Neutral Citation Number: [2007] IEHC 181

THE HIGH COURT

RECORD NO. 272 COS/2005

IN THE MATTER OF NATIONAL IRISH BANK LIMITED
IN THE MATTER OF NATIONAL IRISH BANK FINANCIAL SERVICES LIMITED
IN THE MATTER OF THE COMPANIES ACTS, 1963 TO 2003
AND IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF CORPORATE ENFORCEMENT PURSUANT TO SECTION 160(2) OF THE COMPANIES ACT, 1990

BETWEEN

THE DIRECTOR OF CORPORATE ENFORCEMENT

APPLICANT

AND
KEVIN CURRAN

RESPONDENT

Judgment of Mr. Justice Roderick Murphy dated the 23rd day of May, 2007

1. Pleadings
The respondent, Kevin Curran, became Regional Manager of National Irish Bank Limited in 1988 and subsequently Head of Retail Banking from 1996 to his retirement in 1997.

Mr. Curran had spent his entire career with the Bank. He was appointed Regional Manager (together with Dermot Bonner) with effect from 1st June, 1988. He had responsibility for 22 branches and initially reported to Mr. Brennan, General Manager – Retail Banking. After Mr. Bonner's appointment as Head of Retail on 1st October, 1990, Mr. Curran reported to Mr. Bonner and, with effect from 3rd May, 1993 to a newly appointed General Manager – Banking, Mr. Michael Keane. In February, 1996, following the retirement of Mr. Bonner, Mr. Curran was appointed Head of Retail Banking and continued to report to Mr. Keane. He retired on 4th July, 1997.

The Financial Advice and Service Division of the Bank (FASD) was separate from the branch network which also reported to the General Manager – Banking.

Following an exposé of certain practices within that bank, inspectors were appointed by the court on 30th March, 1998 to investigate the affairs of National Irish Bank Limited. The scope of the investigation was broadened on 15th June to investigate the affairs of National Irish Bank Financial Services Limited. The inspectors reported to the court on 9th July, 2004.

By notice of motion dated 20th July, 2005 the applicant, the Director, sought an order pursuant to s. 160(2)(b) and/or s. 160(2)(d) and/or s. 160(2)(e) of the Companies Act, 1990 declaring the respondent to be disqualified from being or acting as an auditor, director or other officer, liquidator, receiver or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts, 1893 – 1978, for such period as the Honourable Court may see fit.

Sub-section (2) in relation to the present application provides that:

> "(2) Where the court is satisfied in any proceedings or as a result of an application under this section that –
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> (b) a person has been guilty, while a … officer … of a company, of any breach of his duty as such … officer …; or
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> (c) …
>
> (d) the conduct of any person as … officer … of a
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> company, makes him unfit to be concerned in the management of a company; or
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> (e) in consequence of a report of inspectors appointed by the court or the Minister under the Companies Acts, the conduct of any person makes him unfit to be concerned in the management of a company."

The ground upon which such relief is based is on the conclusion of the inspectors' report (the Report).

That Report concluded that National Irish Bank Limited and National Irish Bank Financial Services Limited (collectively referred to as "the Bank") were involved in a number of improper practices which were summarised therein. These were the opening and maintaining of bogus non-resident accounts and fictitiously named accounts enabling customers to evade tax through concealment of funds from the Revenue Commissioners; Clerical Medical Insurance (CMI) policies promoted as a secure investment for funds and disclosed to the Revenue Commissioners; Special Savings Accounts (SSA) where Deposit Interest Retention Tax (DIRT) was deducted at a reduced rate notwithstanding that the applicable statutory conditions were not observed and the improper charging of interest and of fees to customers.

2. Inspectors' findings
Part 8 of the Report is entitled Improper Practice: Knowledge and Responsibility. The Report distinguishes between entities other than individuals, being Internal Audit, External Auditors, the Audit Committee of the Board and the Board of Directors and named individuals.

The inspectors did not consider as relevant to comment on the knowledge of employees of the Bank holding positions subordinate to that of manager, as, while junior officials may have been aware of the existence of practices which were improper, they were not in a position to effect change, and so could not be held to have any responsibility for their existence.

Managers of the branches of the Bank where bogus non-resident accounts existed were aware, or ought to have been aware, of the existence of such accounts. They failed in their duty to deduct the relevant Deposit Interest Retention Tax.

Branch managers also had a duty to ensure that if properly completed declarations were not held for all accounts classified as DIRT-exempt non-resident accounts DIRT should be deducted. They were aware of this obligation and failed to observe it.

However, the inspectors did not consider it appropriate to find individual managers responsible for the practice of non-compliance with the legislative provisions relating to DIRT, as they believed that that responsibility for this practice lay at a higher level in the Bank.

The inspectors concluded that the Bank's Internal Audit personnel performed their functions in a satisfactory manner. It was not their function to correct improper practices or deficiencies in procedures discovered by them.

The External Auditors were aware of, and placed reliance on Internal Audit whom they concluded were competent and were satisfied that the issues were being reported to management and to the Audit Committee. The judgment of the External Auditors, with the exception of their not seeking to have management quantify the potential retrospective liability for DIRT, were appropriate in the view of the inspectors.

Similarly, and with the same reservation, the inspectors were satisfied that the Audit Committee dealt satisfactorily with the relevant matters.

The inspectors received no evidence that any improper practices being investigated were brought to the attention of the Board. In the circumstances they were of the opinion that the Board of the Bank could not be held responsible for the existence of these practices.

In addition to the Regional Managers, including Mr. Curran, the inspectors were of opinion, for the reasons which are summarised in the affidavit of Mr. O'Rafferty on behalf of the applicant Director, that each failed to discharge the responsibilities in respect of making reasonable enquiries of the branches within their regions.

3. Specific allegations
The specific allegations against Mr. Curran, as respondent in these proceedings are as follows:

> • Throughout the period when the Respondent held the position of Regional Manager (or a superior position) from June 1988 to 4th July 1997, the Respondent was made aware through internal audit reports circulated to him of the deficiencies or irregularities which existed in the operation of DIRT-exempt non-resident accounts at branches. The majority of such reports referred to the failure of branches to hold properly completed declarations for all accounts classified as DIRT-exempt non-resident accounts;
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> • Certain audit reports copied to the Respondent referred to instances where lending to resident customers was secured by letters of lien over deposit accounts with non-resident status;
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> • Reports copied to the Respondent also referred to instances where the residential status stated on non-resident declarations was at variance with other branch records;
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> • In the opinion of the inspectors, the audit reports pointed to the likelihood that the non-resident accounts referred to therein were in fact bogus;
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> • In addition, reported documentary non-compliance was on such a scale as to constitute, in the opinion of the inspectors, a further indication that a substantial proportion of the non-resident accounts could be bogus;
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> • The Respondent was circulated with minutes of the meeting of
>
> senior management held on 9 February 1995 to discuss the results of the DIRT Theme Audit and the DIRT compliance issues arising therefrom;
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> • In evidence given to the inspectors, the Respondent acknowledged that he had suspicions that bogus non-resident accounts existed in the branch network;
>
> • The inspectors believe that the inevitable inference from the above is that the Respondent was not only aware of the failure of branches to hold properly completed non-resident account declarations but ought also to have been aware of the widespread existence of bogus non-resident accounts in the branch network;
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> • The Respondent had a responsibility in respect of branches in his region to ensure that all accounts classified as DIRT-exempt non-resident accounts were correctly classified as such. In this regard, particularly in the light of the deficiencies disclosed in the audit reports circulated to him, the Respondent had a responsibility to make reasonable inquiries of the branches for which he was responsible to satisfy himself that all such account holders were genuinely non-resident and that properly-completed declarations were in place for all accounts so classified;
>
> • The Respondent had a responsibility to ensure that DIRT at the standard rate was deducted from interest paid or credited where the conditions for the operation of accounts as DIRT-exempt non-resident accounts were breached;
>
> • The Respondent failed to discharge these responsibilities.

(Pages 170 and 171 of the inspectors' Report).

8. In the area of Special Savings Accounts, the findings of the inspectors are as follows:-

> • The Bank failed to deduct Deposit Interest Retention Tax ("DIRT") at the standard rate from interest paid or credited on accounts designated as Special Savings Accounts where the branch did not hold a properly completed declaration in a form prescribed or authorised by the Revenue Commissioners or where there had been a breach of the statutory requirements relating to withdrawals;
>
> • Although senior management was aware of the breaches of the relevant statutory requirements, the Bank took no steps to calculate and remit to the Revenue Commissioners arrears of DIRT due, being the difference between tax at the standard rate, which ought to have been deducted, and tax at the reduced rate actually applied.

(Page 80 of the inspectors' Report).

