

**An Inquiry pursuant to Part IIIC of the Central Bank Act 1942 (as amended)
concerning the Irish Nationwide Building Society, Michael Fingleton, William
Garfield McCollum, Tom McMenemy, John S. Purcell and Michael P. Walsh
(the “Inquiry”)**

Inquiry Management Meeting

Monday 28 January 2019

OPENING REMARKS BY MS. MARIAN SHANLEY, CHAIRPERSON OF THE INQUIRY

This Inquiry Management Meeting is being held to consider various options arising from the illness of the one of the Persons Concerned, Mr. Michael Fingleton.

In that regard, the Inquiry has been provided with medical reports and has heard oral evidence in respect of Mr. Fingleton's health. The evidence is that Mr. Fingleton is currently unable to engage with the work of the Inquiry at any level.

We have received written submissions from the Enforcement Directorate of the Central Bank, from Mr. Stan Purcell, and the Legal Practitioner Team assisting the Inquiry and we will hear oral submissions from those present here today.

Because today's proceedings will inevitably involve discussion of the Mr. Fingleton's medical condition, the Inquiry has decided to conduct the substantive part of this IMM in private. However, before the hearing goes into private session, and because this is the first time the Inquiry has addressed this matter in public, it is necessary to outline some of the principal developments since the evidence in the first module of the Inquiry concerning SPC 5 concluded on June 29th last.

Mr. Brian O'Moore of the Legal Practitioner Team will provide with outline summary.

The commencement of the hearings on the next module of the Inquiry concerning SPC 6 has been delayed as a result of the Mr. Fingleton's current condition. The meeting will explore the options available to the Inquiry going forward.

STATEMENT BY MR. BRIAN O'MOORE S.C. OF THE LEGAL PRACTITIONER TEAM ASSISTING THE INQUIRY

This is a significant moment for the Inquiry in that the Inquiry is now being asked, because of the persistent and continued illness of Mr. Fingleton, in relation to a variety of different ailments, to decide how to proceed. And what I intend to do before there is the debate mainly in private about the options available to the Inquiry, is to put a hopefully a fairly full context for today's deliberations and the reasons why they are required.

You are aware, Chairperson, that the Inquiry Members have directed the Legal Practitioner Team not to disclose the nature or the type of illness that has been suffered by Mr. Fingleton in order to preserve his confidentiality in that regard and of course that direction will be complied with.

However, given that it is a public Inquiry in our view it is important that some more precise sense of the disruption to the work of the Inquiry caused by the illnesses of Mr. Fingleton now be given in public at this sitting of the Inquiry. And before we even get to the various ailments that Mr. Fingleton has suffered and how it has impacted upon the work of the Inquiry, it may be helpful just to stand back and to look at the context of the Inquiry's work.

Firstly, before we even get into the business that the Inquiry has carried out, the Inquiry will recall that in two separate pieces of litigation obviously ventilated in the courts rather than before the Inquiry itself, attempts have been made by Mr. Fingleton and by Mr. Purcell to stop the Inquiry proceeding as against each of them. Both of those attempts were unsuccessful.

Within the work of the Inquiry there have been a wide range of private hearings before the public hearings of the Inquiry began at the end of December 2017. And again it's worth

recalling some of these issues raised not just by Mr. Fingleton but also by Mr. Purcell and Dr. Walsh who was then a Person Concerned before the Inquiry but who has since settled his differences with the Central Bank.

And just to give a flavour of those, without spending too much time on them, the Notice of Inquiry having been served in July 2015, by the end of that year there was a private management meeting on issues of costs, on issues of the jurisdiction of the Inquiry and on the timing of the responses to the Inquiry management questionnaire which had been delivered to each of the Persons Concerned and which they had not at that point in time provided responses to.

The purpose, as the Inquiry will recollect, of the questionnaire was to try to net down issues that may be ventilated before the Inquiry to limit the scope of its hearings and its works and therefore to provide for a more expeditious progress of these allegations against the Irish Nationwide Building Society and the relevant Persons Concerned.

I'll return very briefly to the sort of allegations that have been heard by the Inquiry and are due to be heard by the Inquiry in the course of this address.

