REDACTED EXECUTIVE SUMMARY OF REPORT BY SENAN ALLEN SC

TO

THE ACTING CLERK OF DÁIL ÉIREANN

ON CERTAIN MATTERS CONCERNING THE INVESTIGATION TEAM WORKING TO THE JOINT OIRECAHTAS COMMITTEE OF INQUIRY INTO THE BANKING CRISIS RAISED BY A CONFIDENTIAL REPORT FROM A MEMBER OF STAFF

SENAN ALLEN S.C.

1 SEPTEMBER 2015
1. **Executive summary**

1.1 On 22 July 2015 I was appointed by the Acting Clerk of Dáil Éireann to carry out a review of the matters raised in a report made in writing by a member of staff dated 10 July 2015.

1.2 The report made a number of very serious allegations of incompetence, misconduct and breaches of the Houses of the Oireachtas (Inquiries Privilege and Procedures) Act 2015. It also contained many allegations of waste of public money and of corruption.

1.3 At the time the allegations were first made, [Employee] and [Employees] each, quite properly, offered to stand aside pending an inquiry into the allegations. Those offers were declined. The confidential informant’s allegations threatened to derail the Banking Inquiry. If the [Employee] or the [Employees] had then stood out, the Banking Inquiry would almost certainly have collapsed.

1.4 The report of 10 July 2015 (understandably as the confidential informant had not attended the offices of the Banking Inquiry since 27 April 2015) appended no documentary evidence in support of the allegations. There were a number of Appendices to the report but these set out information and I think would more correctly have been described as Schedules. The report did, however, refer to documents which, it was said, would evidence the alleged misconduct.

1.5 Strikingly, the report, on its face, contained a good deal of suspicion, surmise and conclusion but much less in the way of hard information. In addition, the report posed a number of questions. It struck me that the fact that many of the questions which confidential informant thought needed to be answered remained unanswered was very difficult to reconcile with allegations of grave misconduct.

1.6 In many cases the confidential informant alleged that the Joint Committee had been misled by the Investigation Team, both by the provision of false and misleading information and by alleged withholding of information. At the same time the confidential informant suggested that consideration should also be given to the
willingness of the Joint Committee to disregard information and the motivation of the Joint Committee for doing so. On their face, and without any exploration or explanation, these struck me as mutually exclusive alternatives but the confidential informant appeared to be alleging both.

1.7 With the full cooperation of the Houses of the Oireachtas Service, the office of the Parliamentary Legal Advisor and all those concerned, I obtained a copy of all the documents I required and conducted a series of interviews over the course of twelve days. Where there was divergence in the evidence, I afforded to each of those I interviewed the opportunity to comment upon or to respond to points of difference.

1.8 I had a stenographic note taken of the interviews. I was asked by some of those I interviewed to make available to them for review a copy of the transcript and I did so.

1.9 As I expected they would, the written records allowed an assessment to be made of the reliability of the confidential informant and the validity of the confidential informant’s perspective.

1.10 The confidential informant is shown by the contemporaneous correspondence and documents to be a wholly unreliable historian.

1.11 Far from supporting the allegations, 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.

1.12 The contemporary written records of other events and dealings (including documents authored by the confidential informant) clearly showed that there was no basis for many of the other allegations.

1.13 Although a trained lawyer, the confidential informant did not understand and could not be brought to understand the nature of an Irish parliamentary inquiry or the constitutional and legal framework in which Inquiries under the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 must be conducted.
1.14 In interview, the confidential informant eventually acknowledged that legal advice on a particular issue which had been condemned in the report as “ludicrous” had, after all, been correct but persisted in the view that a course of action which was not open to the Joint Committee ought nevertheless to have been taken.

1.15 The genesis of the confidential informant’s dissatisfaction appears to have been a failure or an inability to understand the basis upon which the Banking Inquiry was established, and was to be, and was being, conducted. The 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].

1.16 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.

1.17 There were inevitably tensions in the Investigation Team as the team grappled with a very heavy workload and the [Management] juggled competing demands to keep the Banking Inquiry on course. 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.

1.18 I have analysed each of the allegations made in the report of 10 July 2015 and examined the evidence in relation to so much of that report as comprised assertions of fact. I have interviewed those people who I believed might be able to assist me in determining the facts.
1.19 Several of those named in the report of 10 July 2015 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.

1.20 The facts are not as the confidential informant reported. In many cases the “facts” as reported are plainly at variance with the documentary evidence. In other cases it emerged that what was reported as fact was wild surmise in relation to matters of which the confidential informant had very limited knowledge or no knowledge at all. The confidential informant did not appear to me to be able to distinguish between fact and proof or between fact and surmise.

1.21 While the primary focus of the alleged “relevant wrongdoing” is the Investigation Team and the Secretariat, the confidential informant suggests (parenthetically and, to my mind, inconsistently) that consideration should also be given to the alleged willingness of the Joint Committee to accept false information and to disregard evidence.

1.22 Repeatedly in the course of my interviews the confidential informant, when pressed, resorted to reciting a litany of their allegations against [Employee]. In my firm view this repetition added nothing to the substance or credibility of what was alleged. When pressed that a particular allegation appeared capable of innocent explanation, the response was to refer to all the others, as if a series of events each capable of innocent explanation could together form the basis for allegations of irregularity, criminality and corruption. I could not accept this.

1.23 The Joint Committee was not provided with false information, and there was no
factual basis for the allegation that it was.

1.24 No Participant attempted to obtain favourable treatment, nor did the Leads Investigators or any of them or any other Investigator do or not do anything towards any such end. The documentary records of the Banking Inquiry flatly contradict the allegations that they did.

1.25 The practices and procedures in relation to the challenging of redaction and withholding of materials and documents were reasonable in the circumstances. [Management] were all quite candid that in an ideal world in which they had more time and resources the exercise might have been approached differently.

1.26 The procedures available for dealing with possible conflicts of interest are robust and, in the case the subject of the allegation, were correctly applied.

1.27 The [Employee] who is alleged to have leaked information or documents did not.

1.28 For the reasons which I will explain in detail, have come to the conclusion that there is no substance whatsoever in any of the allegations.

1.29 That being so, no question of any recommendation arises.