9. With respect to Special Savings Accounts, the Report addresses the Respondent's responsibility by indicating inter alia that:

• The Respondent was made aware through the circulation of branch internal audit reports, of widespread documentary non-compliance in the areas of SSAs. The Respondent was circulated with minutes of the meeting of senior management held on 9 February 1995 to discuss the results of the DIRT Theme Audit and the issues arising therefrom;

• Consequently, the inspectors believe that the Respondent was aware that DIRT at the standard rate was not being deducted as it ought to have been from interest paid or credited where the conditions for the operation of accounts as SSAs were being breached;

• The Respondent had a responsibility to ensure that all accounts classified as SSAs were correctly classified as such and in this regard, particularly in light of the deficiencies disclosed in the internal audit reports circulated to him, had a responsibility to make reasonable inquiries of the branches for which he was responsible to satisfy himself that properly completed declarations were in place for all accounts classified as SSAs;

• The Respondent had a responsibility to ensure that DIRT at the standard rate was deducted from interest paid or credited where the conditions for the operation of accounts as SSAs were breached;

• The Respondent failed to discharge these responsibilities.

(Page 179 of the Report).

10. In the area of the sale of CMI, Scottish Provident International and Old Mutual International Policies, the findings of the inspectors are as follows:

• Monies which were undisclosed to the Revenue Commissioners, including funds held in bogus non-resident accounts and fictitious and incorrectly named accounts, were targeted by Bank personnel for investment in CMI policies.

• Bank personnel promoted CMI policies as a secure investment for funds which had not been declared to the Revenue Commissioners, thereby engaging in a practice which served to facilitate the evasion of Revenue obligations by third parties.

• Prospective investors were given an assurance by Bank personnel that their investment would be confidential from the Revenue Commissioners and, if made the subject of a trust, would pass to their beneficiaries without probate having to be obtained, thus making it possible for the funds invested to be kept hidden from the Revenue Commissioners even after the investor's death.

• The role of the branch personnel of the Bank was to identify likely investors, and the role of the personnel in the Financial Advice and Services Division ("FASD") of the Bank was to introduce customers to CMI and induce them to take out policies with CMI.

• The purposes for the Bank behind the execution of such policies were:

(i) The earning of commission.

(ii) The retention of deposits.

(iii) The gaining of new deposits.

(Pages 115 and 116 of the inspectors' Report).

11. With respect to the sale of CMI, Scottish Provident International and Old Mutual International Policies, the Report addresses the Respondent's responsibility by indicating inter alia that:

• The Respondent was a Regional Manager between February 1988 and February 1996 and was the Head of Retail Banking from February 1996 until his retirement in July 1997. He was aware that "sensitive" funds and funds in bogus non-resident accounts and fictitious and incorrectly named accounts were being invested in CMI through the FASD;

• He was also aware that the CMI product was very successful and resulted in CMI having substantial deposits with the Bank;

• He knew that the FASD was promoting CMI policies as a secure investment for funds which had not been disclosed to the Revenue Commissioners;

• The Respondent shares responsibility for this practice and for the Bank's failure to take steps to ensure that the promotion of CMI policies in this manner was stopped.

(Pages 185 and 186 of the Report).

12. In the area of the Practice of Improper Charging of Interest, the relevant findings of the inspectors are as follows:

• During the period the subject of the inspectors' investigation, the interest charged by the Bank to some customers in their quarterly account included sums which were not in fact interest;

• The inclusion of such sums in the charge for interest was improper;

• The sums which were improperly charged as interest should, on discovery by Internal Audit, have been immediately refunded by the Bank.

(Page 137 of the inspectors' Report).

13. With respect to the Practice of Improper Charging of Interest, the Report addresses the Respondent's responsibility by indicating inter alia that:

> • The Respondent was made aware of the practice of loading interest through receipt of the May 1990 internal audit report on Carrick-on-Shannon branch. This knowledge was reinforced by memoranda dated 21 May 1990 and 5 June 1990 addressed to him from Mr. Frank Brennan;
>
> • The actions of the Respondent in response to Mr Brennan's memorandum of 5 June 1990 on the practice of loading interest were appropriate in that he gave instructions that the practice of loading interest cease. However, the Respondent did not revert to Mr Brennan as requested by him to report on how widespread the practice was, and it remains unclear whether he took sufficient steps to establish this;
>
> • The Respondent shares responsibility for the failure to refund customers whose interest charges had been loaded. No instruction issued to the branches, and the focus of attention was on the future only.

(Page 187 and 188 of the inspectors' Report).

14. In the area of the Practice of Improper Charging of Fees, the relevant findings of the inspectors are as follows:

> • Between 1988 and April 1996, there was no system in operation at the branches for the contemporaneous recording of administration and management time.
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> • The manner in which branch managers purported to charge fees for administration and management time during this period was in the opinion of the inspectors improper, resulting in some customers being overcharged, across the branch network.
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> • While the new system for recording and charging account administration time introduced in March 1996 was to take effect from the May/August charging period of 1996, this system did not become fully operational in the branches on schedule, and extensive manual adjustments were still being effected in a number of branches in November 1997.

(Page 164 of the inspectors' Report).

15. With respect to the Practice of Improper Charging of Fees, the Report addresses the Respondent's responsibility by indicating inter alia that:

> • As a Regional Manager during the period 1988 to 1996, the Respondent knew or ought to have known that the Bank Procedures Manual did not contain any guidance on the nature of the work or services to customers which should give rise to an administration or management time charge. Nor did it give any guidance on the form of record to be maintained by branch staff for delivery of the service;
>
> • The Respondent was aware that there was not at that time any system in operation for recording branch management and administration time which was charged to customers;
>
> • In addition, the Respondent was on the circulation list for internal audit reports on branches under his supervision. There was a constant theme therein of dissatisfaction with the lack of explanation for fee increases recorded on the Fees to be Applied Report. The Respondent was also aware from internal audit reports of the failure of the introduction of the Customer Action Pad in 1992 to bring about an improvement in the situation;
>
> • The Respondent must bear some of the responsibility for the failure to put in place an appropriate system for recording management and administration time to be charged to customers.

(Pages 189 and 190 of the Report.)

The report says that, insofar as Mr. Curran is concerned, that:

> - Mr. Curran was aware of various improper practices which prevailed within the Bank;
>
> - he was responsible (with others) for the continuation of these practices, and for the failure to address the Bank's retrospective liabilities arising from a number of those improper practices and for the Bank's associated legal and professional failures.

In all the circumstances the Director pleads that it is clear that by his actions and omissions, Mr. Curran, while action as an officer of the Bank over a period of nine years –

> - breached his duty as such an officer in failing to ensure that the company's legal requirements were complied with and in failing to carry out his common law duties with due care, skill and diligence

(s. 160(2)(b));

> - engaged in conduct which makes him unfit to be concerned in the management of a company (s. 160(2)(d) and (e)).

The application is grounded on the affidavit of Mr. O'Rafferty. A replying affidavit of Mr. Curran was followed by a second affidavit of Mr. O'Rafferty which covers much of the matters in more detail.

Extensive evidence was given by Mr. Curran over five days which repeats the matters in further detail.

One of the difficulties in the assessment of the unfurling of the evidence is the degree of repetition, albeit by way of clarification, in relation to the allegations and replies to the findings of the inspectors.

4. Affidavit of Dick O'Rafferty

By affidavit filed 20th July, 2005, Mr. O'Rafferty, an officer of the Director of Corporate Enforcement, based the present application on

the findings of the inspectors.

The Director had written to Mr. Curran on 15th March, 2005 outlining the basis for the proposed application.

In response to the Director's invitation in that letter to make representations in relation to the findings of the inspectors, Mr. Curran made various claims, some of which the Director did not dispute (his never having been appointed a director of NIB or NIBFS or a member of the Audit Committee), while others were not a matter for the Director (his having been hampered in defending himself before the inspectors due to a lack of documentation). Of the remaining representations, the Director did not agree that a disqualification application was wholly discriminatory, punitive or inappropriate in his case or that if such application were successful that it would deprive Mr. Curran of the right to earn a livelihood.

Mr. Curran indicated that he did not accept the findings of the Inspectors and that he himself had no authority, implied or otherwise, to change any of the Bank's corporate governance, policies or procedure.

Mr. O'Rafferty says that regardless of whether he had any authority to change the Bank's corporate governance, policies or procedure, the Director was of the opinion that he was a member of the Bank's senior management and thereby had a responsibility to ensure that the Bank complied with its legal and professional obligations.

The inspectors' Report had recorded that Mr. Curran had suspicions, as he acknowledged to the inspectors, that bogus non-resident accounts existed in the branch network, that he had responsibility to make reasonable enquiries at the branches for which he was responsible, to satisfy himself that all such account holders were genuinely non-resident and that properly completed declarations were in place for all accounts so classified and that he failed to discharge this responsibility.

The inspectors also record that he was aware, through the circulation of bank audit reports, of widespread documentary non-compliance in the area of SSAs, that he had responsibility to make reasonable enquiries at the branches for which he was responsible, to satisfy himself that properly completed declarations were in place for all accounts classified as SSAs and that he failed to discharge that responsibility.

The inspectors also say that Mr. Curran was aware that FASD were promoting CMI policies as a secure investment for funds which had not been declared to the Revenue Commissioners and that he shared responsibility for the Bank's failure to take steps to ensure that the promotion of CMI policies in this manner was stopped.

