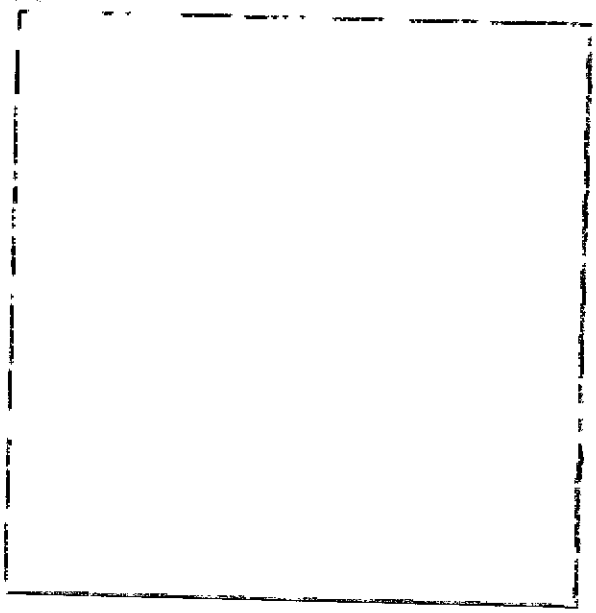

25 November 2015

Mr Peter Finnegan
Acting Dáil Clerk
Houses of the Oireachtas
Leinster House
Dublin 2

RE: REPORT BY SENAN ALLEN SC DATED 1 SEPTEMBER 2015 (the 'SC Report')

Dear Mr Finnegan

As you are aware, I was not afforded an opportunity to comment on the SC Report before it was published, in fundamental breach of my right to fair procedures.

This response is submitted to you as a protected disclosure under the Protected Disclosures Act 2014. While I am permitted, as a matter of law, to make this disclosure to external parties in specified circumstances, including where I had previously made a disclosure of substantially the same information to my employer and the relevant wrongdoing is of an exceptionally serious nature, I confirm that I am confining the distribution of my response at this time to you.

However, I intend to advise Members of the Joint Committee of Inquiry into the Banking Crisis (the '**Joint Committee**') that my response has been submitted.

It is imperative that you are made aware that the SC Report is deeply flawed and arrives at wholly unfounded conclusions. As a result, the matters referred to herein are highly relevant to the findings that the Joint Committee might make in reliance upon the conclusions reached by Mr Allen in the SC Report. This correspondence is critical lest the Joint Committee believe that I accept the findings made by Mr Allen or that they were arrived at in accordance with the fundamental principles of fair procedures and natural justice.

Further, it is in the interests of the Members of the Joint Committee that they do not preside over an Inquiry Report that - for reasons including the failure of the Joint Committee to address essential information that had not been disclosed to it in a timely manner or properly analysed, which goes to the very heart of its terms of reference - lacks basic credibility.

In making the protected disclosures the subject matter of the SC Report (the '**Protected Disclosure**') my paramount concerns were and remain the significant gaps in the disclosure of documentary evidence from the Central Bank to the Joint Committee crucial to the investigation and the manner in which I was actively prevented from pursuing these gaps. To ensure that these central concerns are not obscured, I do not intend at this stage to respond to the conclusions reached in the SC Report as to other matters set out in the Protected Disclosure and other related protected disclosures made by me. I reserve my rights to make further comment in relation to these matters as and when necessary.

I set out below:

(I) My concerns in relation to the manner in which the review conducted by Mr Allen (the **'SC Review'**) has been undertaken;

(II) The evidential deficits referenced above, which Mr Allen signally failed to address in the SC Report and have now been independently corroborated by a third party outside the structure of the Banking Inquiry; and

(III) My response to the performance criticisms made of me in the SC Report.

(I) CONCERNS IN RELATION TO THE CONDUCT OF THE SC REVIEW

(i) Failure of Mr. Allen to Interview Key Personnel in the Course of the SC Review

Despite the characterisation of me in the SC Report as a lone and unreliable complainant, I was not alone in the concerns I held and raised in the Protected Disclosure. In the course of my interviews with Mr Allen, I identified five investigators as likely to assist in relation to my concerns about the matters referred to in this response. Three of the investigators in question had significant experience of managing large scale investigations. However, for reasons that are less than clear, Mr Allen elected not to interview any of these personnel on the basis that he did not consider it "*necessary or useful*" to do so.

Thus, in the SC Report, Mr Allen states: "*I have interviewed those people who I believed might be able to assist me in determining the facts.....Several of those named in the '[Protected Disclosure] are said to have shared the confidential informant's concerns, suspicions and beliefs. I did not consider it necessary or useful to canvass with anyone who did not appear to me to be, and was not identified as likely to be in a position to, assist in the resolution of any contested issue of fact, whether they did or did not share the concerns, suspicions or beliefs of the confidential informant. I took the view that the allegations were either justified by the information reported or they were not and that the allegations were not any more or less justified by the number of people who might be prepared to subscribe to them. ..... Any fellow Investigators who shared the confidential informant's perception without being able to contribute to my investigation of the facts was not, in my view, a corroborative witness.*"

The effect of Mr Allen's assertion as set out above is that he did not consider that the corroborative witnesses would assist in the resolution of contested issues of fact. However, clear contested issues of fact existed, including whether or not the engagement concerning directions issued by the Joint Committee revealed material compliance issues.

I had identified three corroborative witnesses to Mr Allen in relation to this key issue - one who had participated with me on a call on 1 April 2015 with representatives for the Central Bank where clear resistance was evident in the disclosure of documentation, a second who had reviewed with me the correspondence from the Central Bank declining to provide documentation which in our view was highly material (including certain documentation referenced by Mr Frank Browne in the statement recently provided to the Joint Committee) and a third who had concerns in relation to the extent of the redactions made by another participant in the Banking Inquiry (as evidenced in written correspondence provided to Mr Allen in the course of the SC Review).

