (58% more, which cannot be considered irrelevant). Why then is the staff complement in Anglo so high? It does not suggest great efficiency.

	NAMA	***IBRC (Anglo)***
	2010 Annual Report[111]	*2011 Annual Report*
Loans	*€29,436 m*	*€28,028m*
Provisions	*(1,485)m*	*(10,339)m*
Net Loans	*27,951m*	*17,689m*
Turnover	*€525 M*	*€2,469m*
Profit After Tax	*€(1,179m)*	*€(885m)*
CEO Salary	*€430k*	*€500k*
CEO Expenses etc.	*Public service pension scheme*	*€241k relocation expenses + €125k pension*
Closure Date	*2020*	*Before 2020*[112]

The Sunday Times, in April 2012, reported that Anglo had, in January 2011, written off 60 loans; it also included the following comment:

"The current drama at Siteserv has shone a light into the usually covert activity of IBRC and most of the country seems bewildered by the apparent decision of IBRC to write off €110m from a €150m loan, whilst allowing Siteserv's shareholders to walk away with €5m. We were also interested to find out that IBRC has been allowing €400k+ salaries at Siteserv, despite the fact that the offer prices for the company – €45-60m – suggest it is deeply insolvent.

111 NAMA's preliminary results for 2011 - Operating profit €1.01bn; Impairment charge €0.81bn Net profit €200m

112 IBRC 12th April 2012: "*orderly*" wind-down of the wealth management business "*over a five-year time-frame*". No new business will be written. The vast majority, if not all, of the wealth management funds are set to mature within a five-year timeframe.

But how many Siteserv's are there out there where IBRC is seemingly playing fast and loose with our money? Step forward TV3! In February, 2012, we learned from the Independent that IBRC had indefinitely "parked" an €80m loan to Doughty Hanson which controls TV3, pending a possible future sale of Ireland's only commercial TV channel. In addition to the "parking", no interest charges are being run up and Doughty Hanson itself is said to be in rude financial health….. But why did IBRC offer a measure of debt forgiveness to TV3 when its parent seemingly has the resources to pay back the loan? And what about our national bete noire, Denis O'Brien? There has been reporting which suggests that he owes IBRC hundreds of millions of euro, and might in fact be IBRC's biggest single exposure.

Somehow I would trust the NAMA CEO, Brendan McDonagh to pursue the interests of this State more than IBRC's CEO Mike Aynsley, and ditto NAMA's chairman Frank Daly ahead of IBRC's chairman, Alan Dukes. Arguably Mike Aynsley is no longer fit for purpose – when he was originally appointed in late 2009, it was with the expectation that Anglo would be developed into a stand alone bank, but as we now know, it is to be wound down, it doesn't take on new business, hasn't a branch network and its minimal deposits are kept because they are associated with legacy lending.

Given the similarities between NAMA and IBRC, you might ask why the Minister doesn't feel the need to appoint an IBRC advisory board. But at this stage, given we own IBRC 100% and for all intents and purposes we own NAMA 100%, and given that both are dealing with generally distressed loans centred on property, given that both are supposed to wind down by 2020 and given that both are funded by state guaranteed funding – NAMA bonds and IBRC promissory notes – why not merge NAMA and IBRC together, generate savings from economies of scale and know-how and take the best from both organisations? And perhaps develop and apply the same standards of accountability and transparency to a merged entity."

There is no doubt that the broad thrust of those three quotations has considerable merit. We will probably never know whether 60%-70% is the normal range for Anglo write-offs in its new role as the remnant of Irish Banking's Rotten Core. But it could all have been so different, and it should have been. The original plan was to divide Anglo into a 'good' bank and a 'bad' bank. Whether that was a good idea or not, we will never know, but it appeared to have considerable merit and should have been tried. Anglo has relocated to a palatial building opposite the EBS Headquarters and was renamed and re-branded as IBRC.

But the central issue – the criminal destruction of national wealth by Anglo/IBRC – is not being addressed. In fact, it is being vigorously defended in the courts by the new management led by Dukes, Aynsley and Woodhouse. We now know with certainty that the current IBRC structure does not work. IBRC is the greatest disaster to have been born out of the economic collapse. Some form of combined entity, covering the responsibilities of both NAMA and IBRC, would clearly have been a more efficient and less costly solution. It is worse than that – it is not working to the advantage of Ireland Inc. and the Irish taxpayer either. According to UCC's Seamus Coffey" [113]

'*Mike Aynsley expects the nationalised Anglo to generate an operating loss of between €25 Billion and €28 Billion in its lifetime*'. *Using the June 2011 Income Statement, the huge role of the Promissory Note Interest in determining this loss is obvious. The following is an abbreviated version of that income statement:*

ANGLO IRISH BANK – CONSOLIDATED INCOME STATEMENT JAN-JUN 2011

ITEM:	***€MILLION***
Promissory Notes Interest	***644***
Customer Interest	***439***
Other Interest Income	***106***
Less: Interest Expense	***(717)***
Net Interest Income	***472***
Other Income	***17***
Total Operating Income	***489***
Total Operating Expenses	***157***
Profit Before Provisions	***232***
Provisions and Other Losses	***431***
Operating Loss	***99***
Joint Venture Loss	***2***
Taxation	***4***
TOTAL LOSS FOR THE PERIOD	***105***

Anglo reported a loss of €105 million for the first six months of the year, but the largest single income item in calculating that figure is the €644 million of interest, which it received from the State for the Promissory Notes. Without this inflow,

[113] http://economic-incentives.blogspot.ie/2011/09/getting-money-back-from-anglo.html

Anglo's losses would have been much higher (more than seven times higher!) *If that is true for this six month period, it is also true for the remainder of Anglo's lifetime.*

*Mike Aynsley may well feel that, while it is nationalised, Anglo will generate a loss of between €25 Billion and €28 Billion and will, therefore, be in a position to return some of the €29.3 Billion capital poured into the bank. But such a loss will be possible only because of the €11 Billion of interest that the State is providing to Anglo. (*Not many would accept Aynsley's definition of 'loss', if that is the standard of his logic and his arithmetic.)

The fact is the State must pay interest to Anglo as a result of having injected capital through the device of a Promissory Note. That is in sharp contrast with most of the capital injections into the functioning banks; those will see the banks paying an interest charge to the State, thereby returning something to the national exchequer. Anglo will not be making anything like those returns – it is, and will continue to be, a drain on national finances.

It is clear that without this Promissory Note interest income, Anglo's losses would be greater than Aynsley's assessment and would probably be at least the €29.3 Billion with which it was provided; depending on interest rates, it could be even closer to the €34 Billion "worst case scenario" that was suggested at the time the Promissory Notes were provided to Anglo.

To say there may be a "capital surplus" to be returned to the State is technically true; to say that it will occur, because losses are, or will be, lower than expected is not.' The projected 'capital surplus' is just another Anglo 'spin', because in reality, IBRC is just not working well.

Nevertheless, in the Irish Times Friday interview '*Don't Mention the A Word*'[114] in a comment remarkably similar to that used by Fitzpatrick, when defending his salary, Aynsley says management "*deserve to be remunerated for it*". In a further similar trait to Fitzpatrick, he shows his insecurity, although he is the highest paid state employee, in the following quote "*People can hate an organisation, but why should they hate a bunch of people who have come in from the outside, who weren't part of the problem?"* Could it because this bunch of people has achieved very little other than defending Fitzpatrick's scam, in order to protect the Department of Finance?

[114] Op.cit.

Why the word 'resolution' was included in IBRC's title, is a mystery. It has resolved nothing so far. And it never will – because in the majority of cases, it has been totally confrontational, instead of looking for and identifying opportunities for negotiation and settlement. Everyone, right down to the biggest idiot in the world, knows that the Anglo approach is not the right way to go about resolving problems. It is clear that Alan Dukes believes that using the legal system and doing PR spinning is a good combination for resolving issues; that is simply stupid.

Of course, the real issue is that, as the Sunday Times suggests, Alan Dukes was a disastrous choice as chairman of IBRC (as indicated earlier he had, or should have had, since he was a director, an interest in some of Anglo's worst decisions) and Mike Aynsley has been an equally disastrous choice as Chief Executive. It is not a high I.Q. or huge arrogance which makes a successful business person or a successful resolver of problems; that requires balanced judgement, an ability to see solutions which are not obvious, the willingness to assess and take risks, and the courage to do what needs to be done to carry a potential solution to a conclusion. We should all know that by now, because the evidence is there for all to see.

Unfortunately, in Ireland, we have a media, which has no interest in segregating what is important from what is peripheral. For far too many in the 'fourth estate', the 'spin' from Anglo/IBRC has been enough to provide the basis for the story. That is both lazy and incompetent journalism, which has contributed to creating scapegoats and allowing perpetrators to go largely undamaged.