They recorded that Mr. Curran was aware of the practice of interest loading, that he acted properly in instructing that the practice cease and that he failed to revert, as requested by Mr. Brennan, with a report on how widespread the practice was and that he shares responsibility for the failure to refund those Bank customers whose interest charge had been loaded.

The inspectors said that Mr. Curran was aware, through the circulation of branch audit reports, of a constant theme of dissatisfaction with a lack of explanation for fee increases and of the failure of the introduction of a Customer Action Pad by Mr. Bonner and that he must bear some of the responsibility for the failure to put in place an appropriate system for recording management and administration time to be charged to customers.

Mr. O'Rafferty concludes that Mr. Curran was an officer of the Bank, notwithstanding that he was never appointed a director and that the Inspectors had made appropriate findings of fact and responsibility with respect to him.

Mr. Curran had failed:

- to put in place in the Bank proper procedures to secure compliance with legal and professional obligations;

- to address or pursue the correction of weaknesses or potential weaknesses in the Bank practices of which he was aware;

- to address the Bank's retrospective liabilities to the Revenue Commissioners and its customers which resulted in the improper enrichment of the Bank at the expense of those stakeholders and/or

- to create, promote and uphold within the Bank culture material compliance with relevant law and duty.

On that basis Mr. O'Rafferty says that the Director considers that he had demonstrated unfitness, lack of commercial probity, negligence and/or incompetence in the discharge of his duties as an officer of the Bank. Accordingly, the Director was of the view that he was unsuitable to participate in the management of any company and recommended to the court that an order be made against him in terms of the notice of motion.

5. Affidavit of Kevin Curran

5.1 Documentation issue
Mr. Curran, having read Mr. O'Rafferty's affidavit, said that he had been hampered both in his response to the inspectors' Report and in dealing with the present matter before the court by a lack of documents held by the Bank, which had refused to give him access to those documents without a court order.

5.2 Disqualification application
By way of general response to the application he said that even if all the findings against him in the inspectors' Report were correct (which he did not accept) those findings did not warrant a sanction sought by the Director of Corporate Enforcement. For a person not to be fit to be concerned in the management of a company they must be guilty of some serious wrongdoing such that they would be a risk to the public if they were allowed to continue to manage business operated through a company. The findings against him, while undoubtedly serious, related to his alleged failure together with others to, "establish and maintain an appropriate corporate ethos and to communicate and entrench its values through National Irish Bank."

He gave details of his age, contract work for banking in the audit area and the distress and embarrassment when journalists contacted his employer and asked his employer to comment on whether he was a suitable person to continue working in banking. He referred to a particular article of 6th May 2005. Arising out of the report he felt obliged to resign from the Board of the Ombudsman for Credit Institutions and as a supervisor in his local Credit Union in order to protect those bodies from publicity and embarrassment.

Mr. Curran said he believes strongly that he was not unfit to be involved in the management of the company and that he would pose any risk to the public if he were so involved. The averment on behalf of the Director that the latter was not seeking to prevent him from earning a livelihood was manifestly unreal given that he had been working in banking since 1963 and that it was too late for him to re-skill or re-train.

Mr. Curran said that the corporate governance structure placed at all times utmost responsibility in the Board of Directors, the Audit Committee and auditors (both internal and external) all of whom were exonerated by the inspectors. There was also an executive committee (of which he was never a member) with the function of policy making for and management of the Bank, which clearly had a significant role to play in the affairs of the Bank. He also stressed that the main perpetrators of wrongdoing were the managers who were directly involved in the matters giving rise to the inspectors' Report.

5.3 Bogus non-resident accounts
In relation to the bogus non-resident accounts, he said that he did not have a defined responsibility for compliance during his tenure as Regional Manager. Insofar as he had a responsibility it was to ensure that branch managers dealt with matters which were flagged or "actioned" in the audit reports. He had worked for National Irish Bank or its predecessors since 1963 where the focus was on what was termed "conservative" banking values i.e. administration, procedural controls etc. In 1986, when National Australia Bank took over, the focus was to aggressively growing the business with the minimum of administrative support. Individual branch managers had routinely dealt with dishonest declarations and apparently ignored audit reports directing them to address problems. They told him on more than one occasion in face to face meetings that there were no bogus non-residents in their branches. He naively took them at their word. He now believes that the reason why managers were so anxious to facilitate this wrongdoing and deceive him was because of competition from other major banks for this business and the loss of deposits. He saw some of the audit reports referred to in the inspectors' Report but not all. He said he was absolutely certain that every audit report that he received was dealt with in the correct manner and in accordance with procedures. He had asked the Bank for records of all auditor reports but did not receive them.

In relation to the irregularities referred in those reports which he said related to missing or incomplete declarations or to incorrect account numbers as new numbers were subsequently generated by the Bank's computer systems. He was surprised by the results of the various official enquiries in relation to the Bank.

He said that, insofar as he had acknowledged that he had suspicion in relation to the existence of bogus accounts in banks, he was referring to knowledge that he had through the grapevine. There were some maverick managers, which he identified, where one would never know what they were doing. He said that the manager in question was subsequently disciplined and demoted. This was the only instance which was brought to his attention by the inspectors. The inspectors did not mention the disciplinary action.

As Regional Manager his responsibility was to ensure that the Banks policies and procedures were followed. Overall responsibility for compliance rested with the Bank's internal and external audit function and by the general manager with responsibility for administration.

When he received audit reports highlighting technical irregularities he required his managers to sign off on those audit reports verifying that the issues arising therein had been actioned and rectified. In his oral evidence before the court he referred to a number of specific audit reports with his handwritten note indicating that the manager was to deal with the matter or to get it sorted. His work as Regional Manager involved much travelling - 30.000 miles per year – and he was the only regional manager outside of Dublin until he was appointed General Manager-Retail in 1995.

He said he relied on managers' certification that they had addressed those issues. He believed that in doing so he satisfied his responsibility to make "reasonable enquiries" of the branches reporting to him to ensure that the issues identified in the reports were being addressed. Where a "sign off" was false or a manager had not completed the required action specified in the audit report then it was the responsibility of internal audit to report this to him and to the General Manager or to the Audit Committee. He could not recall any such report ever been made to him. No such report is referred to by the Inspectors. He referred to the normal audit procedure commencing in 1991 which involved a certification process which, by 1993, was a regular six-monthly procedure. He believed this was done on foot of discussions that the Bank had with the Revenue Commissioners and with the Department of Finance. This process involved bank managers signing regular declarations to the effect that there were no bogus accounts in their branches. The declarations were furnished directly to Mr. Brennan and not to him. The inspectors' Report acknowledged that Mr. Brennan had specific responsibility for ensuring that there was a system in place for compliance with the DIRT regime.

He said that he had no responsibility for the retrospective calculation of DIRT once a bogus account was discovered. He could not unilaterally introduce such a policy which the responsibility of the auditor Finance Department or the Board or executive committee of the Bank.

5.4 Clerical medical policies
Mr. Curran said he did not have a particularly detailed level of knowledge about the CMI product – he was not briefed on the product by either head office or other FASD. He did not have the documentation which the inspectors had in relation to items of correspondence that he was alleged to have seen in relation thereto.

The first letter was an issue which had originated in the Kilkenny branch and was subsequently brought to his attention by the manager of the branch in Mullingar which related to a customer from another region who hade invested funds in CMI. He removed the undeclared funds from CMI to avail of the tax amnesty. A dispute arose regarding a preferential deposit which he had been promised in the latter branch which got no benefit from that deposit. He referred the matter to the highest level in the Bank and relied on Mr. Keane, Mr. Darcy and Mr. Bonner to deal with the matter. It was not evidence of any wider pattern.

The second letter from the Manager of the Dungloe branch, referred to an account and a suggestion that the funds may have been invested in CMI. To the best of his knowledge this was never done and the account in question was closed at his insistence by the issue of a bank draft in the fictitious names.

In relation to other customers identified by the inspectors, he could not remember what action if any he took in respect of those customers but denied ever directly engaging in a process whereby "sensitive" funds were invested in CMI or any other product. As far as he was concerned the CMI product was a legitimate scheme.

With hindsight he accepted what the inspectors had concluded that a different practice should have been adopted in relation to these matters. However, he did not accept that it was his responsibility to dictate Bank policy in that regard.

5.5 Improper charging of interest and fees.
In relation to both these matters the findings of the Inspectors of responsibility against him is in the widest terms. As Regional Manager he did not have any responsibility for Bank policy and procedure in the charging of fees nor was it open to him to devise an individual policy for his region. Audit reports received by him that dealt with overcharging would have been dealt with and referred to the relevant manager for action. The remedial action would have been specified in the report and that action was, as far as he could recollect, that the practice should desist. There was no mention of refunding of interest. In other audit reports the action specified would be "error should now be corrected" and interest or fees would be duly refunded. He did not know why this was not done in some cases. He did not deliberately or consciously decide not to make a refund of the interest. It was an issue for others in the Bank to decide. He always urged the importance of properly documenting and recording fees and, in April 1996, when he was head of retail banking he introduced a system for contemporaneously recording administration and management time.