Mr Allen was informed about all of this but despite repeated requests on my part to do so, still declined to interview these individuals.

This approach was taken by Mr Allen notwithstanding that his response to e-mail evidence of the concerns held by three of the experienced investigators was to say "*So well, I have a pretty good sense of the context. ....I don't say it* [the criticism] *wasn't warranted.*"

So in the course of my interviews with Mr Allen, the clear implication was given by him that my colleagues' concerns about the manner in which the inquiry was being conducted were warranted (which were included in the concerns raised by me in the Protected Disclosure); yet this is directly contradicted by him in the SC Report, where he states that there was: (emphasis added) "*no substance whatsoever in any of the allegations*".

It is also a matter of fact that one of these investigators resigned from the Investigation Team within a matter of days after my departure from the office, working out their notice until 13 May 2015, having cited (to the Manager of the Human Resources Department of the Oireachtas Service) certain irregularities around the conduct of the investigation by the Investigation Team as the reason for their departure.

This individual's resignation was not related to "*stresses, strains and dissatisfaction*" (as referenced in paragraph 5.30 of the SC Report) but rather specifically to the irregularities of the conduct of the investigation cited during a lengthy exit interview. The investigator openly discussed their dissatisfaction with the manner in which the investigation was being managed by the lead investigators and did not seek confidentiality in relation to their reasons for resignation. Had Mr Allen elected to interview this individual, as I had urged, precisely these concerns would have been ventilated to him; yet, inexplicably, he chose not to do so.

In addition to my own position and this resignation, it is also a matter of fact that two other investigators left the team in March 2015, one having negotiated an early end to their contract and the second leaving to join another participant in the Banking Inquiry. This amounts to a total of 4 people out of a team of no more than 13 at the time who chose to depart the Investigation Team. In mid to late May 2015, another investigator sought to leave the Investigation Team, but they were entreated by a senior member of the Secretariat to remain, as their departure could "*collapse the Inquiry*".

Mr Allen's approach as to corroborative witnesses is simply wrong. In circumscribing his interviews to exclude those individuals whom Mr Allen had been informed by me would corroborate disputed points of fact and focusing his interviews primarily on those persons against whom allegations had been made and in reaching conclusions on this basis, the SC Report is fundamentally flawed.

While my response does not constitute a legal response to the SC Report, it cannot be ignored that the SC Review was, pursuant to its terms of reference (the **'Terms of Reference'**) and in accordance with my legal rights, to be conducted in accordance with fair procedures. It is well established that in order to act in accordance with fair procedures, the body in question must not have refused or neglected to take into account matters which it ought to take into account. In refusing to interview, and reflect on the evidence of, my colleagues whom Mr Allen had been informed shared my concerns in relation to fundamental matters included in my Protected Disclosure, Mr Allen failed to take into account matters which he ought to have taken into account.

The determination of Mr Allen not to interview these individuals and to focus his interviews principally on those persons against whom allegations had been made was irrational, fundamentally at variance with reason and common sense and fatally undermines the conduct of the SC Review and the conclusions reached in the SC Report.

(ii) Use of Inquisitorial Process by Mr Allen to Force Me to Make Concessions Based on False Premises

During the course of the interviews, Mr Allen employed the inquisitorial process in a manner which appears to have been designed to force me to make concessions based on false premises. This is evidenced by the transcripts in which Mr Allen attempts to convince me that a trusted colleague had misled me as to the content of a critical piece of evidence. I stated that I would be surprised if that was in fact the case, as I had known my colleague to be an individual of the highest integrity.

I asked Mr Allen to provide me with a copy of the document in question, as I was willing to admit that I may have been mistaken. Mr Allen refused to provide it to me stating "*that is the point. I have it and you don't*".

Mr Allen continued to suggest that I had been misled and even put forward a suggestion as to what the evidence contained which was both misleading and inaccurate. Later, Mr Allen categorically stated that the evidence did not contain the wording that I had recollected. I was so concerned by Mr Allen's refusal to provide me with the evidence (as were my legal representatives), that I endeavoured to obtain the evidence from another source. I was successful in my efforts and I was in a position to confirm that my recollection of the wording was in fact correct.

My legal representatives wrote to Mr Allen expressing concern about the manner in which he had engaged in this line of questioning and asserted that it was not the case that I had been misled by my colleague, as he had suggested, in regard to the content of the written evidence. Mr Allen responded to my legal representatives in writing in or around 28 August 2015 and (remarkably) stated: "*With respect, it is not sensible for you to suggest that your client was or was not mislead* (sic) *about the content of an e-mail which neither she nor you have ever seen*".

During the course of the final interview on 29 August 2015, I advised Mr Allen of my gravely held concerns in relation to his line of questioning and I pointed out the specific part of the previous transcript in which Mr Allen had categorically stated that the written evidence did not contain the wording that I had accurately recollected.

This entire episode was unnerving and raised fundamental questions about what purported to be an independent investigation.

(iii) Flawed Disregard of Material Information and Other Matters by Mr Allen

In his undertaking of the SC Review, Mr. Allen asserts that the written records allowed an assessment to be made of my reliability and the validity of my perspective. His conclusion that I am a "*wholly unreliable historian*" is based on his assessment of: "*contemporaneous correspondence and documents*". Thus, it would appear that Mr Allen identified no correspondence or documentation which supported my claims. It is unsurprising that Mr Allen was unable to identify a document stating that the practice of the Investigation Team would be to accept less than appropriate disclosure from an entity such as the Central Bank. Naturally such an approach would not be documented.