Alan Dukes has never demonstrated any of the attributes needed to resolve difficult problems. That was one of the reasons why he was such a failure when he was leader of his party – a role which involved good judgement of situations and good negotiating skills. He has no background in hard business negotiations; he is entirely a bureaucrat; he is a director of Wilson Hartnell PR and appears to believe passionately in the value of public relations; but those who succeed in negotiating difficult agreements and resolving difficult problems do not use P.R. Nothing which Dukes has done better demonstrates his faith in the use of the law and P.R. combined, than his apparent personal vendetta against Sean Quinn and his family, though he denies that and may even believe it, but few others believe it.

Mike Aynsley starts with a similar lack of qualifications for resolving problems. He starts from the worst of all bases – he is a banker. What have the banks and bankers done for society, or the economy, or for business development, or for wealth creation over the past three or four years? When have the banks in any part of the world resolved national economic problems, or even contributed to their resolution? They get paid huge bonuses in good times and ridiculous salaries at all times; in fact, if any profession ranks as overpaid, it has to be bankers. Aynsley costs almost €0.9 million; he is not worth 10% of it.

The resolution of the problems created by Anglo Irish Bank required pragmatism, realism, courage and a willingness to take risks. Aynsley has so far demonstrated none of those attributes. He too seems to have far too many bureaucratic tendencies and he too makes excessive use of the media to promote his case.

Their combined approach has cost the country untold millions, in legal fees, in P.R. fees, in fees to Kroll International and Risk Management International[115] (RMI) for surveillance activities, in failure to produce viable initiatives and in staffing costs which bear very unfavourable comparison with those of NAMA. Their recovery rate also demonstrates a remarkably poorer record than has NAMA's.

But their greatest damage to the Irish economy has probably been their acceptance and implementation of the Murdock McKillop inspired break-up of the Quinn Group, especially of the giving-away of Quinn Insurance, which apparently was done with the agreement of Matthew Elderfield.

Many people seemed happy to hear that Sean Quinn had lost his company, because of the way in which the media, at the instigation of Elderfield, McKillop, Dukes, Aynsley and Woodhouse, have portrayed him. Presumably, they would have been less happy if they had realised that they will have to contribute to an indefinite levy on future insurance premia, in order to repay the Insurance Compensation Fund the amount by which these geniuses undervalued the business and used the assets to generate losses.

It has been claimed (though it has never been confirmed, since he refuses to talk to the media, though he is talkative enough in other forums) that Peter Quinn made an offer to Anglo, during some kind of negotiations, that if Anglo would find another bank, which would fund the monies due on the overseas property, the Quinn Family would retain the properties and pay off the loans – even though they disputed their

[115] RMI is a company of 'latter-day mercenaries', whose Denis O'Sullivan and others conducted covert (and potentially illegal) surveillance on members of the Quinn family and their relations, sometimes claiming to be acting on behalf of the State and, at other times, claiming to be acting for McCann Fitzgerald.

validity; it is claimed that he also asked for other concessions, including the release of the charge on Sean Quinn's house and the return of some less valuable assets.

But seeking as much as possible would be expected of any good negotiator. Peter Quinn is far too experienced a negotiator to table his bottom line, in advance of some indication of a counter-offer and, apparently, the Anglo side made no counter offer. After all, he has acted in that role on behalf of the U.K. government and with the support of the Irish government, in the past, so he should know how to negotiate. Anglo apparently rejected the option of further negotiations, without exploring what was achievable.

That story could not be confirmed during the writing of this report and, even if it is true, it is also possible that Anglo may have been right (the details have never been made public), but the bank's management team should have allowed the negotiations to proceed until both sides' bottom lines were known. That would have been the practical way of finding a solution, at virtually no cost. But it appears that Dukes did not take it. That raises the possibility that Dukes, Anglo and the Government/Department of Finance did not and do not want a deal, because it would focus attention on their own failings and the fraud of their predecessors, and would, as a consequence, relieve the pressure on some of its borrowers.

Chairman Dukes, CEO Aynsley and Executive Woodhouse are putting a revisionist spin on the actions of the former management in an attempt to legitimise the past actions of Anglo Irish Bank – Ireland's most hated institution for several months, but now converted by Dukes and Co. into the country's saviour; clearly they have the support of the Government and the Department of Finance for that approach. In their promotion of this revisionism spin, they are being supported by KPMG, a major 'packager' and channel of loan applications from development companies, during the Fitzpatrick era. There are still some 'cosy cartels' in the new Ireland.

IBRC's PR spin and overall approach, is at one with Fitzpatrick's approach; it moves the blame elsewhere. It appears to be simply an extension of the fraud committed on investors by the former management. Being State controlled does not convert illegal actions into legal ones, nor change the way in which they should be construed. In effect, what they are now doing is little different from the cover-up, which underpinned the pyramid scheme being operated by the former management. Is that not just another example of further passive collusion?

In most cases, such a cover-up would be deemed to be more damaging and more fraudulent than the original misdeed. In a passive cover-up, information is simply not provided; in an active cover-up, deception is used. Morally, the latter would usually be seen as the greater evil – in so far as morality is applicable in this case. It appears that Anglo's new management is now using a combination of both, in their press leaks and in their framing of affidavits. A '*throw enough muck and some of it is bound to stick*' attitude. And they have enlisted a broad range of support for their conspiracy, because that is what is now involved, in this case – a conspiracy being led by Anglo/IBRC and involving the government, the Department of Finance, the Regulator and the media, and supported by sections of the judiciary.

Dukes' sense of 'absolute right' (or is it the Department of Finance, with Dukes as its stooge?) is just exactly what was NOT needed in the role of Chairman of IBRC. And that is why so many people now see him as such an unfortunate choice for the role. Is that why the Department of Finance is now transferring an Assistant Secretary for an initial six months period into IBRC? Or does this signal the start of a regime change at IBRC?

What is not known is whether the other Board members have made any attempt to rein in his 'absolutist' tendencies; they would have served Ireland better if they had done that successfully. But they might have made an enemy, or range of enemies, in the process. In a very real way, the current regime is applying a reincarnated version of the management model used during the Fitzpatrick era.

Aynsley admits that he is "*overly sensitive*" to people continuing to call the bank, 'Anglo', when the old management team has been replaced by a new group of mostly foreign bankers, and the company has been 're-engineered' from a lender to a loan recovery business[116]. One might well ask how effective the re-engineering can be, if the past is not being addressed, especially given the nature of the past, in this case.

Unfortunately, they can afford to ignore that past; they are being protected by so many vested interests and they have won the P.R. battle; but they seem to have made and continue to make fools and losers of the Irish people, though the people are not yet aware of that, but like all such scandals, the truth will eventually emerge.

[116] 'Don't Mention the A Word'; Simon Carswell, Irish Times.

19. REGULATORY FAILURES RESULT IN NATIONALISATION.

By the end of 2008, all the Irish banks were perceived in the international capital markets as being practically worthless (and with considerable justification, because they were all losing money and had been for years); their share prices were on the floor, following a rapid decline over several months, but a particularly steep descent over the previous three weeks. It was clear that urgent remedial action was needed.

It is probable that the short-term factor which ultimately triggered their collapse was the disclosure of Fitzpatrick's previously undisclosed loans and the so-called 'circular loans controversy'. But the known exposure of all the Irish banks to property lending had to be the main medium-term factor; Irish property values were then in free-fall.

UBS financial analyst Ross Curran[117] was cautious on Irish banks, in 2008. He claimed that the Irish commercial property market was significantly over priced. As a result, he explained what prompted the downgrade on Anglo Irish (from 'neutral' to 'sell') in August (2008), as follows:

'*It is the most exposed bank to this market. It fell sharply in the middle of the year but then rebounded equally sharply in a two or three-week period, which we felt was completely overdone*.'

The shares, having hit a low of €4.08 on 15 July, had shot up nearly 50% to €6.03 by the time Curran produced his 'sell' note on 18 August. This proved something of a 'dead cat' bounce and the stock fell to 0.97, giving Curran an 83% return. He agreed the market's focus had now moved from concerns over property to a potential capital-raising driven by concerns over asset quality.

The net result was that Curran and Ignacio Cerezo from JP Morgan saw their 'sell' and 'underweight' recommendations on Anglo Irish Bank pay off after a nerve-wracking rally in September. London-based Cerezo's concern was the highly leveraged Balance Sheet and, like fellow analyst, Curran, the exposure to the overheated UK and Irish commercial property markets. Valuations will continue to come under pressure for four reasons, said Cerezo at the time: (1) higher impairments as the credit cycle turns and property prices deflate, (2) lower earnings, (3) rising pressure on capital, and (4) refinancing challenges due to reliance on

[117] http://www.sharesmagazine.co.uk/node/5102

wholesale funding markets, although government guarantees have improved this situation

There was no mention of the impact of CFDs in either their criticisms, their recommendations or their other comments.