5.6 Omission
Mr. Curran concluded his affidavit by saying that he understood the allegations against him were essentially ones of omission. He stressed that he had never in his life been involved in the opening of bogus non-resident accounts or in overcharging of a customer for either fees or interest and had never been involved in the evasion of tax. While he did not expect to get credit for avoiding wrongdoing, he believed that it would be quite unjust for him to be penalised so severely for the omissions alleged against him.

6. Second affidavit of Mr. O'Rafferty
Mr. O'Rafferty compared the inspectors' findings that the responsibility lay with senior management to ensure that the business of the Bank was so conducted that such practices did not occur and, if they did, that they were stopped immediately, with the corresponding position of Mr. Curran in relation to each of the five areas of improper practices. Mr. O'Rafferty referred, in particular, to the audit reports which identified irregularities and weaknesses. The evidence before the inspectors indicated that Mr. Curran was well aware that there was a serious recurring problem of compliance for the Bank with respect to DIRT to the internal audit reports circulated to him. His position was that, while he was aware of the irregularities, he believed them to be documentary in nature and was not aware that bogus accounts existed throughout the branch network behind the documentation irregularities. He had failed to take appropriate action to ensure that proper DIRT procedures were in place. Notwithstanding the findings of the DIRT theme audit, no significant progress was made in relation to the problem over the following three years.

The Inspectors found that Mr. Curran was aware that FSAD was promoting CMI as an investment vehicle for funds which had not been disclosed to the Revenue and referred to particular instances.

In relation to the improper charging of interest Mr. Curran had said that he did not deliberately or consciously decide not to make a refund of interest as it was an issue for others in the Bank. He was aware of the problem and had emphasised that there was never a focus in dealing with things retrospectively but that he had done everything that he was required to do as stated to the Inspectors. Mr. O'Rafferty said, however, that he did not reply to the memo of 5th June, 1990 of Mr. Brennan regarding the overcharging of interest.

Mr. Curran had asserted that, as Regional Manager, he did not have any responsibility for Bank policy or procedures of the charging of fees but that he had urged upon his staff the importance of properly documenting and recording fees incurred in relation to customer accounts. Mr. O'Rafferty had suggested that there were weaknesses revealed in fees being levelled in customer accounts in about fifty percent of the internal audit reports from March 1992 to March 1994 and referred to specific instances. The Director was satisfied that the inspectors were correct to attribute to Mr. Curran shared responsibility for the failings of the Bank in this area over the period when he was Regional Manager or head of retail banking.

In summary, Mr. O'Rafferty said that during his tenure in such position that Mr. Curran was a senior manager who had:

1. breached the obligations of the Finance Act with respect of DIRT in the area of bogus non-resident accounts, fictitious and incorrectly named accounts and special savings accounts;

2. facilitated others to defraud the Revenue Commissioners via bogus non-resident, fictitious and incorrectly named accounts in CMI and similar products,

3. applied to customer accounts fees which were not properly justified, and

4. facilitated the sale of products by CMI and another entity when neither of them was the holder of an authorisation from the Minister for Enterprise, Trade and Employment and failed to make returns of these sales to the Revenue Commissioners as required by law.

The findings in the inspectors' Report in aggregate were correct.

7. Second Affidavit of Mr. Curran
Mr. Curran on 9th October 2006 responded to Mr. O'Rafferty's affidavit detailing his position within the Bank and stressed once again that the corporate governance structure of the Bank placed at all times utmost responsibility on the Board of Directors, the Audit Committee and auditors, all of whom had been exonerated by the inspectors. He was not a member of senior management prior to his promotion as head of retail. He referred to the staff survey dated 25th January 1994, which referred to senior management, regional management and retail bank managers which was organised by Dermot Bonner in 1994, though the then Chief Executive had expressed disappointment that Mr Bonner did not regard regional managers as senior managers.

A further document entitled "External Audit Management Letter Policy" defined senior management as general managers of the area on which the audit matters were raised. Senior management of each group entity had to provide a formal response to the external auditors. Mr. Curran said that he had not reached that grade, was not circulated with the theme audit not invited to attend the meeting to discuss it.

He referred to the inspectors' conclusion that branch managers did not have a positive obligation to cure non-compliance that occurred in their branches and were prepared to excuse deliberate deception on the part of the branch managers. He did not have an overriding compliance brief nor a responsibility for pro-actively reforming the Bank's procedures. Where compliance matters were drawn to his attention, whether in audit or otherwise, he believed that he had dealt with those matters in an appropriate manner. His primary responsibilities were to restructure the Bank network with a focus on cost-cutting and to manage the risk assets. As a result of the latter he recalled that the outcome of cost-cutting in his region of some twenty- seven branches resulted in a significant saving.

The position description for regional managers issued to him in 1991 did not mention compliance matters nor audit matters.

A considerable the amount of his work was taken up with travel as Regional Manager. He commuted form his home in Dublin to his place of work in Sligo on a Monday to Friday basis, where he worked on average between sixty and seventy hours per week under conditions of extreme pressure invariably relating to sales and restructuring. Between 1992 and 1996 there had been a Bank strike, chronic shortage of staff in all branches, high turnover of managers and a wholly inadequate information technology system.

He was unsure as to what steps he was supposed to have taken once the managers had told him that they had checked each account and was sure that each account was in order. He did not realise that the increase in deposits may have been as a result of bogus non-resident accounts until 1993 when he realised that the confirmations furnished to him by his managers had been based on false certifications in relation to accounts that the managers knew to be bogus. He was not aware of whether all of those certificates/declarations were sent directly to Mr. Brennan but he did know that they were not sent to him as a result of the new procedure Mr. Brennan had introduced following his memorandum on 26th November 1993. The inspectors had dealt with the certification process by branch managers and concluded that in confirming that they had held the relevant forms they were not vouching the validity information on those forms. To impute to him the same level of knowledge and responsibility as branch managers who had completed the certificates was unjustified. From 1993 onwards Mr. Curran was no longer involved in the process as responsibility for it had moved directly to Mr. Brennan. Indeed, Mr. Curran was not privy to the DIRT theme audit report nor with the memorandum that was generated as a result of the meeting of 9th February 1995.

In relation to the prevalence of tax evasion in Ireland in the early 1990s he referred to the Comptroller and Auditor General's report relating to bogus non-resident accounts, the Revenue's awareness of the problem and the likely repercussion of any major moves against the banks in that area.

Mr. Curran referred to the audit reports on which Mr. O'Rafferty relied and dealt specifically with problems relating to the Castlebar branch. Mr O'Rafferty appeared to equate the failure of the Bank to completely resolve the problem with the failure to take any remedial action. Mr. Curran said he did take remedial action in relation to that branch and could not be held responsible for the persistent failure by branch managers to honestly represent the situation to him. While the 1993 audit clearly identified that accounts were bogus, the 1995 audit for the most part identified errors with documentation which, while unacceptable, were not at the same level as previously.

Mr. Curran said that he had no responsibilities for the CMI policies or to the manner is which the Financial Advisory Services Division (FASD) conducted its affairs and sold products. The senior management of the Bank issued directions to bank managers that obliged them to refer customers to FASD. The branch managers under his direction did not report to him, but to FASD division and then to senior management within the Bank. He believed that the CMI products were created, developed and sold by FASD with the approval of senior management to the Bank. He believed that that product was lawful and tax effective. It had the benefit for the Bank of a commitment by the insurance company to placing matching funds on deposit with the Bank corresponding to the funds invested by the Bank's customers with the insurance company. Branch managers would get a notional credit to their deposits equal to the customers' investment in CMI. The relationship was between the FASD salesperson and the branch manager. Mr Darcy had stated CMI had the full support of the Chief Executive and the General Manager of the Bank.

In relation to his involvement with the Mullingar branch which he said was tangential and did not demonstrate that he was implicated in the practice. The entire issue in relation to the branch manager and his customer arose because the funds in question should not have been invested in CMI and his involvement was to respond to one of his manager's complaints that his branch was being penalised.

The statement attributed to an unnamed and unidentified branch manager did not allow him to have the opportunity to cross-examine and it was impossible for him to deal with the matter.

He also referred to the issue of interest and fees and said he was disadvantaged during the course of the inspectors' work by reason of the refusal of the Bank to provide him with access to documents or files which he had maintained before he retired. By reason of a filing error they may not have been provided to the inspectors.

8. Evidence under cross-examination

8.1 Leave had been given by the court for the cross-examination of Mr. Curran. In addition to the extensive affidavits, the exhibits, consisting of four lever arch files, contained transcripts of the evidence given to the inspectors, branch audit reports, DIRT theme audit report, correspondence and internal memoranda. Cross-examination commenced in the afternoon of the third day of the hearing. A re-direct examination followed on the sixth and seventh day. Closing submissions took place on the eighth and ninth day of the hearing.

8.2 Mr. Curran had never been a branch manager though he had worked in the Maghera branch in County Derry in 1966 after two years in the College Green branch. He then became personal assistant in the regional office, comptroller's assistant, special duty manager, advanced comptroller, superintendent of branches and head of lending in 1985.