However, the following documentation, which was among a significant amount of documentary evidence provided to Mr Allen in the course of his review, clearly identifies serious concerns in relation to such matters which merited further review by him:

(a) Extensive correspondence between the Investigation Team and the Central Bank and its legal representatives related to redacted, withheld and missing material (including reference to the material later identified by Mr Frank Browne);

(b) Statistical analysis which I documented in relation to the extent of the redacted material provided by the Central Bank;

(c) E-mail correspondence sent to me by another investigator highlighting dissatisfaction on the part of three other investigators in relation to the manner in which the investigation was being managed;

(d) E-mail correspondence exchanged between investigators highlighting concerns about redacted material in relation to another participant in the Banking Inquiry; and

(e) E-mail correspondence from a Member of the Joint Committee of Inquiry highlighting their dissatisfaction with the activities of the Investigation Team and specifically referring to their concerns in regard to their lack of insight into the interaction between the Investigation Team and the Central Bank.

Mr Allen baldly states that (emphasis added): *"the e-mails to which the confidential informant referred in the report of 10 July 2015 were quite at variance with the report and demonstrated clearly that there was no basis for the allegations"*.

In fact, the emails and other documentary evidence set out above directly support the central allegations raised in my report related to the inadequate disclosure made by the Central Bank. As previously mentioned, this claim is supported by other investigators (whom Mr Allen elected not to interview) and is now borne out by the statement provided to the Joint Committee by the former Head of the Financial Stability Unit at the Central Bank.

The correspondence between myself, the Central Bank and its legal representatives also makes very clear the information that had not been disclosed, the materiality of which is patent. This being so, it is extraordinary that the documentary evidence supporting my central concerns in relation to the withholding of material information has been discounted *in its entirety* by Mr Allen, with no credibility attributed to it in any respect.

In addition, on any objective analysis, the statistical analysis which was provided to Mr Allen in the course of the SC Review showing the extent of redactions made, and withholding of information, by the Central Bank evidences serious and systemic issues with the extent of disclosure made. Again, Mr Allen chose to entirely ignore this and as he says *"steadfastly"* declined to review any of the redacted or undisclosed material.

In the course of the SC Review, Mr Allen appears to have entirely accepted as fact all of the evidence given to him which countered the claims I made, to have discounted the entirety of my oral evidence and the written documentation that I had informed him would support this evidence and to elect not to interview those investigators whom I had informed him would - and, as made clear in the written documentation provided, did - support my claims. It is baffling that such a restrictive approach was adopted in an independent review.

Mr Allen also states in the SC Report that the contemporary written records of what he has described rather obtusely as *"other events and dealings"* *"clearly showed that there was no basis for many of the other allegations"* (emphasis added).

First, it is not entirely clear as to what precise allegations Mr Allen is referring. Secondly, the reference to there being no basis for *"many of the other allegations"* implies that some allegations were supported by contemporary written records, contradicting Mr Allen's conclusion that there is *"no substance whatsoever in any of the allegations"*, a definitive conclusion already contradicted in evidence given to the Joint Committee by the former Head of the Financial Stability Unit at the Central Bank.

In the SC Report, Mr Allen states that he: "*examined the evidence in relation to so much of* [the Protected Disclosure] *as comprised assertions of fact.*" Given Mr Allen's earlier criticisms in the SC Report of the manner in which my concerns were raised - which, as a matter of law, was the approach I was obliged to adopt - I am understandably concerned that Mr Allen's examination of the evidence was more cursory than these matters merit and that the conclusions in the SC Report flowing from this examination are correspondingly flawed.

Finally, it has come to my attention since the SC Report was published that one of my fellow investigators interviewed by Mr Allen did in fact provide robust support for a specific allegation made by me in the Protected Disclosure. While Mr Allen accepted this individual's evidence in relation to an unrelated matter, all of the individual's evidence regarding the allegation made by me was discounted *in its entirety* by Mr Allen.

(iv) Flawed Decision of Mr Allen Not to Inspect Evidence of Redacted and Withheld Materials

In the course of his review, Mr Allen was provided with documentary evidence to support my concerns as to the unacceptable level of information from the Central Bank which was redacted and withheld from the Joint Committee of Inquiry. This included statistics prepared by me following review of documentation containing redacted material and my resulting assessment that the documentation required further challenge. Mr Allen was also repeatedly invited on my behalf to inspect samples of the redacted material.

However, Mr Allen elected not to do so, stating in the SC Report the following:

"*In the course of my investigation it was repeatedly asserted that I should embark upon a review of the documents disclosed to the Banking Inquiry by [Participant] with a view to establishing whether the [Participant] , and [Law firm] on its behalf, had correctly applied the rules as to the redaction and permitted withholding of documents. As often as this was suggested, I declined to do so. My investigation was not an inquiry into the Banking Inquiry or an audit of the compliance of the [Participant] with the Direction issued by the Joint Committee. I would have been prepared to countenance any line which appeared to me to be necessary to follow to establish the facts relevant to my investigation but whether the [Participant] had or had not complied with the Direction was simply not relevant.*"

Elsewhere in the SC Report, in the context, *inter alia*, of my contention that he should view a sample of documents from the documentation provided to the Banking Inquiry by the Central Bank, Mr Allen observes: " *It seems to me that the confidential informant is obsessed by detail to the point that they lose sight of the substance*" and in relation to my review of compliance by the Central Bank with the Direction: "*The confidential informant's efforts yielded results, if one measures results by avoirdupois, but not in terms of materiality.*"

As is clear from this response, Mr Allen's conclusions in this regard are fundamentally flawed, as information that I had identified as having been not disclosed by the Central Bank to the Joint Committee is clearly substantial information which is of central materiality to the Banking Inquiry.

The information was identified in correspondence provided to Mr Allen during the course of the SC Review and Mr Allen appears to have addressed this concern by filing it under a vague (and apparently unimportant) heading of 'compliance'. Since the raison d'etre of the Banking Inquiry was to come up with new insights and evidence in relation to the matters coming within its terms of reference, the public expectation is (and presumably remains) that a thorough review of the relevant evidence would be undertaken in order to adequately interrogate witnesses.