In 2016 there were a series of further private hearings of the Inquiry to include a further management meeting which considered the responses to the Inquiry management questionnaire, a very significant management meeting of the Inquiry to consider whether the Inquiry should be held in public or in private, a further meeting of the Inquiry to consider whether the Inquiry should be adjourned because of the intervention of a third party and also a lengthy hearing in connection with issues such as whether or not the hearings of the Inquiry when they began should be modular or simply unitary; with regard to the proof documents and that issue was addressed and clearly that was of some significance given the amount of documents made available to the Inquiry running safely into six figures and also to consider an application made by Mr. Fingleton for a stay of the Inquiry against him which again did not prove successful.

Then in 2017 before the commencement of the oral hearings on SPC 5 there were further private hearings of the Inquiry to consider an application by Mr. Walsh about his access to documents from the Enforcement Division of the Bank. Mr. Walsh's application was that the allegations against him be particularised. A separate hearing over two days in February and March of 2017 to consider an application by Mr. Fingleton about access to documents from the Enforcement Division and his own free standing request to that of Mr. Walsh that the charges against him, Mr. Fingleton, also be particularised. And then three other private hearings of the Inquiry in the second half of 2017; one hearing to consider the compliance by Enforcement with an order made by the Inquiry in aid of Mr. Walsh that he be provided access to certain documentation maintained by Enforcement. The second to deal with preparations for the hearing of SPC 5 and in particular on the status of the documents, the chronology which was to be the spine of the documentation available for the purpose of that oral hearing and the presentation of evidence through the various systems available to the Inquiry, namely, relativity and the TrialDirector. And there was a second and final private hearing of the Inquiry to deal with those matters in the month before the public hearing of the Inquiry began.

The Inquiry has decided on a modular approach to its business. The first module tackled by the Inquiry was the module in relation to SPC 5 and again just to remind the Inquiry and the public, the SPC 5 module dealt with allegations against the building society and against four named individuals that, if I can put it very generically, the application of the Credit Committee was the unsatisfactory. The Credit Committee being a key organ of the building society over the relevant period between the 2004 and 2008.

And the four individuals involved in that module were Mr. Walsh, Mr. Fingleton, Mr. McMenamin and Mr. Purcell. We needn't spend too much time with Mr. Walsh and Mr. McMenamin as both of those now have entered into arrangements with the Central Bank and the Inquiry as against them is terminated.

The SPC 5 hearing commenced with opening statements in the week beginning the 11th December 2017 and they proceeded as directed by the Inquiry.

The next step in the SPC 5 module was, logically, to be the taking of evidence. That was scheduled to begin in early January of 2018. And here we have the first episode with regard to the work of the Inquiry caused by Mr. Fingleton's illness.

Precisely because naming or identifying the clinicians involved would reveal possibly too much about the various ailments that Mr. Fingleton suffered from I intend to refer to them as Clinician A and so on. And, as I said, the SPC 5 hearing of evidence was due to begin on 9th January 2018.

The previous day on the 8th January 2018 a medical certificate from Clinician A as I will call that individual, was received by the Inquiry indicating that Mr. Fingleton was unable to participate in the hearing due to begin the following day.

The Inquiry Members adjourned the commencement of the evidence on SPC 5 for a week. On the 15th January 2018, again the day before the evidence was due to begin, a further medical certificate was received from Clinician A by the Inquiry in respect of the fitness of Mr. Fingleton to attend and it was certified that he was not able to do so.

The Inquiry then put off the commencement of the evidence on SPC 5 for a further period of time.

It's important to remember that at this point in time a whole range of witnesses had been subpoenaed or summonsed I should say, and required to attend from the 9th January on for a period of some weeks in total. And all of those witnesses had been notified of the particular week in which they were anticipated their evidence would be given and while obviously adjustments had to be made depending on the availability of witnesses, broadly speaking the Inquiry was in a position at that point in time to proceed without interruption with the hearing of all of the evidence in respect of SPC 5.

The third medical certificate received in respect of Mr. Fingleton was from a separate clinician, Clinician B, on the 24th January 2018. The SPC 5 hearing at this point in time was due to

commence the following week on 30th January and that medical certificate suggested that Mr. Fingleton would be unable to participate in the business of the Inquiry for some weeks.