In January 2009, the government decided to re-capitalise Ireland's three main banks – AIB, Bank of Ireland and Anglo Irish Bank. That would have required an Extraordinary General Meeting (EGM) in each case, but shortly before Anglo's EGM was due (on the previous night), the then Minster for Finance, the late Brian Lenihan, announced that Anglo was being nationalised. That precipitated a series of resignations in the Irish banking sector, including that of Pat Neary, then the Central Bank's head of Financial Regulation, as well as several directors of Anglo.

The issue was raised, at the time, as to whether Lenihan was right to nationalise one and recapitalise the other two Irish-owned banks; it was a source of controversy for a short while. It is now much clearer why Lenihan felt that Anglo should be treated differently and why he wanted control over it: it had been acting fraudulently and breaking a wide range of national and international laws for several years; that left it open to litigation from a variety of interests and Lenihan saw the need to protect any new investment by the State from being totally absorbed by claims of wrongful lending, fraudulent trading and share support, from borrowers and/or investors.

In other words, Lenihan wanted to make sure that the shareholders and the borrowers, rather than the State or the overseas bond-holders, would pay the price for the actions of Fitzpatrick. The fact that such actions would involve destroying many shareholders, most of whom were Irish, many businesses and many reputations, was clearly of secondary interest; protecting the Central Bank and the Department of Finance was the main priority – in fact, the only priority. The underlying morality of that decision is still seen as questionable, in some quarters, though it has had the unequivocal support of the Irish media and, as a result, the support of the Irish public, who have never been given the facts.

As described in this report and as the facts demonstrate, the former Anglo Irish Bank Corporation was involved in activities, which were illegal, covert, deceitful, a fraud on shareholders and contrary to both Company Law and Stock Exchange Regulations as well as contrary to European Regulations. In addition and crucially, the State's regulatory bodies had failed to protect both borrowers and investors, and Lenihan prioritised the rights of those who had failed in their duties to the national exchequer and the nation, over those who had invested, while totally unaware of the illegality, which had been an inherent and important element of Anglo's operations, over an extended period.

That was an odd choice of priority; but it was almost certainly dictated by the bureaucrats. For many, that was the single most scandalous decision in the history of the State; for others, especially those in the media, it was good to see successful entrepreneurs and job-creators, whether they were active or passive investors, brought to their knees. Jealousy is still alive and well in modern Ireland and no place more than among its media.

The catalogue of wrongs perpetrated by Anglo Irish Bank and its management has been described earlier in this report; it makes horrendous reading, for any organisation, never mind for a state regulated entity, now owned by the people of Ireland, although they were never asked if they wished to own it - most would not have wanted it! Among the most blatantly deceitful and/or corrupt activities were:

- it was proclaiming a business model which was not the one actually being used – in fact it was very different, not just a modest variation, though its management had probably convinced themselves that they were doing what they said they were doing (difficult as that might be to believe);
- as it was applied, that business model was fundamentally flawed – it involved overtrading and like any other pyramid scheme, it would work effectively only when sales were buoyant – in fact, when they continued to grow almost exponentially;
- its business model involved a theoretical, triple-lock, security system, which in practice, reduced to a single-lock, which was entirely dependent on property values;
- it was understating its bad debts and overstating its profits; it was almost certainly not profitable, from 2007 onwards and probably well before that;
- it was exploiting its less sophisticated borrowers for a considerable time, by over-charging on interest;
- it was consistently 'fiddling' its Balance Sheet, through warehousing loans, which it defined as part of its deposit base;
- it was failing to disclose information (especially, but not restricted to, the Directors' Loans and much more importantly, its loan pipe-line) which would

have had a crucial effect on investors' perceptions of the company and on its valuation, over a long period; and

- it was totally ignoring the rules of the Stock Exchange, some aspects of Company Law and European legislation.

But by far the most serious aspect of what that bank was doing is that ***IT WAS INVOLVED IN* A *MAJOR 'SHARE SUPPORT'/'MARKET MANIPULATION' SCHEME, WHICH WAS BOTH FRAUDULENT AND ILLEGAL*.** It had almost certainly 'got away' with a similar exercise in relation to the Clegg shareholding, but that did not compare with what it had been doing, over more than a year prior to its demise. In any other jurisdiction, the share support scheme would have been the primary focus of concern and the first issue to be brought before the courts of the land. But, as Behan told us, Ireland is different: in Ireland, the begrudgers have first priority.

The failure of the State's regulatory systems had left Ireland Inc. exposed to a multitude of claims from shareholders and, possibly from borrowers too. That had obvious potential to damage the national finances and destroy the reputation of the Department of Finance. It is now clear that the current management of IBRC and the State are both scared stiff of the reality of the danger arising from Anglo's share support activities. In particular, they are worried that Tom Browne, Sean Quinn or his family, or any one of dozens of other investors, would be in a position to sue the bank on that basis. If one was to win such a case, which the facts suggest that they should, and probably would if they received a fair trial, it would open the flood gates for other investor claims, borrower claims and possibly other claims too. The cost would certainly top €10/12 billion, but it could go to €25 billion, or more, given that so many Anglo shares were held by institutional shareholders, prior to nationalisation.

It is already known, though it is being kept hidden by the Department of Finance, the Minister for Finance, the Government and the Central Bank (i.e. by the Department of Finance, since it dictates strategy to all of the others) that IFSC-based Lambay Capital Securities plc, which held stg.£300 million in Anglo Irish Bank preference shares, has been pressurising the Government to establish a compensation system for shareholders who lost out when the institution was nationalised in January. Lambay has even published details of correspondence between the company and the Department of Finance on the Luxembourg stock exchange, but it is not being published in Ireland, because it would clearly be to the advantage of other shareholders too. Who now believes that there are no conspiracies and no conspirators in today's bankrupt Ireland?

The facts in relation to the Quinn case are also being carefully hidden by Anglo/IBRC and with good reason. The research undertaken during the production of this report indicates that, as Sean Quinn has stated from time to time:

(i) No money was advanced by Anglo to Sean Quinn or his family – it was given to Quinn Group, which still exists and is still trading;

(ii) The monies were not advanced to purchase the overseas properties – a fact already accepted by a Swedish court; they were advanced to support the bank's shares;

(iii) The loans were designated *'for working capital'* in Anglo's books, but they were actually for market manipulation;

(iv) When the bank's problems became public knowledge, Anglo Irish re-designated the loans as property loans and charged them against the only Group assets, which were not otherwise pledged and had equity value;

(v) Sean Quinn (stupidly, but apparently under pressure) agreed to those charges and persuaded his children to sign those guarantees, which they did, apparently without any legal advice; that included one daughter who signed, having been taken off a bus, while on her way to a third-level football game, and another who signed while preparing for an examination.

In any other country in the world, such loans and the related guarantees would be deemed invalid; one might have expected that such would be the case in Ireland too. Not in Dukes' Ireland, nor Noonan's Ireland, nor Lenihan's Ireland, nor Kenny's Ireland, nor Paul Gallagher's Ireland, nor Anglo/IBRC's Ireland either.

Worse again, the validity of those loans and the validity of the security held by Anglo has never been confirmed in any court of law, but some of them have been deemed invalid. And no Irish court has yet taken that into account – nor is it likely that any one will (unless the Supreme Court acts independently), given the conspiracy being perpetrated.

Against that background, it is easy to understand why a conspiracy would exist and why one family would be made into national scapegoats; but understanding it does not make it right. It has gone too far, when people are being jailed; but it has also gone too far if perjury has been committed by anyone on the state payroll (though that has not yet been proved – it has merely been suggested), or when a valued member of Fermanagh's community is killed.

Whatever IBRC's and Dukes' strategy actually is, all the indications are that it is not just to demonise Quinn, but to humiliate him, destroy him and make him a hate figure, and they have succeeded; they can deal with Fitzpatrick and his colleagues more leniently now. If they had their way, they would probably not deal with them at all, until Quinn and his family had departed the scene, or left the country entirely.

Normally, the law would protect the victim in such cases. Unfortunately, in this case, a fair trial in the Irish courts cannot be anticipated, never mind guaranteed, given the ends to which the State is prepared to go to ensure that bank's nemesis will not be allowed to win. They will probably have to go to Europe, though they have a much better chance of getting justice in the Supreme Court, if they could get there.

Aynsley says some of the bank's own civil actions against former executives may no longer be worth pursuing from a commercial point of view given the cost involved; but fighting cases against former directors was a matter for the Minister for Finance, the bank's owner.