In 1988 he was appointed regional manager of Region 1, which consisted of the outer suburbs of Dublin. As regional manager he had discretion with regard to lending. The regional manager structure was set up in 1988 when the Bank, then called Northern Bank, changed its name to National Irish Bank, two years after being taken over by National Australia Bank. Mr. Curran said that he became Regional Manager of the North-West Region on 19th November, 1990. It was not a promotion from head of lending but a slight sideways or even a slight downward move. In 1988 Mr. Bolger was the only other regional manager until 1990 when he was made head of retail and two further regional managers were appointed. The regional managers reported to the head of retail. He was the only regional manager living away from Dublin. His region covered the north-west from Westmeath to Donegal, where there were twenty-seven branches. There were really eight super branches within the twenty-seven. The other branches were clustered and made subordinate to a principal branch.

As Regional Manager covering Meath, Cavan, Monaghan, Mayo, Leitrim, Roscommon, Westmeath and Donegal, he drove a minimum of 30,000 miles a year without taking into account his return to Dublin, where his family still lived, each weekend.

He met his managers on a quarterly basis. None of the twelve annual minutes of those meetings was discovered to him by the Bank. The agenda would vary but would primarily look to the performance of the region in terms of sales and administration.

8.3 Regular issues were the concerns regarding non-resident accounts after Mr. Brennan's memo of 1993 which referred to discussions with the Revenue Commissioners. He had pointed out that it was a very serious matter to accept a deposit which was designated a

non-resident account when the managers did not have proper completed documentation.

After the theme audit there was a focus on fictitious accounts in 1995 and 1996 when Mr. Harte, Head of Audit, attended and the implications of non-compliance were spelt out in relation to fraud and possible dismissal and prosecution.

As head of lending, before he was regional manager, he was not conscious or aware of the introduction of Deposit Interest Retention Tax but he did not have a recollection of what had happened twenty-one years ago. He thought that possibly Mr. Brennan's memo in 1991 was the first real indication that there was a concern about documentation. He would have been aware that there was such a thing as a bogus non-resident account and that the beneficial owner of the interest was a key issue. If a person came in and signed a declaration complete in every respect and the person was not known to the branch then the account would be designated as a non-resident account. If the person was making a false declaration unbeknown to the branch then it was clearly a bogus account. He did not recall being copied with the letter from Mr. Brennan saying that, as far back as October, 1989 he wrote to every branch manager on "this thorny subject" and which instanced the result of a random survey taken from branch visits by the auditors.

Mr. Curran said he was aware that the care of branch designation was a bank-wide problem, not alone in relation to deposit accounts but also to current accounts. As head of lending he was aware of customers who required their statements not to be sent out to them but to be collected. The only effective way of actually dealing with that was to flag the computer system "care of branch". This was particularly so for people living in a border town. It did leave the Bank wide open to fraud as the customer was not receiving statements. It was not necessarily so that this indicated that there was a difficulty about the actual veracity of the account but it would probably be an orange rather than a red light.

Mr. Curran could not recall what his understanding was in relation to a memorandum of August, 1991 which referred to the whole area of non-resident accounts being a sensitive issue in relation to the DIRT-exempt accounts for branches within his region. One could draw the conclusion that it was something other than a technical problem and that there was some exposure or risk or difficulty attached to it. He said that he thought generally one would infer from the context in which the word "sensitive" was used that it was not absolutely right, whatever the problem was. He did not know what his view was in 1991 though he thought, there having been an amnesty and that the Revenue were indicating that they were going to get pretty proactive in terms of non-resident accounts, that Mr. Brennan had a particular concern.

Mr. Curran was referred to a memo of his to all managers in the north-west region dated 6th September, asking the managers to confirm to him by private note that they had examined the non-resident accounts and that the position was in order. Mr. Curran said that he got the assurance and, by memo to Mr. Brennan dated 12th November, 1991, said that all managers confirmed that all DIRT-exempt accounts were then correctly documented. It came as a surprise to him that a year later Mr. Bonner referred to recent audits having highlighted many instances where non-resident declaration forms were then being obtained or were missing or incorrectly completed and requesting Mr. Curran to request branches to properly complete all forms.

He would have confirmed that all forms were properly completed.

A further year later, by memo dated 26th November, 1993, Mr. Brennan, General Manager, wrote to Mr. Curran indicating concerns arising from conversations with the Revenue Commissioners who had expressed concerns regarding the validity of the figures in respect of non-resident accounts and the possible loss to the Exchequer of DIRT not being deducted. In the previous twelve months the level of non-resident deposits had risen by close to 30%. Mr. Brennan said that he had decided to send a letter to all branches attaching a certificate form which, Mr. Curran understood, was sent.

In his affidavit in relation to this matter Mr. Curran had said that he understood that the certification/declaration process commenced in that year and continued in the following years and that he was not aware whether these declarations were sent directly to Mr. Brennan but that they were not sent to him.

In his evidence, Mr. Curran said that he did not have all of the documents from the Bank on discovery. Relying on memory, he thought that the managers were required to sign in relation to a range of things to confirm that everything was in order.

He agreed that there was a refinement in 1995 when the certificate required managers to confirm that they had read and understood the DIRT circular, and that all accounts were properly documented.

Mr. Curran believed that to his knowledge he did not recall Mr. Brennan approaching him regarding a concern that Mr. Brennan had that the response from branch managers disclosed the existence of bogus non-resident accounts. Mr. Curran said that he believed that the difficulties were essentially of a technical and administrative nature but did not indicate that there was an underlying problem with the genuineness of accounts or widespread bogus accounts. The first time he became aware was in relation to the 1993 Castlebar audit report which, in his affidavit, he had regarded as exceptional. The manager had to be disciplined. What occurred in Castlebar was not representative of what occurred in other branches.

The procedure when internal audit raised a weakness or an issue was to make a recommendation. His role was to ensure that the recommendation was implemented. There might have been a tolerance extended to give the branch time to get the form properly completed. A customer may have indicated that he would sign the form when he was next in Ireland. He agreed that that was not in compliance with the legislation which required the declaration to be there from the start. Occasionally, as a result of unsigned forms, the accounts were re-classified. He was not implying that DIRT was applied retrospectively. That had never happened to his knowledge. It had never crossed his mind that DIRT should be charged from the inception of the account and remitted to the Revenue. It would not have been a very large proportion that were re-designated. There were some in discovery. He thought that as much as 10% or 20% should have been re-designated.

Mr. Brennan's memo with the draft letter sent to the various branch managers referred to declarations not being accepted from customers where the detail was obviously incorrect as that left the Bank, and particularly the official accepting the declaration, liable to penalties imposed by the Revenue Commissioners and possible prosecution. Mr. Curran said he did not read the document in that level of detail as he was doing a lot of travelling and had a lot of documentation, letters and memoranda. He believed that the managers had to make reasonable enquiries and not accept a declaration where they knew that the customer was clearly resident in the State.

There were a number of other branches referred to in the audit reports where problems had occurred. In hindsight there was clearly a pattern emerging but he did not spot it at the time. In banking tradition one's word was one's bond. He relied heavily on what managers told him. It might be obvious as of now, looking at the audit report with many recommendations to be dealt with of a recurring nature related to inefficiencies. Non-resident issues would not have been any different. He never even knew that bogus

non-resident accounts were widespread throughout the Bank until the Inspectors and the DIRT inquiry. He had no reason not to believe the managers.

He had expressed his concern to the manager in Castlebar and instructed his deputy to write to him to express his dissatisfaction in 1993. He agreed that the 1993 audit report did not give the full picture in the light of the document from Mr. Harte. There were issues relating to accepting security in relation to non-resident accounts which was described as "dangerous". The practice of accepting letters of lien over non-resident accounts was, in his view, compounding the problem, because the bank as opposed to someone else, was knowingly conniving in the practice of fraud. He said that a memo of November, 1992 in relation to this matter in Castlebar was not circulated to him.

Mr. Curran said that he was annoyed that his instructions regarding the closing of accounts had not been complied with in relation to Castlebar when the new manager, in the branch response action plan following the 1993 audit, referred to the accounts not having been closed. The new manager had not closed the account but was making efforts to regularise it. He agreed that the manager would not want to have lost the account. He rang him up and insisted on the account being closed, which he believes it was. The response action plan referred to the auditor's statement that the account should be closed in consultation with the customer. Mr. Curran wrote to the new manager on 16th October, 1995 saying that the irregularities in respect of non-residence were totally unacceptable and had to be rectified without further delay.

In addition to Castlebar there were problems in Dungloe, referred to by counsel for the Director, where interest was capitalised in a fictitious non-resident account. A memo in relation thereto dated 29th June, 1995 had a hand-written annotation by Mr. Curran that it "must be sorted out". The note pointed out the difficulty with the non-resident status in what were significant sums of money and where a fee arrangement had been negotiated which should not have been allowed. Mr. Curran replied to Mr. Duffy on 3rd August requesting that the practices had to cease forthwith and that he wished to have his assurances by return before 30th September that there were no other such accounts. He added that he had reluctantly agreed to charge the amount outstanding to irrecoverable losses but had to say that he considered that the whole matter had been badly handled by the branch and accepted that this arose prior to Mr. Duffy's appointment to that branch. Mr. Curran had involved the group manager who became responsible for the six or seven branches in Donegal at the time.