The response to that medical certificate from Clinician B of the Inquiry was to summons that clinician to give evidence before the Inquiry at a private hearing on 30th January 2018.

There was a hearing at this venue to hear evidence from that clinician in respect of Mr. Fingleton's application to adjourn based on that medical evidence and the clinician was examined on oath as to the prognosis for Mr. Fingleton and the nature of the treatment of Mr. Fingleton.

On 3rd February 2018 the SPC 5 hearing having been adjourned as a result of the private hearing involving the examination of Clinician B, to the 13th February, on the 2nd February 2018 a letter was received from Mr. Fingleton indicating that because of the medical procedures in which he was involved there would be a third clinician now, Clinician C, who would be in a position to advise the Inquiry about when Mr. Fingleton might be able to return to participate in the Inquiry's affairs.

And that clinician, Clinician C, was on foot of his report required to attend and did attend for a private hearing of the Inquiry on the 14th February 2018. Again he was examined on oath about the evidence he was in a position to give in connection with Mr. Fingleton's medical condition.

The hearings of the Inquiry then, at least as far as evidence is concerned after the SPC 5 module had been opened in December of 2017, the hearings with regard to evidence then began on 20th February 2018. So that's a delay of a month and a half as a result of these various ailments and they are not all the same ailment on the part of Mr. Fingleton.

On 1st March 2018 there was an e-mail from Mr. Fingleton requesting that the SPC 5 hearings be limited to mornings only and that was supported by a letter from a fourth clinician, Clinician D. On the 9th March 2018, a week after that request, there was a private hearing of the Inquiry

to hear the application of Mr. Fingleton that the Inquiry sit for half day hearings only, that was ruled upon by the Inquiry who decided that given Mr. Fingleton's medical condition, as vouched for by Clinician D, that the Inquiry would then resume its hearings on a half day basis solely and that is the way in which for the balance of SPC 5 the Inquiry continued to carry out its business.

On 29th April 2018 there was a further medical certificate, this time again from Clinician A, the first medically qualified person who had provided a certificate on behalf of Mr. Fingleton, that indicated that Mr. Fingleton was unwell and there was a delay of some five days in total in the ongoing business of the Inquiry as a result of that illness on the part of Mr. Fingleton.

Now, from then on the Inquiry continued to take evidence in respect of SPC 5. It heard evidence from a total of 26 witnesses and that concluded at the end of June 2018. After the conclusion of the evidence in respect of SPC 5 the Inquiry Members set down how the module in relation to SPC 5 was to be concluded and also set down what was to happen in respect of SPC 6 and again the Inquiry Members will recollect that SPC 6 was a separate charge against INBS involving originally Mr. Walsh, but obviously concluded as against him, and also involving Mr. Fingleton and Mr. Purcell. So not involving the other Persons Concerned, Mr. McMenemy and Mr. McCollum, and it related to the provision of documents and reports to the board of INBS over the relevant period between 2004 and 2008 in respect of decisions by the Board on lending issues.

What the Inquiry Members had directed was that there would be a series of exchange of submissions in respect of SPC 5 in order to allow oral submissions on that module to take place in September of last year. And the precise directions provided were as follows: That on 20th July 2018 Enforcement was to provide its written submissions on SPC 5, its closing submissions on that module and Enforcement did that.

The next step was that on the 16th August 2018 there was to be a set of submissions received from the Persons Concerned which, given how matters had developed, were essentially Mr. Purcell and Mr. Fingleton and also technically Mr. McMenemy though he had not taken part in the business of SPC 5 apart from giving evidence in that module. Mr. Purcell honoured that direction and delivered his written submissions on the 16th August 2018.

But at around this time Mr. Fingleton was again beset by medical difficulties and on the 10th August 2018 there was a further medical certificate from Clinician D provided and Mr. Fingleton Jr. clearly acting if I can put it that way, on behalf of his father, Mr. Fingleton, indicated that Mr. Fingleton would not be able to meet the deadline for the SPC 5 submissions and looking for an adjournment for an indeterminate period of time.