"*Ethically, I think it is very important that we continue with it. You reach a commercial point with some of these actions where, commercially, you should walk away. That is not our call then. That is the public interest call that the Minister will make – whether he wants to spend more money and litigate to make a point*," says Aynsley[118].

Is this the new Anglo democracy, where some are more equal than others, or is it just plain bigotry, or political prejudice?

[118] '*Don't Mention the A Word'*, Simon Carswell, Irish Times.

20. ‘CYNICAL DISREGARD OF LAWS AND REGULATIONS’.

The information uncovered during the production of this report suggests that this is the greatest financial scandal and State-sponsored conspiracy in the history of the Ireland. That conspiracy is designed to ensure that what Anglo Irish Bank did, through its ‘share support’ and ‘market manipulation’ activities, will never come to light in any judicial forum. And the entire statutory sector is right-bang in the middle of it, disgracing the innocent and protecting the wrong-doers.

Sadly, they have the support of the media in doing so. God help Ireland and protect its people from the ‘crooks in suits’ who run it – the politicians, the judiciary, the Department of Finance in particular, but the public sector generally, and the media; add to that the roles being played by the Central Bank and the Financial Regulator. It makes for a serious and potentially criminal assault on any citizen, or number of citizens, and Dukes is happy to lead the charge.

The oddest thing about the list of fraudulent and illegal activities disclosed in this report is that none of those offences was committed by any shareholder – not even one; a shareholder, who was neither an employee nor a director, could not have undertaken any of those activities.

That would appear to include borrowers and investors, neither of whom had any influence over Anglo’s decisions. Why then have they become the bête noir of the story? What did the Maple 10 do, to be seen as contributors to this disaster?

The fact is that if those borrowers were to get ‘fair play’, the State would be shown to be involved in a conspiratorial and corrupt shambles; our politicians and our public sector bureaucrats would be shown to be incompetent idiots; the State’s judicial and regulatory processes would be shown to be complicit in protecting those who committed fraud or allowed it to occur; the Department of Finance would be recognised as totally incapable of fulfilling its remit.

But most of all, Noonan, Kenny and Gilmore would be seen as men, who are being led by the nose, by incompetent bureaucrats and grossly overpaid financial advisors. These men were elected on a promise of absolute transparency and fairness; they have become the least transparent government in the history of the State, hiding from Freedom of Information, making promises to correct wrongs and resiling from them when put under pressurise by the bureaucrats, agreeing to meet and then refusing all contacts, ducking and diving like Del Boys, and taking the Irish people for a ride.

Otherwise, why would the former Anglo executives not have been charged with and convicted of ‘share support’ and/or ‘market manipulation’ long ago. It is not difficult to guess the answer; it is not difficult to identify the conspiracy.

Acquiring shares using CFDs might have been unwise – indeed it clearly was - but it was not a crime. Those who did so did not run the bank, nor cause its collapse, just as they cannot be held accountable for the collapse of AIB or Bank of Ireland, or any of the other non-locally-owned banks which had to be recapitalised too. Anglo refused to allow one of them to ‘dump’ his shares; instead, the bank settled the margin calls over a prolonged period, in a futile attempt to protect the share price and the value of the executive share options and bonuses. When both bank shares and property values collapsed, that proved to be a complete waste of both public money and private wealth. Our media revelled in it - another bad news story, another fall from grace.

But it was a waste and a fall created by Anglo and Anglo alone – not by any Golden Circle or any developer, who was funded by Anglo Irish bank or any other bank. None of those initiated the actions which produced the write-offs either. The State’s losses from the Anglo collapse were caused wholly and entirely by a combination of:

- the senior management of Anglo;
- Fitzpatrick, as CEO and later as Executive Chairman;
- the failures of Anglo’s non-executive directors to supervise the activities of the company, which they were supposed to control; and
- the abject failures of the State’s regulatory regime, including the Department of Finance and the elected politicians, up and including the relevant Ministers.

Those losses have since been compounded by massive expenditures on legal costs and P.R. costs, designed to create scapegoats. The losses in the other banks were caused mainly by their following what Anglo was doing, in the interest of maintaining market share; that too might have been foolish, but it was not fraudulent or corrupt either.

In response to a Dail question in July 2012 Minister Noonan said: "*I am advised by IBRC that the approach of the Bank is to work constructively with each borrower on an individual basis to identify the most appropriate loan repayment plan. IBRC takes a very serious view of borrowers seeking bankruptcy in other jurisdictions as a means of circumventing the repayment of monies owed to the Bank. Where necessary, and as has occurred previously, the Bank will pursue borrowers to ensure bankruptcy is declared in what it deems to be the correct jurisdiction, with the ultimate goal of maximising recovery of loans for the Bank.*"

That was clearly a pointed reference to Sean Quinn who sought bankruptcy in the North, where he was born and reared and worked for his entire life of over three score years; he never worked in the Republic and he lived there for less than half his life. But IBRC could not demonise him, if he went bankrupt in the North. So they pursued him, had the order over-turned and he was subsequently declared bankrupt in Dublin. They followed David Drumm to Boston. By comparison, NAMA appears not to have a problem with its borrowers, who declare bankruptcy in the UK.

Clearly neither Drumm nor Quinn are, or were ever, part of the establishment; they were both outsiders from the start.

By contrast, former Fine Gael Minister, Ivan Yates, succeeded in declaring himself bankrupt in the UK, despite having lived all his life in Wexford, after High Court Judge Elizabeth Dunne had dismissed a bankruptcy petition by AIB. Interestingly Yates did not attend the court in Dublin, but Judge Dunne decided that his actions were entirely credible. Why the difference between that and other cases? Ah, yes; is that not the same guy who was a former Fine Gael Minister and touted as a potential leader?

The actions, the credibility and the avoidable failures of the new Anglo/IBRC management (and of some others) now need to be examined by some independent, external body.

The State, through the Department of Finance, did not have to collude in selling Quinn Insurance for far less than it was worth, by overstating the provisions for claims, on the basis of the case made by McKillop. They did not have to allow the use of the insurance Compensation Fund to fund the losses being generated under the administration. They did not have to take the Irish people for idiots.

Neither did they have to take away any borrower's ability to repay his borrowing, by seizing control of his various companies in a military-style operation and handing them over to a team, which, according to all the evidence available during the preparation of this report, is proving completely incapable of generating best value from them.

Dukes claims that Quinn's 'work-out' scheme would not have worked. It is a reasonable bet to assume that he would have said the same about his entry into the cement business or into the glass business too; he would have been wrong then and he may have been wrong on this one too – but he will never admit to that as a possibility. Anyway, how would he know? He has never built a business in his life. It is not that difficult to understand why someone who believes he is omniscient and is now almost omnipotent, has never succeeded in real business.

It is a 'sick joke' that the new team in Quinn Group is gloating about the increased sales of cement by comparison with 2011, without alluding to the fact that the biggest cement producer on the Island has been on strike for much of the period of highest demand for cement and that they are undertaking the biggest price-cutting exercise in the company's or the industry's history. It is even worse that they are selling good, modern mobile equipment for less than the cost expended in putting new tyres on those machines only a few weeks earlier. What idiocy!

But the funniest thing about the new management of the Quinn Group is that they have spent weeks welding the man-hole covers around the properties, in order to protect themselves. Sean Quinn is known to have received dozens of death threats per annum for all of two decades; his brother is understood to have received similar threats. Yet neither of them saw the need to weld any man-hole covers, or to have minders to protect them – money wasted on men sitting outside office doors for the entire working day, to protect managers, who cannot manage.

Anglo/IBRC has also hired security men to tail Aynsley and Woodhouse, but this cost is not being disclosed as part of their compensation packages. When the US President visited Ireland he brought a security detail and manhole covers along the route were sealed. But why would Aynsley, Woodhouse and the KPMG-appointed executives of the reconstituted Quinn Group require US-presidential type security?

Unfortunately, worker safety appears to be less important in the reconstituted Quinn Group, as evidenced by the tragic death of Fermanagh footballer, Brian Óg

Maguire. That was demonstrated when Paul O'Brien declared at a Dublin corporate restructuring conference that there were insufficient corporate governance procedures at the Group prior to his arrival, before going on to say that the 'Quinn Group is alive'. What an outrageous insult to the memory of Brian Og, who was not alive – made in the week of his funeral! Some sensitivity, that.

Does O'Brien not understand that corporate governance extends to the safety of employees? Should corporate manslaughter charges not be brought against him, the other current Directors and the 'shadow directors' from KPMG and from IBRC?

The Irish taxpayer will lose heavily because of the fraudulent acts of Anglo's former management and the incompetence of its current management. But they can rest happy – they have a scapegoat, who has been killed-off as a generator of wealth and value, as an employment creator and as a major contributor of tax revenues, for the Irish economy.