8.4 In the cases involving a re-classification of an account from tax exempt or DIRT exempt to general or ordinary, Mr. Curran said he did not realise that there was an actual retrospective liability and he did not know whether anyone else in the Bank did but certainly, if they did, nobody drew it to his attention. It was certainly clear now that there was a retrospective liability, he did not realise it then. At the time the instructions issued by the Bank made no reference to retrospective liability.

He accepted that, as a matter of law, the Bank was required to deduct interest except where it was an account that was properly exempt from DIRT.

The customer action pad was not a very sophisticated system but he was unhappy that it was not being used and helped to oversee the automated system for certification. The audit reports were circulated to Mr. Curran and to the Executive Director, General Manager of Banking and the Head of Credit Bureau. He knew about the bogus accounts but did not bring them to the attention of Mr. Seymour, Mr. Keane or Mr. Harte but had a discussion with audit in relation to the Dungloe branch who had examined only one-third of the accounts and possibly may not have seen any deficiency in respect of the documents.

Where a number of fictitious or bogus accounts were identified was of concern to him where he had been given assurance from the bank managers to the contrary. A fictitious account was never satisfactory. He relied on the manager's word. The cross-checks clearly were not sufficient in relation to named branches.

When he took over as Head of Retail on 1st February, 1996 he became aware of problems with branches in other regions. As Head of Retail the six area managers reported to him. Between 1993 and 1996 there was no Head of Retail: this was a new position created in 1996. The area managers took over from the former regional managers. They were really area sales managers and reported to him to ensure that the Bank's sales objectives and targets were achieved. He, in turn, reported to the General Manager, Mr. Keane, and subsequently Mr. Windeyer, who joined the bank as General Manager on 19th August, 1996 and held that position until 31st July, 1997 from National Australia Bank.

Mr. Curran did not recall whether he mentioned to Mr. Keane that he had become aware of bogus accounts being present in branches either as Regional Manager or Head of Retail as Mr. Brennan had overall responsibility for the non-residence scene after 1993. Mr. Brennan was appointed General Manager – Retail in the management structure put in place in May, 1988 shortly after Mr. Lacey became Chief Executive. Mr. Brennan had previously been General Manager (Operations). As General Manager – Corporate Services from 1st July, 1991 he was responsible, *inter alia*, for internal audit which reported to him in relation to administrative and operational matters. In both roles the inspectors had said that he was in charge of the branch network reporting to the Chief Executive. His title changed to General Manager – Administration on 3rd May, 1993 when he assumed responsibility for Treasury and International Department in addition to his existing duties.

Mr. Curran said he was quite unhappy about the whole documentation issue as it was a recurring problem and an issue with five-star rating on the audit reports.

Mr. Curran said that when a superior manager was dealing with a problem he did not feel that he had responsibility.

Audit had never mentioned bogus accounts in its reports. They had dealt with fictitious accounts. Mr. Brennan was dealing with the overall non-resident accounts. Regional managers would not have been aware of compliance except as reported by audit. There was no compliance manager until the Money Laundering Act in 1995. He had no responsibilities with regard to the Criminal Justice Act, 1994 except where something was drawn to his attention by the compliance officer.

The inspectors' Report had referred to the evidence of Mr. Bonner and Mr. Curran as acknowledging that they had suspicions that bogus non-resident accounts existed in the branch network. Mr. Curran said that in his region, apart from the one or two mavericks, he had no real concerns about that issue. While he had suspicions that bogus accounts existed, it was not on a widespread basis. He had insisted on these accounts being closed.

8.5 In relation to the CMI products Mr. Curran said that the standard procedure was that FASD would be brought in because they were supposedly the experts on financial solutions, lawful ones, to offer some product that would suit the customer as a possible alternative. He did not recall an Emerald product or a Personal Portfolio – none of them rang a bell other than CMI. In that case, while the money deposited would not leave the branch, it would be designated by a CMI deposit which was a single premium life assurance

policy whereby the provider had agreed with the bank to replace a similar amount of funds with the bank to that invested by the customer. The branch would issue a draft in favour of CMI. He was not absolutely sure what the commercial benefit from the customer's perspective was. FASD was totally removed and separate from the retail bank. The single premium insurance policy, he believed had certain death benefits. He assumed that any profits that would accrue on the policy would be tax free. He was not sure of the fee but he did know that a customer was very aggrieved because the net amount he received was less than the principal sum he had invested. Around 1993 or 1994, following Ireland's entry into the Exchange Rate Mechanism, retail banks started to provide fixed term deposits and customers were much more demanding about rates. He referred to a customer in the Mullingar branch. The manager wrote to Mr. Curran saying that he had no option but to involve Dermot Bonner, Head of Retail, as the initial investment was made to a different branch he was entitled to a fee of about 3% on an investment of several hundred thousand. Earlier, a customer was very upset in a Donegal branch when a unit trust was only worth 70% of the principal sum at maturity. He agreed that there was a significant amount of commission and/or fees involved. The Mullingar customer had availed of the tax amnesty and had invested in CMI. He said he did not make any enquiries as others more senior than him were looking at the matter in its entirety. He agreed that it was the concern of the bank manager that he was not getting the commission on the original investment.

8.6 Charging of Interest
Mr. Curran agreed that there was less than satisfactory adherence to procedures regarding the charging of interest, notwithstanding memos from the Chief Executive and Mr. Brennan that loading interest be discontinued. He had required the branches to implement the recommendation made by the auditors which would be the action plan for the branch. He did not believe that the issue of making refunds to customers occurred to him at the time. Mr. Curran said that he was concerned about interest charged without legitimate reason or customers' knowledge on twenty accounts in November of 1989 and thirty-three accounts in February, 1990. He did not have documents in his discovery in relation to this matter.

However, where adjustments were made in either refunds or debits to the accounts, there was no suggestion that the customers were being improperly charged interest. In many cases the journals were not properly completed. The auditors had followed through the transaction and would have raised the matter.

Mr. Curran said that the computer system was poor. Problems were the product of a highly manual system which resulted in serious issues cropping up from time to time in audits, such as the incomplete declarations for the purpose of DIRT. Statements were automatically issued by the Live Link system to the addresses on it.

Where a refund was appropriate he did not recall ensuring that those refunds were made. He agreed that fees were a problem. In 1996, as Head of Retail, he oversaw a new system for automating the recording of administrative time and commissioned a theme audit on interest which revealed there were weaknesses. He also set up a certification process with managers.

Mr. Curran had said that there were targets for fees set by the National Australia Bank based on their performance in the previous year. While Mr. Curran said that on occasions he thought that he had said to managers if they had incorrectly overcharged their customers they should refund the amount, he could not remember saying to the manager in Sligo to refund or even to attempt to get a quantification of overcharging where the fees were substantially increased without legitimate cause or reason. He said he asked the manager to confirm that they had dealt with these things. The audit had indicated that overcharges arose. He told the managers, as a general principle, that if they overcharged improperly they should refund. Beyond that he could not recall whether he did specifically and he did not believe he did. He did not believe that too many of the audit reports had said that, as in Sligo, there was substantial overcharging.

Mr. Curran said that he made one introduction at a very early stage to FASD, not specifically in relation to CMI but because the client had funds and wanted advice as how to invest them.

An unnamed bank manager had given evidence to the Inspectors that Mr. Curran had suggested to him that he should have FASD look at the case of a fictitiously named bogus non-resident account with a balance of £210,000 and that that was how it ended up in CMI. Mr. Curran said that he did not and that the manager was not identified to him in any way, nor did he get an opportunity to question the veracity of what was said. He did not see how he would be advising a manager in those terms as the FASD representatives built the relationship with the manager and would not report to him when they were in a branch. He said he had rebutted the suggestion to the inspectors and thought that was accepted.

8.7 Bank Procedures
He said that at the time he met the inspectors he had no access to any records and was relying entirely from memory. The audit reports had suggested documentary deficiencies other than in Castlebar and others already referred to. He was shocked that it was a widespread practice.

The Bank had a regular problem in relation to SSA and the noticed accounts which included fixed-term deposits. The manual system produced regular mistakes. When he was Head of Retail he had endeavoured to persuade the Bank to introduce or upgrade the system. He saw the problems as problems of documentation and the need to have a fresh declaration signed every time a client changed from a fixed deposit or when it matured. A customer might have three or four different accounts with differing maturity dates. It was regarded as a minor infringement if there was only one declaration. Mr. Curran agreed that it was an irregularity to have Irish addresses inputted into Live Link but said it could have occurred where a customer working abroad gave their home address.

There was no liaison between the documentation that the finance department received. They did not receive the audit. There was a flaw in the whole control and administration procedure which was not Mr. Curran's responsibility.

He accepted that the two 1996 audit reports for Wexford and College Green were not in compliance with the circulars despite the certification signed by managers. He had never been presented with any certificates arising from the process. The system did improve but not sufficiently and not fast enough.