On 13th August 2018 there was a further medical certificate from Clinician D and on the 21st August 2018 there was a medical certificate provided by Clinician E. And Clinician E suggested that there should be some again indeterminate but relatively significant deferral of any obligation on the part of Mr. Fingleton to participate in the business of the Inquiry.

Clinician E provided a full report on the 7th September 2018. Now, at that point in time the oral submission hearing in respect of SPC 5 which was due to begin on the 11th September and conclude on 14th September was postponed by the Inquiry without a fresh date having been fixed.

However, what the Inquiry had also done for the purpose of moving on with the work of the Inquiry was to fix the 9th October 2018 as the date on which SPC 6 was to begin. I am terribly sorry, the 2nd October 2018 was the date on which SPC 6 was to begin with submissions or openings and then the evidence was to commence on the 9th October 2018.

And by the time we have these interventions in September 2018 from the fresh clinicians for Mr. Fingleton in particular Clinician E and we will see in a moment subsequently Clinician F, a range of witnesses, 12 in total, had been set up to give evidence in respect of SPC 6 beginning as I said on the 9th October 2018 and finishing on the 30th November 2018. So those two months were to be taken up with the evidence in respect of SPC 6 and over that time persons were notified that they would be giving evidence on particular weeks over that period, so the SPC 6 hearings as a result as well as the conclusion of the SPC 5 hearings had been scheduled to occur to allow the Inquiry to finish its work on those two modules hopefully by Christmas of last year.

That wasn't possible given the medical report produced by Clinician E on the 7th September to which I have already referred. There was a private hearing of the Inquiry held on 24th September 2018 at which Clinician E gave her evidence and gave evidence which was again on oath and again the subject of questioning by counsel on behalf of the Inquiry.

A second report of Clinician E was made available at the end of October 2018, and a further report made available from Clinician E at the start of this year.

The second report of Clinician E led to a further private hearing of the Inquiry on 13th November 2018 at which again Clinician E gave evidence on oath about the state of Mr. Fingleton's health as far as that clinician was concerned and was questioned about her evidence in that regard.

And then, finally, on 4th December 2018, there was a report from Clinician F which dealt with the state of Mr. Fingleton at that point in time. I said the third report of Clinician E was made available earlier this month, in fact it was made available at the end of November 2018.

So when one comes to the end of December of last year the following has been the position as far as Mr. Fingleton's health is concerned: Firstly, six different clinicians have provided reports in relation to a variety of ailments he has suffered since January of last year. Secondly, three of those clinicians have given sworn evidence to this Inquiry, one of them on two different occasions about Mr. Fingleton's ability to participate in the Inquiry.

And thirdly, in the way that I have described, firstly the hearings in respect of SPC 5 have been deferred on a number of occasions to accommodate Mr. Fingleton; secondly, the Inquiry has sat for half days rather than full days because of what the Inquiry has been told about the state of Mr. Fingleton's health; and thirdly, with regard to SPC 6, that has been impossible to commence due to the evidence provided by the more recent clinicians, Clinician E and Clinician F about the state of Mr. Fingleton's health.

It's been impossible also to finish off SPC 5 because of Mr. Fingleton's inability because of his illnesses to participate in the making of submissions either oral or written in respect of that module.

And the current prognosis from Clinician E in a report that was received during the course of last week on the 24th January has been summarised by you, Chairperson, but it may be worth just re-emphasising what it is. It is to the following effect: That in the view of Clinician E Mr. Fingleton will not be able to take part in the Inquiry either on a written or oral basis for at least four months and the proposal of that doctor was that Mr. Fingleton should be reviewed by Clinician E in three months' time to assess at that point whether he would be able to take part in the Inquiry presumably at the expiry of the fourth month.

If one just carries out the simple exercise of seeing where that leaves the Inquiry, that would mean on the basis of this medical evidence Mr. Fingleton cannot take part in the Inquiry until the very end of May of this year or more likely one would have thought June of this year and one doesn't know whether he would in those circumstances be able to participate immediately either in the opening of SPC 6, the SPC in relation to the provision of reports to the Board or the conclusion of SPC 5, the SPC centring on the way in which the Credit Committee performed its obligations. It may be that it would require some time in order to read himself back in before he could participate in either of those ventures.