The funding of the CFD margin calls was not just a one-off action in the dying days of Anglo, but a core part of a systematic and sophisticated fraud, which had been in operation over many years. This together with the pyramid/ponzi schemes and activities, the share price support schemes and now the attempts by Anglo (through Woodhouse), using affidavits, to cover up the scam, combine to produce the real conspiracy and bury any smoking gun, which could uncover the truth. That is symptomatic of corruption and of a corrupt regime.

But that gun will never be fired, because firing it would open up new areas of necessary investigation, involving untouchable people. It would reveal the greatest conspiracy in the history of our country – worse than anything which happened to Casement or even Parnell – and it would demonstrate the corruption underlying the higher echelons of current Irish society and of the main Irish power-brokers.

There is a certain symbolism to the Central Bank's decision to relocate to Fitzpatrick's planned headquarters for Anglo in the IFSC. It continues the masquerade of normality, which was characteristic of Anglo's activities, over such a long time. Is it possible that the Central Bank was not aware of Anglo's plans for that building? They seem not to have been aware of many of Anglo's other activities.

The findings of the DTI in relation to the Guinness takeover of Distillers, are now more than two decades old; nevertheless, they still appear to summarise correctly the Anglo findings outlined, not just in this document, but in other ones too, as summarised by a then contemporary commentator:

> "*Firstly, the cynical disregard of laws and regulations;*
> *secondly the cavalier misuse of company monies;*
> *thirdly, a contempt for truth and common honesty.*
> *All these in a part of the City which was thought respectable*".

There are far too many similarities between what Anglo was doing and what Guinness did during the Distillers take-over; there are other similarities between Anglo and the various pyramid schemes, which have been perpetrated over recent decades. Unfortunately, all those comparisons indicate that Fitzpatrick's approach and activities were very similar to those of both Ernest Saunders and Bernie Madoff (although the latter two were themselves very different, on a whole host of dimensions).

Is it just a coincidence that all three acted in a similar manner, when confronted with their failed business models? Indeed, is it just coincidence that all three purported to have and to be implementing business models, which were very different from what they were actually doing?

In the case of Ernest Saunders and his colleagues, their activities related to only one takeover, covering only a short number of months. Anglo perpetrated more than one such act and the final fraud continued for much longer.

By comparison, Madoff operated for probably as long as Fitzpatrick. Both Saunders and Madoff have subsequently faced the courts and compensation claims were lodged by the victims, with some settlements.

However, detailed and appropriate charges have not yet been brought against Fitzpatrick or Anglo, although a very prolonged Garda/ODCE[119] investigation is still in progress, and hence compensation claims are being denied. Why has the investigation been taking so long?

119 The four aspects of the Anglo issue already passed to the DPP involve loans made to directors, the non-disclosure of certain directors' loans in Anglo's financial statements over a number of years, the provision by Anglo to numerous people of financial assistance for the purchase of its shares, and the communication of possible false or misleading information in certain Anglo public statements in 2008.

And what are the chances of compensation in the Anglo case? Clearly Ireland could not afford any such payments. Another basis for a corrupt conspiracy? But there has to be a better way and there would be if Dukes was not so arrogant and so self-righteous.

Fitzpatrick's account of the demise of Anglo is not being questioned in any way. Consequently, the challenge for those who do not believe either his account of events, or those of Anglo, IBRC and Dukes, is to identify how to create an interest among media commentators in querying that account of events. It will be difficult – probably impossible - because the media has already fully bought into the Anglo and Dukes story.

The other central issue – the criminally incompetent destruction of wealth by Dukes and Anglo – is not being addressed either. Instead it is being vigorously defended in the courts by the new management led by Dukes, Aynsley and Woodhouse. Only an Irish government could consider that trio to have the solution to the economy's woes; individually or collectively, they have never contributed one cent to Ireland's productive output, but they are being allowed – not just allowed, but supported – to destroy jobs on this island.

Add the politicians - Kenny, Noonan, Gilmore and Hayes - the over-rated McKillop, O'Brien and Dixon, and the legal eagles (Gallagher, Harty and others in McCann Fitzgerald), to the Anglo trio; then add John Moran and his senior staff in the Department of Finance. The result is the new Ireland's version of the 'failing upwards' syndrome. That incompetent partnership has produced a new Ireland, which is now governed by its media. Shame on our politicians for allowing that to happen!

The current approach is clearly designed to favour the authorities – especially the Department of Finance and the Central Bank, as well as IBRC/Anglo and their former auditors. It leaves the Government free to focus on the public handling (or mishandling) of the repayment of the Anglo bonds, both secured and unsecured, and on the issues associated with the promissory notes. The decision on the repayment of the Anglo bonds and promissory notes can easily be blamed on the previous administration and allowed to proceed, despite pre-election promises by the coalition parties.

However a recent UK court ruling has challenged Minister Noonan, the Department of Finance and Anglo/IBRC, as it has deemed the "coercive" measures taken to persuade junior bondholders to accept losses on €1.6bn owed by Anglo Irish Bank in 2010, breached UK law. Finance Minister Michael Noonan said in a statement that the investments affected by the deal would have been worthless if the State had not 'swept in' to save the bank. Perhaps the Minister should define 'save' and indicate precisely who, or what, was 'saved', because it is not clear.

Interestingly, a spokesperson for the Department of Finance rather than from Anglo/IBRC, said such issues had been challenged in the courts throughout the financial crisis. "*We will be appealing the judgment to the English Court of Appeal. We would be confident that there won't be any major implications from this ruling*," said the spokesperson.

One would have to wonder why Aynsley, the highest paid State employee, earning four times Kenny's salary, has the Department of Finance making his excuses for him.

The possible upcoming court action regarding the legality , or otherwise, of Anglo's payments of the CFD margin call loans, is being met by vigorous defensive actions by Anglo/IBRC, including launching a range of other legal actions. The probability is that these actions are being driven by the Department of Finance and by the Government, as much as by Anglo.

Aynsley claims that "*We will go as far as we need to get the money back. I keep on saying this – this is nothing about being vindictive, this is doing the job that we need to do*".

But he declines to comment on whether, how or when the bank will fight the case relating to the legality of some of those loans. When will we know whether they were advanced unlawfully to prop up the bank's own share price, or to manipulate the market for those shares? That has to be an issue, when former executives are being charged with false accounting and having lent money illegally, in criminal prosecutions currently being taken by the State.[120]

The perception, among a sizeable section of the public, is that current actions are being initiated as a way of draining the Quinn family of both the financial resources

[120] '*Don't Mention the A Word'*; Simon Carswell, Irish Times.

and the public credibility needed to fight the bigger and more important case, and that perception is almost certainly valid. When they are jailed, they will have even more difficulty in pursuing such actions.

But a European Court might be more even-handed, if it is given a chance to take an unbiased view and come up with the truth, whatever that actually is.

There is no doubt that Anglo will continue to use Paul Gallagher S.C., in defending itself against any 'insider dealing'/'market manipulation' claim(s). In court, he is aggressive and comes across as vindictive; in normal life, he is quite arrogant and pompous – 'strutting like a peacock' is a term, which has been used about him. But he is also supposed to be a good barrister. He should be: he is a former Attorney General.

But why should a former Attorney General, who clearly committed himself totally to the government position, since he was advisor to the government at the time of the bank bail-out, the creation of NAMA and the nationalisation of Anglo, be allowed to represent one of the litigants in a related civil case?

He has an obvious vested interest, including a political interest, in ensuring that Anglo gets what it wants. And as a former Attorney General, he has the status to influence, if not brow-beat, the judges in any case in which he is involved. There is also a need to investigate whether, after his appointment as Attorney General, he was involved in any of the activities related to Anglo's use of the amended Asset Covered Security legislation.

In May 2011, just two months after the government was defeated, Gallagher, who received €99,442 in severance pay, was representing wealthy businessman and tax exile JP McManus. Later that month, he was also senior counsel for Anglo Irish Bank. By June, NAMA and AIB were numbered among his clients, while in January of this year, he represented the Central Bank in court. During this period he also represented Permanent TSB in court.

In his recent book 'Without Power or Glory', former Green Party TD and Senator, Dan Boyle, sets out his views on the 'Gallagher issue', very clearly:

"*At cabinet level, we were coming up against a further obstacle in the form of the Attorney General, Paul Gallagher. We weren't aware of him prior to his appointment* *but he seems to have been highly regarded in the Law Library. His legal philosophy appeared to be very conservative. To us, it looked as if a greater level of scrutiny was applied to proposed legislation when it emanated from a Green Party source at Cabinet than when it came from another source, with additional reasons often being found as to why such legislation should be proceeded with at a slower pace, if it was proceeded with at all*."