(v) Opportunity to Respond on Certain Matters not Provided prior to Conclusion of SC Report

Mr Allen states in the SC Report that "*Where there was divergence in the evidence, I afforded each of those I interviewed the opportunity to comment upon or respond to points of difference.*"

As is clear from the transcripts, Mr Allen did not follow this approach in regard to all points of difference. For example, in the course of interview with Mr Allen on 21 August 2015 when I sought clarification on whether a key point of difference existed between myself and the lead investigator to whom I reported, Mr Allen responds as follows: *"I'm not answering any questions for you no more than for your counsel"*. This approach by Mr Allen is in fundamental breach of my right to fair procedures and evidences his subjective bias against me.

In fact, it was only upon reading the SC Report that I became aware of key points of difference. These included alleged lack of competence, supposed irrational conduct in the office and the position a lead investigator took in relation to his contact with NAMA, all of which had never been put to me. If it was the case (as it appears to be) that Mr Allen intended to rely upon negative comment about me raised during the course of interviews with fellow investigators, it was my fundamental right to review the comments made and to be afforded with an opportunity to respond.

It is also notable that the evidence given by lead investigators in the course of the SC Review differed considerably to evidence given previously by the same individuals for the purpose of the Inquiry Co-ordinator Report. These differences included evidence relating to an 'off-the-record' meeting held between the lead investigator to whom I reported and a senior representative of the Central Bank which was referred to in the Protected Disclosure. In the Inquiry Co-ordinator report of 6 May 2015 (the **'Inquiry Co-ordinator Report'**) this meeting was reported as having occurred during the final working week of the senior representative prior to their departure from the Central Bank. This timeframe bolstered the position that the meeting was a purely social call in order to say goodbye as the representative was retiring from the Central Bank on 31 March 2015.

This position is repeated in the SC Report where it is reported that the senior representative was: "*retiring soon and just wanted to take the opportunity to thank her for everything and to say goodbye.*" However this meeting in fact was held on the 13 March 2015, more than two weeks previously. Given the same individuals had a later meeting on 27 March 2015, the claim that it was a goodbye meeting was simply not credible. In addition, the Inquiry Co-ordinator Report stated that the visit was received by the lead investigator as: "*a purely social call. No work relating to the inquiry was discussed.*"

However in the SC Report the file note of that meeting (which Mr. Allen relies heavily on in the report for other purposes) is reported as stating that the senior legal representative wanted the lead manager to whom I reported to "*remain involved*" and that he be "*updated in relation to issues relating to witnesses*".

Such matters are clearly work-related and so the fact that they were discussed is in direct conflict with the reporting to the Inquiry Co-ordinator (and, in turn, to the Chairman of the Joint Committee via the Inquiry Co-ordinator Report) that: "[n]*o work relating to the inquiry was discussed*". Yet Mr Allen appears to take the view that this is not an issue which merits comment.

Mr Allen failed to remark upon, nor draw any conclusions in respect of, these inconsistencies in evidence, notwithstanding that the Inquiry Co-ordinator Report had been entered into evidence and was available for his review. So while Mr Allen questioned me in relation to aspects of the previous report, for reasons which are unclear, he appears to have disregarded the content of the Inquiry Co-ordinator Report in its entirety in questioning the credibility of the evidence given by members of my reporting line where points of difference arise.

Certain false and defamatory statements made about me in the Inquiry Co-ordinator Report and circulated to three Members of the Joint Committee were discussed during the course of my interviews with Mr Allen. I put forward an explanation as to why the statements were false and directed Mr Allen to documentary evidence to support my position.

Mr Allen did not offer any contrary evidence to support the veracity of the statements, yet he did not deal with this matter at all in the SC Report. Remarkably, in addressing my retaliatory reassignment, Mr Allen accepted as fact a statement that supported my position in relation to the false and defamatory statements, yet used it in another context in an attempt to reach the erroneous conclusion that my reassignment from the Regulatory Stream to the Banking Stream was not retaliatory.

(vi) Selective Quoting of Mr Allen from Protected Disclosure and Transcripts

In the SC Report, Mr Allen persistently selectively quotes from the Protected Disclosure and transcript of interviews with me in an effort to undermine my credibility. The following are just two examples of this:

In the SC Report relating to a discussion Mr Allen had with me as to one of the Protected Disclosures I made dealing with the levels of competence and motivation of some investigators within the Investigation Team, Mr Allen states the following:

"*12.43 When, in the course of my interview with the confidential informant we got to this allegation I pointed out that the confidential informant had not named those who were said to have been incompetent and unmotivated and to have been wasting public money. In response to my observation that I could not investigate this allegation if I did not know who was supposed to have been wasting public money, the confidential informant said "Maybe just leave this appendix out from the investigation". Much later, it was suggested that I had agreed to do so.*

12.44 It seems to me that the nonchalant way in which the confidential informant would have dropped this allegation gives some insight into the manner in which it, and the other allegations, were made. The allegation of incompetence and lack of motivation, in the absence of any names, was calculated to cast a cloud over all of the Investigators. In my view it was in the way in which it was made, as well as in its substance, without justification."

What actually was said in full (as evidenced by the transcript) was as follows: After a degree of back and forth discussion concerning the levels of competence and motivation of some investigators in which specific substantive evidence was provided, I said (emphasis added):

"Maybe just leave this appendix out of the investigation. I mean it is not hugely critical. I think it is indicative of a sloppy approach and poor planning, et cetera, in not recruiting the right people.....But I would rather that your time was spent on some more of the crucial matters around the fact that I was asked not to challenge redacted material and that that material has still not been challenged while we have a closed witness book."

The response of Mr Allen was (emphasis added): *"I follow all that. I suppose on one level I am relieved because I couldn't contemplate how I would start going about this."*

What is clear from the transcripts, is that I certainly did not "nonchalantly" drop the allegation. This is an allegation that I continue to stand over and appears to have been borne out by recent events in relation to the production of the first draft of the Inquiry Report, widely reported as being *"not fit for purpose"* and *"weak and incoherent"*.