He was concerned at the awarding of staff for increasing personal loans when 40% to 50% had to be written off as bad debts.

He said he was more isolated in his position in Sligo. From 1990 to 1995 he was the only regional manager required to operate and live outside Dublin. There was restructuring within the Bank and targets set by National Australia Bank had not been achieved. In 1997 the restructuring was made where the structure was being entirely broken between personal banking and business banking. He said he was very much a traditional banker, reasonably competent in terms of the sales process but not very much willing to throw away old practices and standards in order to achieve growth. He was reporting to Mr. Windyer, General Manager – Banking at the time he left the Bank in July, 1997, when he was told that there was no position within the new structure. He had been 34 years with the Bank at that time. He had absolutely no influence whatsoever on the direction or management of the Bank, certainly up until perhaps mid-

1996.

He annotated memos to instruct people to deal with the issues raised so that the matters could be sorted. He received six or seven audit reports a year. It was very difficult to detect patterns given all the problems raised and the restructuring of the Bank which involved some twelve to fifteen managers being required to retire early.

The Audit Committee set up as a part of the governance of the Bank ensured that the audit function was carried out to detect weaknesses in administration in the procedures and uncover any wrongdoing. The Audit Committee reported to the Board and to the Head of Audit and auditors.

8.8 Re-examination
Mr. Curran was re-examined in relation to the audit reports and to the action taken by him in relation thereto, having regard to the star grading. Many of the items indicated weaknesses of lesser significance such as fees and non-resident declaration forms which would not have been at the top of Mr. Curran's priority list. He would have regarded them as minor administrative errors. In October, 1993 a letter was put together under his supervision which was designed to achieve that there was no ambiguity about the actions that were required to be carried out by the manager.

Mr. Curran said that only Finance could deal with the payment of DIRT to the Revenue Commissioners. Mr. Curran said that he had no responsibility and absolutely no authority with regard to paying DIRT to the Revenue or of calculating how much DIRT should have been paid.

The inspectors made no finding with regard to Mr. Curran's responsibility for the reimbursement of fees. Managers could authorise fees to a certain level.

He had no input into the circulars nor was consulted in relation thereto.

Mr. Curran was referred to several audit reports with the highest rating possible which indicated some weaknesses. In relation to unsatisfactory audit reports nobody from Audit ever contacted him expressing concern. Many referred to the outstanding matter of non-resident account documentation.

Mr. Curran concluded that the general approach he adopted was to ask the specific managers to confirm that they had dealt with or addressed all the actions contained in those reports. There were numerous examples which he followed up when he was not happy with the response or that there were some outstanding issues. There were few unsatisfactory reports – these were to have involved a disciplinary hearing – but they were poor reports to which he would have paid particular attention to ensure not only that the issues addressed by the auditors were dealt with, but also that underlying issues regarding staffing or managerial ability were addressed. He referred to particular branches where he felt that a manager was acting improperly or had done something contrary to the Bank's procedures or requirements or acted illegally.

Audit were required to identify weaknesses in the system, whether in branches or elsewhere, and also to uncover any improper practices. The responsibility for actioning and implementing rested with management, not Audit. First of all the branch manager would be required to sign off to the Regional Manager that he had done all the things required. The Regional Manager would confirm to the Head of Audit that he had to sign off in respect of that audit.

The position of Regional Manager was stated by the Bank to encompass responsibility and accountability for making the most of the region's operational decisions. Mr. Curran said that this responsibility and accountability related to the business development of the region and the lending performance but not to compliance.

9. Decision of court

9.1 The submissions of the Director
Counsel for the director submitted that the evidence of Mr. Curran was unsatisfactory insofar as it failed to meet the case put: it did not answer the key allegations made. His evidence was that, although the bank managers beneath him were responsible as were the managers above him, that he bore no responsibility for the practices which occurred.

The inspectors did not find, nor did the Director urge, that Mr. Curran alone was responsible for the practices but that he was part of a management team that was responsible for what went on in National Irish Bank within the area where he was Regional Manager and when he became Head of Retail. He failed to spot the widespread nature of non-resident accounts. He should not have relied on the word or the certification of managers.

The branch audits were graded either satisfactory or higher. Few were graded "poor". Yet Mr. Curran was aware of what was happening in specific branches which were not satisfactory. He should not have ignored the problems just because internal audit was happy to label the report as being satisfactory. There were a number of indicators prior to 1994 which, as the inspectors found, should have led a reasonable reader of the audit reports to the view that there was a problem. The DIRT theme audit showed that the problem was not effectively tackled: €6.7 million was paid by the Bank to the Revenue Commissioners in respect of DIRT and an even greater sum in respect of interest and fees to customers. The Bank and its shareholders lost out. The responsibility was laid fairly by the Inspectors at the door of the senior management of the Bank, including Mr. Curran and the other Regional Managers.

Those facts lead to the conclusion that Mr. Curran was unfit to be involved in the management of a company.

9.2 Mr. Curran's Submissions
Counsel on behalf of Mr. Curran regarded the application as remarkable for three different reasons. First, no act of commission against Mr. Curran was alleged despite the huge amount of documentation over the two weeks of the hearing. Mr. Curran never sold a CMI policy nor opened or operated a bogus non-resident account, never operated a Special Savings Account so as to deprive the Revenue of Deposit Interest Retention Tax, nor had he overcharged fees nor loaded interest. What is alleged are sins of omission rather than commission.

Secondly, the approach taken by the inspectors that responsibility for these matters did not rest with the customers, the branch managers, or with FASD.

Thirdly, what was remarkable was the notion that none of the primary touchstones for the court in determining how to decide the application was deterrence rather than protection of the public and the submission that there had been a move away from the

principles established in the *Low Line* case.

In any event, it was submitted that the allegations with regard to the improper charging of fees was not an allegation made against Mr. Curran by the inspectors.

9.3 The court does not accept that submission in relation to the improper charging of fees. The inspectors at p. 190 of the Report stated:

> "The regional managers … Kevin Curran … must bear some responsibility for the failure to put in place an appropriate system for the recording, management and administration time to be charged to customers."

Both the notice of motion and the grounding affidavit of Mr. O'Rafferty (P. 21) repeat this finding.

The court must, accordingly examine the evidence in relation to all of the findings made by the inspectors in respect of Mr. Curran and ascertain if these findings constitute such impropriety that would justify a disqualification order.

9.4 The court is satisfied that there is no finding against Mr. Curran in relation to the *commission* of any of the matters alleged by the Director. The court has to consider, however, whether, given the position of Mr. Curran as Regional Manager and, more particularly, for a short period as Head of Retail, that he should have been more assiduous in detecting the extent of non-compliance and in eliminating the improprieties found and whether there were *omissions* that would justify the order sought.

The premise of the Director's application is that Mr. Curran was an officer of the Bank and a member of its senior management with responsibility to ensure that the Bank complied with its legal and professional obligations.

Office is defined by s. 2 of the 1963 Act Companies Act as including a director or secretary.

Section 159 of the Companies Act, 1990 expands that definition by including shadow directors. Such a director are defined in s. 27 of the same Act as a person in accordance with whose directions or instructions the directors of the company are accustomed to act. *Re: A Company* [1980] Ch. 138 linked "officer" with the management of a company's affairs, a role given to directors under the articles of association (see Regulation 80 of Table A) which equates management with direction or governance.

There was no evidence that the Mr. Curran was director or shadow director or involved in the management of a company in that sense.

The other basis of the Director's application is that Mr. Curran was part of senior management. The inspectors concluded that responsibility for the improper practices which existed rested with senior management of the Bank during the period covered by the investigations.

Senior management is not, however, clearly defined though it appears that in naming the regional managers, including Mr. Curran, as responsible, that the inspectors considered regional managers as senior. Branch managers were not so considered.

While the inspectors had found that the latter failed in their duty to deduct DIRT they did not consider it appropriate to find individual branch managers responsible as they believed that the responsibility for the improper practices lay at a higher level in the Bank.

The inspectors found that internal audit staff had identified and reported back to senior management instances of improper practices without naming them. Mr. Curran, of course, was given audit reports in respect of branches within his region. It would follow, accordingly, that Mr. Curran was included as senior management.

The survey of management undertaking without Mr. Lacy's authority had distinguished regional managers from senior management. This, at least, raised some doubt regarding the authority of regional managers.

Mr. Curran was not involved with discussions with the Revenue Commissioners. The letter from the Revenue Commissioners to the Department of Finance of 21st December, 1987 had referred generally to senior managers of financial institutions being seriously worried about the implication of spurious non-resident accounts being discovered by Revenue in the course of audit or investigation bank work.

It is clear that Mr. Curran was not involved at this early stage nor it would seem, to have been involved in the DIRT Theme Audit Report in 1995 – 96.

There was no evidence of any direction or instruction given by the audit reports other than to regularise documentation.

The court, in the light of the absence of evidence of clear organisational charts for each of the phases of change within the structure of the Bank following its takeover by National Bank of Australia can only conclude that there is some doubt regarding Mr. Curran's status as senior manager.