But, as I said, it leaves the Inquiry with a significant decision to make which is whether the Inquiry should now effectively pause its work, at least the holding of public hearings, the Inquiry is clearly doing other work of a private nature in relation to its mandate, but whether or not the Inquiry should pause any hearing in relation to the Inquiry until on this prognosis at the very earliest June of this year and it hardly needs to be said that June of this year is almost precisely a year since the Inquiry had its last public hearing dealing with matters of substance.

And with that in mind the Inquiry has invited the Persons Concerned and Enforcement and has taken advice from the Legal Practitioner Team about any application that might be -- that might be made at this point in time.

Mr. Purcell has made one application and can I just indicate what that is. Mr. Purcell's application to the Inquiry, which the Inquiry will hear during the course of this morning and later today, is as follows: He said in a communication to the Inquiry of the 22nd November 2018:

"My submission -- that's Mr. Purcell's submission -- is that no fair Inquiry could be conducted without Michael Fingleton's attendance and full participation in all aspects of the Inquiry as that Person Concerned. Therefore I submit that the commencement of the SPC 6 hearing should be postponed until Michael Fingleton is able to fully participate as a Person Concerned."

Now, that's the position taken by Mr. Purcell.

The Inquiry has of its own motion identified three alternative approaches that might be considered and they are set out in correspondence of the 26th November 2018 addressed to the Persons Concerned and to Enforcement. And in proposing or directing that this IMM, this meeting of the Inquiry take place, the Inquiry Members stated that all potential options regarding the SPC hearing would be considered, the SPC 6 hearing would be considered including the following: One, proceedings in respect of all Persons Concerned including Mr. Fingleton; that would be proceeding regardless of Mr. Fingleton's illness as against all Persons Concerned and the Society including him. The second alternative was proceeding in respect of those Persons Concerned identified in SPC 6 excluding Mr. Fingleton and stay the SPC 6 hearing insofar as Mr. Fingleton is concerned until such further date as may be identified by the Inquiry.

That is I think an approach which LPT has characterised as staggered hearings of SPC 6 which would involve taking as much evidence as is available to the Inquiry in respect of the allegations against INBS and against Mr. Purcell and then having a separate hearing before you decide SPC 6 which would involve Mr. Fingleton and would enable Mr. Fingleton to participate fully at that stage in respect of all evidence relevant to him or relevant to the Society at that point in time.

It would also I think necessarily have to involve Mr. Purcell being able to take part in that hearing because matters might be said which affected him or there might be issues which he would like to raise, but at the very least it would allow the Inquiry to get on with its business to some extent, albeit not to the optimum extent which would be facilitated by the Mr. Fingleton's immediate involvement. And the third option identified by the Inquiry was to postpone any hearings in respect of SPC 6 until such further date as may be identified by the Inquiry and of course that communication was sent out and those options were defined before the last two reports from Clinician E and I think before the one and only report from Clinician F.

But given that the Inquiry now knows that the report provided by an individual, Clinician E, who has twice attended the Inquiry to give evidence on oath about Mr. Fingleton's condition and has been questioned about that, given that the Inquiry knows that the position of that individual is that it would be June at the earliest before Mr. Fingleton is able to participate in any way in the Inquiry then obviously option three if it ever was an attractive option is a less attractive option now given the inevitable deferral of all further hearings of the Inquiry that that would involve.

It's worth reminding the Inquiry at this point in time that while I have referred to the substance or the nature of SPC 5 and SPC 6, SPC 7, the third module of the Inquiry's business and SPCs 1 to 4, the fourth and final module of the Inquiry's business, both also involve Mr. Fingleton. So unlike other individuals who are not involved in every allegation made in respect of this Inquiry Mr. Fingleton is so involved.

So the business of the Inquiry today and I think that is the context to it in as full a way as I can describe it, the business of the Inquiry today is to consider Mr. Purcell's submission and his application effectively that the SPC 6 module and by inference no other module proceed until Mr. Fingleton is fully recovered and also to consider the three options that the Inquiry itself has identified with regard to how the Inquiry will now proceed.