However, as my critical concern related to the non-disclosure of material documentation to the Joint Committee by the Central Bank and I was aware that the timescale for Mr Allen to complete his report was limited, my desire was that he focus on the imperative to ensure that the fundamental evidential deficits that existed were addressed as a matter of urgency.

An instance of selective quoting from the Protected Disclosure is as follows. After quoting the following passage from the disclosure:

"One partner repeatedly referenced the efforts they had gone to in order to conceal irrelevant information to protect client confidentiality and to not commit a criminal offence. This was completely nonsensical ... "

Mr Allen states in the SC Report:

"I simply cannot understand that the confidential informant, who is a qualified solicitor, should characterise the work of a practising solicitor engaged in making discovery directed to limiting the discovery to relevant material, protecting client confidentiality and ensuring that their client complied with the law as nonsensical".

Of course, that was not my characterisation. What I actually said in the Protected Disclosure was the following (emphasis added):

"One partner repeatedly referenced the efforts they had gone to in order to conceal irrelevant information to protect client confidentiality and to not commit a criminal offence. This was completely nonsensical as just as the Phase 1 Banks had done, the Central Bank had no difficulty leaving in information that was not relevant to the Terms of Reference of the Inquiry and in the case of the Central Bank most certainly should have been concealed to protect client confidentiality. We have several examples of such material on our Documentation Management System."

So my point was that it was simply not congruent for the representatives for the Central Bank to assert client confidentiality and the imperative not to commit a criminal offence to justify the withholding of information on the one hand, while at the same time providing large swathes of information that clearly did not fall within the terms of the direction from the Joint Committee (the **'Direction'**) without apparent concern as to the risks of compromise to client confidentiality or the commission of a criminal offence.

The fact that Mr Allen elected to selectively quote from the Protected Disclosure and transcripts appears to be a transparent attempt to discredit me.

(vii) Misquoting of an Allegation from the Protected Disclosure by Mr Allen

An instance of Mr Allen misquoting from the Protected Disclosure appears on Page 119 of the SC Report on which Mr Allen quotes my allegation from the Protected Disclosure as follows:

"the alleged failure by [Certain Employees] to permit <u>the confidential informant</u> to contribute to developing lines of inquiry"

Naturally, this implies that I considered myself alone in regard to contributing to lines of inquiry. Although during the hearings, I specifically gave evidence in relation to other investigators pursuing specific lines of inquiry that were excluded, this is a clear attempt by Mr Allen to bolster his position (not put to me at any time) that I had (or have) a grandiose perception of my own importance.

In fact, the wording of my allegation in the Protected Disclosure was as follows:

"(I) Failure to permit <u>Investigators</u> to contribute in developing Lines of Inquiry"

The substance of my allegation encompassed *other investigators* having proposed lines of inquiry that were excluded and the focus of my allegation was not on my own treatment as Mr Allen attempts to portray, but rather the failure to address particular lines of inquiry that if addressed may have resulted in recommendations for the future that would prove beneficial and in the public interest.

It is noteworthy that Mr Allen, in dismissing my concerns in the SC Report, neglects to reveal the nature of the lines of inquiry that investigators sought to pursue, when in fact, during the hearings on the matter, Mr Allen indicated clearly that he understood the importance of a line of inquiry that I had proposed. The fact that Mr Allen elected to misquote my allegation again appears to be a transparent attempt to discredit me.

(viii) Persistent Raising of Issues by Mr Allen Outside of the Terms of Reference

The remit of the SC Review is clearly set out in the Terms of Reference. However, in the course of his interviews with me, Mr Allen alluded to and persistently interrogated me in relation to matters outside the remit of the Terms of Reference. These matters included:

(a) My issuance of a statement to the media on 22 July 2015;

(b) Why I did not resign rather than having made the Protected Disclosure; and

(c) Whether I would withdraw my report (the Protected Disclosure) if I had evidence of compliance investigative work being continued after my departure.

During the course of my first interview with Mr Allen on 5 August 2015 and as evidenced in the transcripts, when discussing matters related to the Central Bank, Mr Allen made a veiled reference to my past employment with a participant bank in the Inquiry (disclosed by me to the Joint Committee in the relevant conflicts of interest declaration). Mr Allen stated that he had "*picked up*" that I had left "*avian flu*" behind me at the employer in question.

Mr Allen made this statement so hurriedly that I was not in a position to consider it even having been made at all until I had an opportunity to consider the transcripts by conducting a line by line review.

The former employer in question became a long-standing client of my own private legal practice in 2003. Regardless of that fact, it is abundantly clear that the raising of these matters by an individual appointed to conduct an independent review of the Protected Disclosure confirms his bias against me.

It is imperative that Mr Allen is asked to provide information as to how and why he came to make such a defamatory statement that had no bearing whatsoever on the Terms of Reference of his review.

(II) EVIDENTIAL DEFICITS

(i) Evidential Deficits in Disclosure Made by the Central Bank to the Joint Committee

Significant evidential deficits existed in the disclosure made by the Central Bank to the Joint Committee. Notwithstanding the dismissal by Mr Allen in the SC Report of the challenges I made to non-disclosures on the part of the Central Bank as "*immaterial*", information which I identified as withheld by the Central Bank and which it continued to refuse to disclose even after challenge by me was of central materiality to the investigations of the Joint Committee. This included:

(a) Board papers and/or internal reports related to concerns about the significant over-valuation of house prices;

(b) Minutes of meetings between the Central Bank and certain covered institutions on 20 September 2008 (10 days before the issuance of the bank guarantee) relevant to consideration by the Joint Committee of liquidity/solvency issues affecting those banks;

(c) Documentation relating to the monitoring by the Central Bank of liquidity ratios of the covered institutions leading up to the issuance of the guarantee (including in 2007); and

(d) Documentation relating to the manner in which regulatory inspections were conducted by the Central Bank.