Why would Alan Dukes engage a barrister whom Bertie Ahern selected as Attorney General? It appears to have been a very strange choice, although possibly not, given the pavonine Gallagher's known leanings towards Fine Gael; but it was certainly strange, given that Gallagher has what appears to be a blatant conflict of interest. A former Attorney General prosecuting a civil case, in which he might have a conflict of interest, would probably not be allowed in most developed democracies. Why is Ireland different and why should Paul Gallagher be different?

There are other issues too. For example, can Sean Quinn or any of the other defendants now be charged with any related criminal offense, when the procedures in a civil case possibly involved the exposure of information, which would not have been allowable in a criminal case? Would that not involve an abuse of process?

There appears to be an arguable case that Anglo perpetrated an abuse of process on Judge Elizabeth Dunne. Did Gallagher consider that possibility, or did he care? Did Judge Dunne take that into account?

What procedures were used to warn the defendants of the danger of self-incrimination, should criminal charges be brought later? If they were not warned, why were they not? Why was the potential for abuse of process not raised by the defendants' side? Was that another travesty of justice?

If a claim that monies were lent for an illegal purpose was upheld, it would probably ensure that the 'truth' would become public knowledge. However, all the indications are that the Irish authorities will do their damnedest to ensure that no court is given the opportunity to adjudicate on that issue. That raises a fundamental question: Will the High Court support the government in its fear of having its failings opened to public scrutiny? Or will it allow the current one-sided information leaks and arrangements to continue?

There are other issues of natural justice too. The following is one of the most obvious ones:

Why should a young woman who was not old enough to vote, when these things happened, but who suffered from their consequences, not be allowed to make her case in a court of law?

One would have to wonder why that young woman is being denied her civil and human rights. Only Dukes and Gallagher can answer that.

But there are other issues too. For example, Judges make a constitutional declaration, before God, to administer justice "*without fear or favour, without affection or ill-will towards any man*". Would it not be construed as a dreadful breach of that declaration if any Judge was to prioritise the protection of the State's finances and/or the concerns of the government over the rights of citizens?

Rightly or wrongly, there appear to be many people in Ireland today, who believe that the Irish judiciary have got their priorities wrong. It has happened before, in cases involving injustice.

Presumably, the government and the judiciary would both claim to support civil liberties. But the fact is that when their own interests are involved, this government has no respect for either civil liberties or human rights – the State must be protected at all costs. 'Totalitarianism Rules' in the land which is now exporting its youth (87,000 last year - mainly young people), because there are not enough entrepreneurs to create jobs – Anglo has ruined the majority of them and the State owns Anglo.

Proposed court cases have the potential for some establishment figures to be subpoenaed; the details of Fitzpatrick's stewardship of Anglo could be disclosed in open court; comparisons with Madoff and Saunders could be discussed; the madness of what Dukes and McKillop have done would certainly be exposed; Elderfield's grab for glory could be examined; Lenihan's attempt to protect the guilty at the expense of the innocent could be disclosed; the truth could come out. And perish the thought – Ireland's public sector could be exposed as the country's most incompetent entity, having their pay benchmarked against even greater incompetence.

Even should that happen, it is unlikely to reverse public opinion; Dukes, Elderfield, Anglo, their friends in Wilson Hartnell and Drury Communications, their friends in the media, their legal friends and the politicians have already captured that fully. But it might open up the whole discussion on Fitzpatrick's activities and Anglo's activities, as well as on the disastrous performance of Anglo/IBRC and on major injustice in this jurisdiction. It might even force the government into disclosing the truth – though that is unlikely!

The recent arrests and charging of Willie McAteer, Pat Whelan and Fitzpatrick is seen by many as really only a smoke-screen to deflect public attention from the overall conspiracy. Had there not been a strong reaction against the jail sentences recently imposed by Justice Dunne, there would probably have been no arrests and no charges either. The Quinns owe Whelan, McAteer and Fitzpatrick a huge apology; they would probably never have been arrested if the Quinns had accepted what Dukes and Noonan wanted.

One thing is certain: they will not be charged with share support or market manipulation, until others have been destroyed, made bankrupt and no longer in a position to sue for the losses imposed on them. Some corrupt State, this New Ireland of Kenny and Gilmore, of Elderfield and Noonan, of Dukes and Aynsley, of the judiciary, the legislature and the Department of Finance.

And why were the Board members not arrested too? Why is Dukes not being taken to task, legally, over the offer made to Paddy Kearney, when he was a Director (and possibly that to Peter Curistan too)? Ireland punishes the easy targets, not those who have the real or ultimate responsibility; that is what conspiracy is ultimately about – finding fall-guys and punishing them.

It really is an appalling vista and a national disgrace. And the wrong people are finishing up in jail.

Justine McCarthy stated[121] that Irish governments are perennial defenders in the courts of the land, but there is no tradition of Irish governments suing within the state to recover damages (from bank directors) on behalf of the people. They sue only the borrowers.

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[121] 'There's Profit in Putting Bank Directors in the Dock'; Sunday Times, 9th September 2012.

Prior to his recent appointment, Noonan's career had been tarnished by the Hepatitis 'C' scandal, when he was seen to have dealt insensitively and incompetently with victims of contaminated blood transfusions, particularly in the case of Donegal mother, Mrs Bridget McCole. Nevertheless, he is repeating his perennial defender mistake, through Dukes/Anysley, in the legal actions against the Quinn family. Will that be another blight on his career and cause untold damage to another family?

Phoenix Magazine, (24th August to 6th September 2012)[122] takes a very realistic view of the current state of play:

"If the DPP action against the three former executives of Anglo Irish Bank is successful, namely in establishing that they acted illegally, can Anglo still pursue Quinn and the family for €2.8bn? In other words, can the bank litigate to receive monies that a court has held to have been lent illegally? This must be the biggest worry now facing Anglo's CEO, Mike Aynsley, who is by far the highest paid employee in the country. …….

Although the directors and auditors are obliged to disclose individual matters which are of major significance to a company, in this case both have decided that discretion is the better part of valour. This elephant in the room is the €2.8bn owed by Quinn and his companies, representing as it does 10% total gross loan book.

Even without the DPP arresting the three former bank executives on foot of the alleged breach of Section 60, both the IBRC directors and Deloitte & Touche, already have full knowledge of what appeared were possibly illegal loans and, accordingly should have provided for these as being possibly uncollectable. The charging of Fitzpatrick et al brings this situation even closer to home and opens up the possibility that the directors could find themselves deemed to have acted recklessly in chasing Quinn and his family for €2.3 bn. the levels to which the bank have gone to chase Quinn for the full €2.8bn when there remains a question over the vast bulk of this."

The funding of Quinn's family with a €2.3 billion loan to facilitate the purchase of the 15% stake in what was then Anglo Irish Bank should presumably, have been disclosed given that it appears to have been well in excess of the 3% disclosure level which the law requires to be disclosed for any individual holder of a stake in a listed company.

[122] Moneybags: 'Trouble Brewing at Anglo Irish' (IBRC)

At the time the theory was that the shares were spread among the five Quinn children and, accordingly, each of them was holding a fraction under 3%, but it is possible that Anglo did not consider that the family was acting in concert (parties acting in concert must disclose the total holding they all have together - in this case 15%).

All of these issues make the pursuit of €2.3bn from the Quinns look premature at least. Dukes and his Board will have a lot of questions to answer if the charges against the former bank executives stand up and the taxpayer has to pick up an even bigger tab than that already contemplated.'

Nothing uncovered during the preparation of this report would refute the veracity of those comments.

Vincent Browne says in his blog[123] that the trial of Fitzpatrick and his co-accused will be the most fascinating trial in Ireland, certainly since the Arms Trial of 1970. It could also be as sensational. For those who don't remember the Arms Trial (ie everybody under the age of 60), its defendants were Charles Haughey, Captain Jim Kelly, then a recently retired intelligence officer in the Irish army, John Kelly, a Belfast member of the Provisional IRA, and Albert Luykx, a Belgian businessman resident in Ireland. They were charged with conspiracy to import arms illegally into this country.

All of them apart from Haughey admitted attempting to import arms, but claimed this was not illegal, as they had the authorisation of the then Minister for Defence, Jim Gibbons. They were all acquitted.

At this remove, according to Browne, it seems clear that the real scandal was the fact that there was a trial at all, given that there is (and was) persuasive evidence that it was government policy to supply arms to beleaguered nationalists in the North. That policy was thoroughly reckless, but it now seems obvious it was policy and that the prosecution of people for the attempted implementation of government policy was, well, 'curious'.