All of the above referenced documentation fell squarely under the terms of the Direction issued to the Central Bank by, and under the terms of reference of, the Joint Committee and were required to be delivered by the Central Bank to the Joint Committee by **31 March 2015.**

(ii) Corroboration as to Substantial Evidential Deficits in Central Bank Disclosure

It is now a matter of public record that my concerns as to substantial critical evidential deficits affecting the investigation of the Joint Committee of Inquiry have been corroborated by a third party outside of the Inquiry and its infrastructure. Mr Frank Browne, Head of the Central Bank's Financial Stability Unit from 2003 - 2010 submitted a statement to the Joint Committee in early September 2015 (published eventually in or around 2 November 2015) supporting my core concern that key documentation of central relevance to the work of the Joint Committee was not provided by the Central Bank.

Mr Browne provided extensive supporting documentation along with his statement and confirms (at Page FBR00003-022):

"These supporting documents also comprise presentations, papers and analyses prepared and submitted to senior management at the Bank [Central Bank]. It is, therefore, important, that this statement be considered in conjunction with the accompanying documents cited therein and contained on a USB key submitted with this statement. I was informed by the Banking Inquiry that a Book of Core Documents has been compiled to the specific themes that I was asked to address. On examining the material, it became very clear to me that a large amount of critically important material was omitted."

I note reports of Mr Browne's evidence in this regard to the effect that if the Central Bank had acted on these and other warnings, made between 2005 and 2007, it would have been better prepared for the crisis and the cost of the eventual bank bailout to the taxpayer could have been reduced. This report was also identified by me in correspondence to legal representatives of the Central Bank as I believed that it was relevant for this and other documentation to be included in core books of evidence for senior management of the Central Bank and Financial Regulator scheduled to appear between 21 May and 11 June 2015.

It would appear then that Mr Allen's view as to the immateriality of the documentation I was seeking is not shared by the former Head of the Financial Stability Unit at the Central Bank.

(iii) Impact of Inadequate/Untimely Disclosure of, and Inadequate/Untimely Review of Evidence on the Witness List

The practice adopted within the Investigation Team was to call witnesses first and engage in discovery at a later date. In the course of the SC Review, Mr Allen's views on this approach were as follows:

"I can easily see that the Inquiry was under-resourced.....I can easily see that the deadlines were impossible. I understand your point entirely that how can you call your witnesses first and do your discovery later - I mean, to a lawyer it seems crazy....."

While Mr Allen's views did not find their way into the SC Report, the practical implications of such an approach is that it led to the absence of certain critical witnesses from the schedule of public hearings for the Banking Inquiry. This is because their relevance to the matters under investigation by the Joint Committee had not been identified, as the evidence had not been reviewed in advance of drawing up the schedule of witnesses. The ensuing enormous potential for key evidential deficits in the deliberations of the Joint Committee is patent.

It is abundantly clear that core books of evidence for key witnesses were closed before large swathes of underlying evidence had been read and analysed or in fact before key evidence had even been delivered to the Joint Committee. An inability to read all key evidence in advance of public hearings has resulted in an inability on the part of the Joint Committee to adequately probe witnesses in public hearings and will no doubt result in a corresponding diminution in the ability of the Joint Committee to reach sound conclusions based on all of the facts.

In this regard, while I note that the Banking Inquiry appears to have adopted a practice of seeking supplemental information from witnesses by means of statements of clarification which presumably (at least partially) arise from the discovery of new evidence from the reading of evidence after their appearance, these responses are in writing and are not tested publicly.

The myriad inconsistencies in the oral and written testimony provided by several members of senior management of the Central Bank demand that the evidence is tested publicly, in order that an assessment can be made as to the veracity of the evidence provided by witnesses.

Numerous unnamed individuals have been referenced in Mr Browne's statement as having attended meetings in which vastly different versions of events have been presented, yet it appears that the Joint Committee may not pursue this line of inquiry and invite others to provide witness statements in relation to matters that are fundamental to its deliberations.

Furthermore, Mr Frank Browne has acted as Governor Honohan's special adviser, yet it appears that Governor Honohan will not now be questioned in public in relation to the new evidence emerging at a very late stage during the deliberations of the Joint Committee.

(iv) Compliance with Direction by Central Bank

I note that Mr Allen's views on the challenges and requests made between myself and the Central Bank in relation to compliance by it with the Direction is as follows:

"[Law Firm] justified the redaction of [Participant] documents on the basis that the redacted material was "Outside the Terms of Reference/Scope of Category", and that the confidential informant challenged the redactions on the grounds that the documents contained information which fell squarely within the scope of the Terms of Reference. [Law Firm] focussed on the terms of the Direction and the categories of documents there spelled out, while the confidential informant focussed on the Terms of Reference of the Banking Inquiry. The confidential informant could not countenance the idea that there might be merit in the position taken by [Participant]. While I do not go so far as to say who was right and who was wrong in this debate, the confidential informant's unshakeable belief in the correctness of their own view clearly constituted an impediment to properly understanding any assessment by [Certain Employees] of compliance with the Directions of the Joint Committee."

In the event that (as I suspect): "*an unshakeable belief in the correctness*" of my view is intended by Mr Allen to be a criticism of my approach as an investigator on the Regulatory Stream of the Banking Inquiry in seeking from the Central Bank the documents described in **Section II(i)** of this response, then for the record, I wish to strongly reaffirm my belief in the correctness of my approach.

Mr Allen states in the SC Report the following: "*The urgent end that the Joint Committee would be ready for [Witness] (and [Witness] for the Joint Committee) could not be advanced one whit by continuing a close interrogation of [Law Firm] in relation to the few documents that the confidential informant had read*".

This statement evidences Mr Allen's fundamental misunderstanding as to the central relevance of the information I was pursuing to the work of the Banking Inquiry in seeking to cast new insights on the matters under investigation.

Despite my concerns as to the extent of disclosure by the Central Bank, I was permitted to issue only 27 sample challenges in all (out of a total of in excess 7,000 documents received from the Central Bank), before I was summarily instructed by senior management to terminate all work relating to the review of the disclosure of information by the Central Bank against the direction of the Joint Committee.

Thus the totality of the redactions that I was permitted to challenge amounted to just .000386% of the total amount of documents provided by the Central Bank. It is a reasonable assumption that if the Irish public were informed that the Banking Inquiry were underpinned by a '*we're doing the best we can*' approach to the review of evidence - as opposed to a rigorous and comprehensive evidential review, which I believe is the expectation of the Irish public - that serious questions would be asked as to why already limited public funds are being invested in holding it.

Mr Allen states in the SC Report:

"What I do emphasise is that the instruction was not to abandon work on compliance forever but to postpone it until the three identified priorities had been completed and agreement as to how the work on compliance was to be taken forward."

However, in the course of the SC Review it became clear that the activity of pro-actively raising further concerns in relation to gaps in the evidence disclosed and following up in writing on the compliance issues I had raised was simply not resumed at any level and at any time following my departure, notwithstanding the critical evidential deficits that had been identified and as now borne out by the evidence presented by Mr Frank Browne.

In addition, and as pointed out by me to Mr Allen in the conduct of the SC Review, the fact that this activity was not resumed is in direct conflict with the assurance given to the Joint Committee in the Interim Update on compliance dated 28 April 2015 that the material in relation to redactions would be dealt with: *"on an ongoing basis."*

It is noteworthy that the Central Bank was not asked by the Joint Committee to provide documentary evidence of how it manages contrarian views or whistleblowing employees. My understanding is that the Department of Finance was asked to provide such evidence in respect of employees above a certain grade level.

I repeat here my concerns that the work of the Joint Committee can only be considered as grievously incomplete without hearing evidence from Mr Jonathan Sugarman, reported to have approached the Central Bank in 2007 regarding concerns about significant breaches of legislation on liquidity ratio reporting and the manner in which the Central Bank reacted to Mr Sugarman's approach.

(v) Characterisation of My Concerns as to Compliance with Direction/Evidential Deficits in the SC Report

In the course of the SC Review and the contents of the SC Report, there is exhibited a rather casual attitude to compliance with a statutory direction from a parliamentary inquiry relating to the provision of evidence concerning matters of serious public interest. In the SC Report, Mr Allen quotes the observations of the lead investigator on the Crisis Management Stream as follows:

"The [role of Employee included], [Employee], observed that while there was no strict obligation on the Banking Inquiry to judge compliance, it was something that needed to be done for good order and practice. He recalled the advice of external senior counsel to the effect that anyone who provided anything would have partially complied, so that the worst judgment that might be passed on anyone is that they had not complied in full."

It is extraordinary that an inquiry relating to the banking crisis - which, after all, will be judged by the public on the new evidence or insights it yields - would appear to be based on such a desultory approach to assessing compliance with a direction for evidence from entities such as the banking regulator. It is equally extraordinary that even in the light of such evidence, Mr Allen takes the view that my assertion that I was routinely asked to take a broad view that the Central Bank had complied with the direction: *"is flatly contradicted by the file"*.

Nonetheless, while in the conduct of the SC Review, Mr Allen states: *"Believe it or not nobody disagrees that you had a point of view in relation to redactions"*, he asserts that the view of the lead investigators was that my work in reviewing compliance by the Central Bank against the Direction was an *"over focus"*, yet fails to take into consideration the fact that without exception, all correspondence that I had drafted was reviewed and signed off on by the lead investigator to whom I reported or by a legal adviser to the Joint Committee.

Mr Allen dismisses my concerns that I was practically and then actively precluded from following the evidence by observing that he has:

"*...no difficulty accepting that the process of compliance was not pursued by the Investigation Team with the zeal with which the confidential informant says that it should have been.*"

Further, Mr. Allen references the fact that in his view it was quite right that the Banking Inquiry would not be "*distracted by. a minute examination of compliance*" (while at the same time referring to the documents provided by the Central Bank as: "*what was undoubtedly a haystack*").

For the record, I was not involved on a minute examination of compliance by the Central Bank. My concern is, and has consistently been, that as the sole member of the Investigation Team who was dealing with the matter, I was unable to, and was, in fact, actively prevented from, completing even a basic review of the documentation provided by the Central Bank relating to its banking supervisory activities in purported compliance with a statutory direction from the Joint Committee to investigate the banking crisis, when I had serious concerns as to such compliance.

(III) RESPONSE TO PERFORMANCE CRITICISMS MADE IN SC REPORT

(i) Performance Criticisms Made and My Response to Them

In the SC Report, it is stated that I as confidential informant:

"*would not, and could not be brought to, recognise their place in the Investigation Team and repeatedly asserted a position of seniority as an Investigator which they did not have. The confidential informant refused to recognise the seniority and authority of [Management]..... The confidential informant's dissatisfaction grew to the point that the confidential informant's perspective became so distorted that in the mind of the confidential informant there was only one rational point of view: which was that of the confidential informant. Any divergence from that point of view was perceived as being so bizarre that it could only be explained by an inference or suspicion of corruption..... The confidential informant refused to recognise their place in the Investigation Team and to work as part of that team and to the direction of the [Management] of the stream to which the confidential informant had been assigned.*"

The clear impression is created of an individual who was acting irrationally and was unable to function appropriately in the workplace, both within the context of the reporting line and in the performance of the role. It is also suggested that the Protected Disclosure was motivated by thwarted personal career ambition, rather than by concerns held by me in good faith in relation to '*relevant wrongdoing*' (as defined in the Protected Disclosures Act 2014).

As these claims were not put to me in the course of the SC Review (in breach of my right to fair procedures as I was deprived of a right to be heard on them), I take this opportunity to respond to them below. I had no reason to recount much of the below to Mr Allen as I had no expectation of my competence having been called into question until I read the SC Report.