[123] Let the TV Cameras Into Sean Fitzpatrick's Trial 4th September 2012

Aspects of the Fitzpatrick trial are likely to be ‘curious’, too - though the *sub judice* rules mean that we have to be careful not to prejudice it.

However, we can speculate that it is likely that information will emerge concerning the extent to which the then Financial Regulator, the Department of Finance and (perhaps) members of the government, knew about what Fitzpatrick and his colleagues were doing in attempting to rescue the bank from Sean Quinn’s gambling; and to what extent, if any, they approved.

The legal advice that Anglo sought and obtained concerning all this will also be interesting, according to Browne. Also fascinating, he says, will be the legal fallout from the State's decision to institute charges for permitting allegedly illegal loans to members of Quinn’s family, namely his wife Patricia and his four daughters.

Depending on the verdict, how credible will IBRC/Anglo Irish Bank be in arguing that a valid legally-binding contract was entered into by the Quinn family members, backed by assets which Anglo/IBRC is now trying to obtain? If the basis of such contracts was illegal, could the family be entitled to retain the €500 million international property portfolio?

This Anglo trial will be a prolonged process, not least because there may be several trials. In this, the first trial, the charges are limited to simply permitting Anglo Irish Bank to "give unlawful financial assistance" to 16 named individuals for the purpose of, or in connection with, a purchase by the same people of shares in the bank itself. According to Browne, It is known that the DPP is considering further charges. It has received files from the Office of the Director of Corporate Enforcement in relation to the share deal to do with the movement of huge funds from Irish Life & Permanent to Anglo to inflate the deposit book, immediately before the completion of the annual audit; and charges related to the concealment of Fitzpatrick's loans from the bank. ‘

Against that background, the Department of Finance is now putting an Assistant Secretary, for an initial six month period, into Anglo/Irish Banking’s Rotten Core. Does this signal a regime change at IBRC, or is it just recognition that the Department of Finance has been behind the persecution of the Quinns, all along?

21. IN A GULAG, CAN ANYONE BE TRUSTED?

There are many in the border area and a minority, or more, elsewhere on the Island who believe passionately that what has happened over the past two years, in relation to Anglo Irish Bank and some of its customers, is no better than what happened in the Gulags, though it is slightly more sophisticated in its application: the identification and creation of new 'class enemies' and those involved in 'counter-economic' activities; show trials, where unwanted evidence, or facts which are unhelpful to the State's case, are ignored; a troika of Government, Anglo/IBRC and the Department of Finance; totalitarianism, leading to state-sponsored victimisation, which appears to have started under the previous Minister for Finance and is being continued by the current Government and their agents, with the complicity of the Department of Finance, the judiciary and the regulatory authorities; and clear, unadulterated corruption and bias at governmental, administrative and regulatory levels.

One can hear the responses already: *'not true'; 'all lies'; 'biased';* '*propaganda*'; etc. These are Ireland's new Stalinists and Soviets; they have to deny the corruption and conspiracy charges, as the ruling elite did in Soviet Russia for so long. And the media will support them 'in the national interest', just as Pravda did in Soviet Russia, for so long and so effectively.

The reality is that the original Anglo Irish Bank and its management corrupted the entire financial and regulatory structures and systems in Ireland, over the best part of a decade; its successor, IBRC, has now contributed massively to the patently obvious corruption of the political, judicial and public administration systems in the country, though they had help from elected politicians and from a supine media.

The net result is that most of the ordinary Irish people, outside Dublin 4, believe that Ireland is now the most corrupt democracy in the world – a nation managed by incompetents, operated by a centralised and corrupt cabal of government, the judiciary, the Department of Finance and the media, and which is morally bankrupt, as well as being economically bankrupt, but is looking to off-load their collective responsibility onto a small number of scapegoats.

Ireland is supposed to be a democracy. In a real democracy, proper legal procedures are seen as almost sacrosanct. But there are many in Ireland today, who believe that proper processes can be set aside, where the best interests of the State are involved. Such allegations undermine any belief in real democracy, but that is where Ireland stands today, in the minds of many of its citizens. Recent developments, some of which are related to the current Anglo/IBRC case have contributed to the growth of that view. That is sad for the country.

The authors of this report have decided not to recount some of the more alarming allegations, since the ‘evidence’ was largely apocryphal; but if the ‘evidence’ was valid, it raises serious questions about justice and democracy in Ireland.

Nevertheless, there are some issues whose relevance deserve to be considered; they include the following:

- Any court-based civil process which fails to warn a defendant against the risk of self-incrimination in any future criminal action is both depriving a citizen of his rights and creating the potential for abuse of process;
- Any public service broadcaster which allows itself to be used to promote hostility towards any person or group, without balancing its outputs, is a disgrace to the nation;
- Any State-owned business or any Department of a State, which breaches both privacy and data protection legislation through engaging private security companies for phone tapping and surveillance, in a trawl for information on private individuals, should be brought before the courts;
- Any group of mercenaries who claim to have accepted an ‘extraordinary rendition’ contract from a state-owned bank, or from a firm of solicitors acting for the state, or from a government department, should lose its licence.

The possibility that some or several of those acts apply in this case is very real. What is now needed is an independent and unbiased investigation into what was happening in Anglo and into its implications for borrowers and shareholders, as well as into what has been happening in Anglo/IBRC since then. We would then have some chance of understanding Anglo. We have little, or none, at present.

But we also need an investigation into the involvement of the current government in crucial decisions, which are making a bad situation worse; we need an external judicial review into Brian Lenihan’s collusion with Matthew Elderfield, in deciding to treat a temporary impairment as a major default, thereby precipitating a major injustice; we need an external investigation into the role of the Financial Services Authority in the U.K., in that decision; we also need an external investigation into the Department of Finance and the decisions of the current government, because they may now be participants in a conspiracy.

We need clarity on why the Financial Regulator has refused to reveal what action has been taken in relation to a serious complaint of liquidity irregularities made to his office in 2007, by a whistle-blowing former banker, regarding Unicredit Bank Ireland. This was a far larger entity than Quinn Insurance, but it was based in the IFSC.

We just cannot trust internal investigations, under the current regime; we need something which will try to get at the truth. But don't bet on such investigations happening. Not under this government and not under any alternative one. There is not enough gumption among the lot of them to be willing to face the truth. In that situation, it is inevitable that organised crime rackets will continue.

At Beal na mBlath recently, Taoiseach Enda Kenny described the loss of the values of "*decency and sincerity . . . accountability and ethics and ambition*" and the necessity to restore them. But his record, despite his election promises, does not match the rhetoric and our research failed to find decency, sincerity, accountability or ethics in either Anglo/IBRC or this government's actions; instead we discovered the very opposite.

According to journalist Justine McCarthy[124] '*An unspoken consensus continues to thrive in the establishment that once politicians get hold of power, they must dispense with ethics. That's how the system works in the patriarchal powerhouse of Dail Eireann*.'

What would the 'Men of 1916' think about the 'crooks in suits' who now run Ireland?

[124] Sunday Times: 30th September 2012.

22. THE HIGH COST OF SELF-CONGRATULATION.

Shane Ross in his newspaper column[125] reviewing the latest financial results from IBRC, stated that:

"*Far more worrying is the existence of the bank (Anglo) at all and the spendthrift culture that survives."*

Ross then proceeded to claim that the results announcement was full of self-congratulation and continued as follows:

"A number of major initiatives were successfully concluded throughout 2011," according to Anglo boss Mike Aynsley. He even insisted that there had been 'welcome progress'. Anglo had reduced staff costs by eight per cent during 2011. No one asked what on earth the 1,219 staff remaining at Anglo were doing when the bank is a zombie. Aynsley is simply trying to justify his outrageous salary. He takes home a package of €866,000 a year -- an obscene amount for a man directing the misfortunes of a bank that is still costing Irish taxpayers billions. Part of his package was a comical payment of €203,000 for 'relocation expenses'. His fellow nonentities on the board are all pocketing around €100,000 a year as part-timers. These top guys in today's banks, courtesy of the Government, are still living the high life of the boom days for no visible return to the Irish people. And they are continuing to line consultants' pockets as though the boom years never ended."

€866,000 per annum for a man, who has enough free time on his hands to attend court on a daily basis, for a case in which he is not a witness. What sort of job has he? And how could the rest of us get jobs like that – not enough work to keep us occupied as our employer fights court cases.

It now costs €300m-a-year to operate IBRC. More than the €1m cost of its CEO, the €300 million reflects the 'money-is-no-object' approach to the demonisation of the Quinns and David Drumm. Surely it must be possible for the Quinns or Drumm to obtain justice in the courts.