For the record, at no time, ever, during my period in the office of the Investigation Team from 26 January 2015 to 27 April 2015 did the lead investigator to whom I directly reported, any member of my reporting line, any member of Human Resources or any other person (within the infrastructure of the Joint Committee or otherwise) mention either formally or informally that there was an issue with regard to: (a) my performance; (b) how I interacted with team members; or (c) any assertion on my part, whether repeated or otherwise, of a position of seniority as an investigator.

It is simply not credible that a performance issue of the magnitude presented in the SC Report is raised approximately four months after my departure from the office of the Investigation Team and that I am made aware of this for the first time through the medium of the SC Report.

It is also worth noting that I was required to attend for four separate interviews prior to being offered a role on the Investigation Team. Two of the interviews were attended by members of the senior management of the Investigation Team, a senior member of the Secretariat and the Chairman of the Joint Committee of Inquiry into the Banking Crisis. I understand that extensive reference checking was employed and references presented before all Members of the Joint Committee, who retained the right to veto an appointment to the Investigation Team. Upon being awarded the position, I received feedback from the senior recruiter that my employment references were considered to be exemplary.

Moreover, my employment contract included a three month probation period and were the assessment of senior management within the Investigation Team indeed as reported in the SC Report, it was open to senior management to invoke the provisions related to probation in the employment contract which would have facilitated my departure from the Investigation Team. This action was not taken.

It is notable that Mr Allen's assessment as set out in the SC Report directly contradicts the Inquiry Co-ordinator Report prepared and distributed following my initial disclosures, to which members of senior management of the Investigation Team contributed in which it was referenced that there was recognition among my fellow investigators that I had *"undertaken valuable work on compliance"*. This comment related to my engagement with the Central Bank in relation to the disclosure of information required on foot of the Direction.

Furthermore, Mr Allen's assessment is at odds with information provided to me by the Manager of Human Resources with responsibility for the personnel of the Investigation Team during a meeting on **25 June 2015** in which it was stated that someone with my skill-level was very much needed within the team and that my departure from the office on 27 April 2015 had resulted in concern and disappointment among my colleagues.

Moreover, in late February 2015 I was invited by the senior investigator and the other lead investigator within the Investigation Team to forensically analyse phone records of certain individuals leading up to the issuance of guarantee and beyond, on the stated basis that I had the skills to do so, although in the event this work never transpired. Such an invitation again is inconsistent with the frankly rather disturbing picture of me presented in the SC Report.

Mr Allen's assessment also entirely conflicts with correspondence sent to me by the Oireachtas Service in **July and August 2015**, in which I was invited to return on-site to work with the Investigation Team to produce a key appendix for the forthcoming report of the Joint Committee relating to the period leading up to the issuance of the bank guarantee. The role would have involved me liaising with other investigators in relation to the 'close book process' for witnesses and involved the attempted resolution of conflicts in regard to evidence provided to the Joint Committee. This clearly related to a matter of some critical importance for the Committee.

Moreover, were the assessment of senior management within the Investigation Team indeed as reported in the SC Report, yet management were willing to have me work on a matter of such central significance, this in itself would raise very serious questions as to the credibility of the forthcoming report of the Joint Committee of Inquiry relating to the issuance of the bank guarantee and the judgement of senior management.

(ii) Response to Questioning of Legal Competence

It is also repeatedly suggested in the SC Report that I am a less than competent lawyer (on the basis that I failed to understand and "*could not be brought to understand*" the nature of the Banking Inquiry, the constitutional and legal framework for its conduct and the basis upon which the inquiry was established and conducted). For the record, I have a clear understanding of these matters.

I note that this evaluation contradicts Mr Allen's own comments in the course of the SC Review in which he stated in correspondence with my legal representatives that I am: "*an experienced lawyer who has long experience in dealing with large volumes of documents very much more complicated than a transcript.*"

Mr Allen's assessment is also entirely at odds with an exchange that occurred in February 2015, during which the legal adviser to the Joint Committee of Inquiry asked the senior investigator within the Investigation Team in my presence if he would give permission for me to be seconded onto her team, on the basis that she had been impressed by my interactions with her during my first three weeks in the office.

The response given to the legal adviser was to agree with her assessment, but to state that I could not be released from my present role on the Investigation Team as my skills were required.

I can only conclude that the characterisation of me, referencing, amongst other things, a "*distorted*" perspective on my part, has arisen because of the making by me of the Protected Disclosure. Such egregious attempts to impugn and discredit me professionally and personally are (to say the least) disquieting and do no credit to those who have promulgated them, or to the public interest.

CONCLUDING REMARKS

Having regard to the foregoing, I formally request that

(a) Mr Allen's Report is withdrawn;

(b) This letter is immediately brought to the attention of all Members of the Joint Committee;

(c) An appropriate public statement is made retracting the findings made by Mr Allen in the SC Report; and

(d) The Joint Committee is advised that I am willing to appear as a witness before all Members to address any questions that arise on foot of this correspondence and the SC Report.

The Joint Committee may upon request be provided with the transcripts (or specific extracts of transcripts) of the interviews Mr Allen conducted with me in order to corroborate the points referenced in this letter.

I conclude by stating that it is manifest that I have suffered significant detriment as a result of the making of the Protected Disclosure, the conduct of the ensuing SC Review and the content of the SC Report. Further, in the Executive Summary, I am identified as a "*trained lawyer*" and within the body of the SC Report as a "*qualified solicitor*". In light of the fact that it is widely known that I am the only legal professional employed by the Houses of the Oireachtas as an Investigator to the Joint Committee, I have been identified in fundamental breach of the Protected Disclosures Act 2014, despite my repeated requests for anonymity.

Having regard to these matters and in order to seek to mitigate the significant damage that has been done to my professional reputation, I look forward to an acknowledgement from you within seven days from the date hereof that the steps set out above have, or as appropriate, will be taken. Should this not occur, I confirm my intention to take immediate steps to vindicate my good name together with my other legal entitlements.

Yours sincerely

/s/ Lorraine M. Morris

Lorraine M. Morris