In the latest edition of 'The Parchment', appointments to the Supreme Court are "*purely political*", according to a claim by Mr Justice Peter Kelly, head of the Commercial Court; he also said that the Judicial Appointments Advisory Board (JAAB), designed to take the filling of judicial posts out of the political arena,

[125] 'Good News from Bad Anglo. There Are No Coincidences in Irish Politics'; 1st April 2012.

"*doesn't really work*". The JAAB was introduced in 1995 to take politics out of the judicial appointments process, but the Cabinet still picks appointments from a list supplied by the JAAB, whose recommendations the Government may legally ignore. "*There should be an independent body to appoint judges*", he said.

The judge, who has ruled out ever going to the Supreme Court, also claimed some people who would make excellent judges were "passed over" in favour of others who were not so well qualified.

Mr Justice Kelly, also told 'The Parchment' that he didn't find the life of a Supreme Court judge in the slightest bit attractive. "*It's purely political in any event, the appointments to that court, and I never had any politics*," said Mr Justice Kelly (although while he was a barrister, he was considered to lean very much towards Fine Gael). He added that he accepted an invitation to the bench by the then Attorney General (Dermot Gleeson SC) in 1996, when the JAAB first became operational. Gleeson was subsequently appointed Chairman of AIB.

Clearly, Mr Justice Kelly knows what he is talking about and his views reflect those of the majority of the country's citizens.

Academic research on the collapse of Anglo appears to be focused on the regulation, rather than on fraud. In a paper entitled ' Crisis in the Irish Banking System – 2012/03' Professor Blánaid Clarke, UCD School of Law and Dr. Niamh Hardiman, UCD School of Politics and International Relations at the UCD Geary Institute stated:

"One of the first European banks to fail in the wake of Lehman's was Depfa Bank, an IFSC based subsidiary of a German bank. Its liabilities were the responsibility of its German parent; but the liquidity problems it experienced in 2008 were understood to have developed because of the freedoms available to it through its incorporation under Irish law. The IFSC's shadow banking system continued to be largely unregulated even after the collapse of the domestic banking system, and its securitization practices were relatively unaffected by the global crash.

The importance of the IFSC to Irish policy-makers coloured their sense of the importance of maintaining a regulatory distance from financial services, and this is likely also to have affected their sense of the regulatory requirements appropriate to the domestic banks too.

We might conclude therefore that not only a consequence but also a central priority of principles based regulation was to maintain the threshold of intervention at a high level. It is reported that 'the bankers loved it, it was regulation without rules' (Ross, 2009). Even this extraordinarily light regulatory regime was too much for Sean Fitzpatrick, former CEO and Chairman of Anglo Irish Bank, who argued in 2007 that:

It is time to shout stop. The tide of regulation has gone far enough. We should be proud of our success, not suspicious of it. Our wealth creators should be rewarded and admired not subjected to levels of scrutiny which convicted criminals would rightly find intrusive (Hennigan, 2010b).

It would not be too long before Fitzpatrick was himself arrested on suspicion of fraudulent behaviour. But it was too late to prevent his bank from causing enormous damage to Irish public life."

Journalist Vincent Browne attributes some of the blame to the media[126]. He has stated that the media joined in the excess of the Celtic Tiger, and celebrated its most garish extravagances. He argued that, the media had relentlessly ignored the scale and perniciousness of inequality, even the 5,000-plus annual premature deaths arising from that inequality. Indeed, he claimed, the media has been one of the engines of inequality, celebrating it, chortling over the misery of its victims.

He further stated that the media failed to see the onset of the financial crisis and then failed to see its roots, not in the failures of individual players but primarily as the outcome of an ideology which it, itself, thoroughly absorbed. And then the media ignored the cruelties, inflicted on those least responsible for the crisis, in the attempted rectification of that crisis.

Browne is right. But what he failed to state was that the controlling shareholders of the Independent, were also major Anglo borrowers and that the RTE Authority was chaired by Drury, who also chaired Anglo's Risk & Compliance Committee. Furthermore the Irish Times was no longer the paper of record; instead its journalists had become Anglo's cheer-leaders, with Carswell fighting Woodhouse's corner consistently.

Yes, the media contributed to our being where we are today; but its members seem not to realise that. Blaming themselves would not sell papers, much less generate advertising.

[126] 'Media continues to fail to hold powerful to account' – Vincent Browne – 19th September 2012

Interestingly, the media has never commented on Aynsley's attendance in court for the legal actions against the Quinn family. It is highly unusual for the CEO of a bank to attend such cases, particularly when his employer is being represented by a very large legal team, which is supported by security consultants. One school of thought is that Aynsley is aware that Anglo's security is flawed and he knows that unsupported affidavits are being presented by the former Attorney General, on behalf of Woodhouse, who (rightly or wrongly) many in the border counties believe lied under oath in a Belfast court. Is it possible that Aynsley feels a need to leak such affidavits to the media, before they are presented in court, in order to influence the judge? Again, that view is widely held in many parts of Ireland, outside Dublin and 'the pale'.

While there may be little direct hostility to Aynsley, it seems that there is little affection for him either – essentially he's unknown. But to remain as the highest paid state employee, he needs a profile and it seems the only way he can get one, given that he has failed to make any progress in winding-up Anglo, is to be photographed attending Quinn court cases. A rather sad state of affairs, but a very expensive one!

23. WILL THE REAL 'CROOKS IN SUITS' EVER BE EXPOSED?

Bill Cullen, in his book 'Penny Apples', outlined how he reached the top in the motor trade. It was simple: he 'out-worked' everyone else. He worked harder and longer than his competitors and, despite starting with very little, he made it to the top. Sean Quinn did the same and created over 5,000 jobs in Ireland.

In researching this report it became apparent that the Quinn family, in addressing their problems, appear also to be 'out working' Anglo/IBRC, despite continuous setbacks and the unsavoury surveillance by RMI.

They appear remarkably confident, culturally intelligent but never arrogant - just well grounded in their community. They also appear to have a belief that the truth will carry them through, while the majority of Anglo/IBRC executives are essentially subcontractors without any community linkages - just motivated by very large salaries, expenses and bonuses. When facing the new Anglo, this government (or any alternative one in this country), the Department of Finance and the media, their belief in the integrity of 'the system' may proved to be misplaced.

"*Everything that the bank (Anglo) was, and the focus that the bank had, has been fundamentally changed. Yet because of the ill-feeling about what Anglo has done to the country, people find it very difficult to understand that what we do is fundamentally different*," Anysley says[127].

But to outsiders, IBRC is still Anglo and the scam continues; Aynsley is the highest paid public servant in Ireland; his associate, Elderfield, is also in the money, earning in excess of €340k - 40% more that his boss, the Governor of the Central Bank. Are they worth it? Nationally, things are too serious to be cracking jokes!

For those directly involved, community support combined with the articulation of core beliefs can sustain a long campaign. Both military history and Sun Tzu[128] tell us that the 'outsider' (mercenaries or subcontractors) never win long campaigns - only short sharp ones.

As we end this report, the current situation can best be described using the sporting metaphor: '*ground hurling and hard hip-to-hip hard pulling*'. In such a contest, for

[127] Op. cit.: Simon Carswell, Irish Times, 7th September 2012.
[128] The Chinese military general, who wrote 'The Art of War'.

those who are timid: "*Things fall apart; the centre cannot hold; there are too many scores against; and the game is ultimately lost*". This game appears not to have been lost yet; a come-back is still possible, but the deficit is large.

One might ask how does one make a problem go away? The approach of Noonan, Anysley, Dukes and the Department of Finance is to pretend it does not exist - Donald Rumsfeld's infamous 'known unknown' approach.

And then there's Shatter – the man who believes that those whose actions are "...*bordering on the insane, deserve little sympathy".* No comment needed!

Anglo/IBRC still seems impregnable, but a decision by some court, whether Irish or European, could collapse that citadel. Its ideology and its new regime appear fixed, unshakeable and almost geologically strong. But we have seen that before: an inch of mortar falls; then the stonework begins to crumble; eventually the facade collapses. When masonry begins to crack, the impossible becomes plausible, then inexorable.

Something like that could happen with the release of further information. Anglo's/IBRC's directors and executives could find that they are shut out of places where they were once welcome; some of them might even find themselves shut in. Wouldn't that be something!

A loss for Anglo/IBRC and the Department of Finance would result in an outpouring of the truth. And a cowardly Government will run like hell – they always do when the smelly stuff hits the fan. Where will that leave the Department of Finance? The only certainty is that they will fight to ensure that we continue to live with confusion on this issue.

In the event of certain court decisions (assuming the cases get there), the 'truth will out' and our understanding of Anglo will be complete – well almost anyway.

But will the real 'crooks in suits' ever be exposed? That's the million dollar question. It's time public sector and governmental conspiracies were uncovered. We can only live in hope!