As Regional Manager Mr. Curran seemed to have been in an anomalous position. He was based outside Dublin for a large period as the only Regional Manager not in regular contact with Head Office but covering an extensive area from Kells to Donegal. There is no doubt that the audit reports in respect of some of the branches within his area did refer to persistent non-compliance. That the overall designation of most report as satisfactory does not detract from that reference.

9.5 The court had been concerned with the issue of documentation which was available to Mr. Curran during the interviews with the Inspectors and notes their concern at one stage in offering to facilitate him with documents. I am satisfied that with the documentation available to Mr. Curran during the hearing of this application that he has had access to substantially more documentation than he had during his interviews with the inspectors.

9.6 While the inspectors' Report forms the basis for the Director's application the court has, however, to consider the evidence of Mr. Curran on affidavit and on cross- and re-examination to the court in relation to his explanations as to his reaction to his awareness of the improper practices.

Mr. Curran said that he was satisfied that his responsibility was to make reasonable enquiries of the branch in relation to bogus non-resident accounts and other matters. His evidence was that he was over-reliant on the assurances given by branch managers. He

says that after 1994 managers had to certify directly to Mr. Brennan with regard to compliance. Mr. Curran said that he believed that he did not thereafter have responsibility for certification.

The recurrence of problems of non-compliance in the audit reports, even when classified generally as satisfactory, should have alerted Mr. Curran to the widespread pattern of non-compliance. There was a need to review the assurances of managers. The supervisory role of a regional manager was to control performance. This was particularly so when after February, 1996 he became Head of Retail.

The court acknowledges the widespread branch network in his region, the pressures of his role as Regional Manager, the degree of isolation from the central sphere of management and its slowly developing directions with regard to the elimination of the problem. It was not until 1994 that Mr. Brennan introduced the certification procedure whereby branch managers reported directly to him rather than perfunctory assurances given to Mr. Curran.

Mr. Brennan's memorandum to Mr. Curran of 26th November, 1993, which referred to the level of non-resident accounts having risen by close to 30% in the previous twelve months, included a draft letter attaching a certificate to be signed by each bank manager, represented a clear instruction from Mr. Brennan directly to the bank managers. It is significant that, notwithstanding that the memo was sent to Mr. Curran, that the letter and certification form was to be sent directly to the bank managers. The bank managers were being asked to certify in detail to Mr. Brennan that they had understood the legislation and that their customers had complied with that legislation.

Nonetheless, it is quite clear that the memo of 26th November, 1993 represented a more exacting approach regarding compliance with DIRT legislation. At that stage it should have been clear to Mr. Curran that the difficulties were not merely technical and administrative in nature and were not restricted to the 1993 Castlebar audit report. While there may have been some justification for Mr. Curran's reliance on the managers' assurances and to extend a tolerance to give the branch time to get the form properly completed up to 1993, it is clear that more was required after that date.

In his evidence he told the court that where a superior manager was dealing with a problem that he felt that he did not have a responsibility for the matter. There was no evidential basis therefor. It does not appear to the court that such an attitude was justified.

There was no evidence of what proportion of accounts were re-classified. Mr. Curran did not think the proportion would be very large. While he said that as much as 10% or 20% should have been re-designated, he did not have any figure as to how many had, in fact, been re-designated.

Mr. Brennan's memo, while, as already observed, being more exacting than previous communications, did not deal with retrospective issues of DIRT where accounts were so re-designated. It had never occurred to Mr. Curran that there should be any retrospective liability. To his knowledge DIRT was not paid in respect of inaccurate or bogus non-resident accounts.

Mr. Curran's evidence in relation to the instruction given by Mr. Brennan in his memo of 26th November, 1993 that declaration should not be accepted from customers where the detail was obviously incorrect seemed not to be a very exacting standard. The reference to bank officials being liable to penalties and possible prosecution should have alerted Mr. Curran to the importance of compliance. It was not sufficient for Mr. Curran to say that he had not "read the document in that level of detail" as he was doing a lot of travelling and had to deal with a lot of documentation.

Mr. Curran was proactive in relation to the bogus non-resident accounts in the Castlebar branch. The auditors had advised that the accounts be closed in consultation with the customer. Mr. Curran insisted that such accounts were unacceptable and had to be rectified without further delay. He did not, however, recall whether the five non-resident accounts which had no declarations were referred to but that he might well have done so.

Mr. Curran accepted that in hindsight there were irregularities and that these were widespread. When he became Head of Retail he had no allusions about how widespread the non-compliance was yet he still believed that the irregularities were documentary in nature. In the several instances of recurring audit references Mr. Curran believed that they were amber light rather than red light matters.

However, his evidence was that, though the DIRT theme audit report was not a red light issue for him at the time, with hindsight it should have been. When he became Head of Retail Banking very senior people in the Bank were taking overall responsibility for the issue.

Mr. Curran also said that he had no capacity to go behind the audit reports or to go into a branch directly to check the veracity of the statements made by management. That was a matter for audit. Mr. Curran said he expected the manager to set out the position exactly as it existed and not as he would wish him to think it existed.

Other audit reports contained two five-star items, being the most serious, nonetheless had an overall rating of satisfactory. Mr. Curran was uncomfortable about the grading in some of these cases. In another audit report under the heading "weaknesses of a lesser significance" there was reference to a CMI account. Mr. Curran said that it would not have been possible with the pressure and stresses that he coped with to actually look and deal with all of these matters and analyse them to the extent that was being now suggested. Nobody from audit, nor the auditor herself, had ever contacted him with regard to this reference to a CMI account. He would have expected replies to come to him so that he could ensure that the recommendations the auditors made could be implemented or actioned as appropriate.

Mr. Curran maintained in his evidence to the court that he did not have a defined responsibility for compliance. This cannot be a sustainable position if the word is taken in its ordinary meaning. A regional manager, even as a middle manager, cannot avoid responsibility for supervision of the performance of branches in his region.

He agreed that his responsibilities were to achieve goals and objectives set by Head Office in relation to targets, to motivate staff and assist to ensure that the various regulations of the Bank were being implemented. When he had said to the inspectors that he had a defined function and role in relation to compliance matters in the Bank he meant that procedures and policies of the Bank were adhered to and implemented and that staff did not misappropriate customers' money and issues such as that. Compliance in that sense was dealt with by the Bank's internal and external audit functions. The finding of the inspectors were that Mr. Curran bore a responsibility for the existence of bogus non-resident accounts and found him responsible for the failure to ensure that there was a retrospective calculation of DIRT when bogus accounts were discovered.

Mr. Curran accepted that as Regional Manager his responsibility was to ensure that the Bank's policies and procedures were followed but distinguished that from overall responsibility for compliance which, he said, rested with the Bank's internal and external audit function and by the General Manager-Administration.

While the court is satisfied that Mr. Curran had been made aware through internal audit reports of the deficiencies and irregularities which existed in the operation of DIRT-exempt, non-resident accounts at branches in his region and, indeed, acknowledged that he had suspicions that such accounts existed and, after he became Head of Retail, ought to have been aware of the widespread existence of bogus non-resident accounts in the branch network, he did take steps perhaps, in retrospect, in a somewhat desultory way, to get assurances from the branch managers.

It should be said, of course, in relation to both that the obligation to ensure that tax was discharged was a responsibility for every manager within the Bank and that procedures should have been clearly in place, notwithstanding that business may have been lost to other financial institutions. According to the evidence of both the Revenue Commissioners and the Comptroller and Auditor General after the abolition of exchange control, banks generally were lax with regard to tax compliance and concerned about the flight of capital from the economy.

A Department of Finance memorandum dated 23rd August, 1987 which put in evidence by counsel for Mr. Curran referred to "the best balance between confidentiality and maintenance of the retention tax yield" and to the Revenue Commissioners' undertaking to consult the Department before any new kind of action was taken.

While this does not exonerate any manager, it does put the matters of compliance in the context of the then current climate. Mr. Curran on his own could not have eliminated the problem.

He said that he had no responsibility for the retrospective calculation of DIRT once a bogus account was discovered. He could not unilaterally introduce such a policy which the responsibility of the auditor Finance Department or the Board or executive committee of the Bank.

9.7 Mr. Curran said that he had some involvement in relation to two bogus non-resident accounts which had been moved to a CMI policy. He was aware of the very sensitive nature of such policies and that it was imperative that a direct link could not be detected between CMI and the Bank.

Mr. Curran said that the CMI product was one developed, approved and issued by the Bank where he understood there was a very robust process in place for the approval of new products. Mr. D'Arcy, by letter of 25th March, 1994, had said that CMI had the full confidence and backing of the Chief Executive and the General Manager. He did not see how he could possibly have questioned it.

Yet his awareness should have raised suspicions regarding this "financial solution" to bogus non-resident accounts.

In relation to the sale of CMI, Scottish Provident International, and Old Mutual International policies the court is satisfied that there were, in fact, only two instances where Mr. Curran was involved. The court is satisfied that this was a matter dealt with by the bank managers and FASD and that his involvement was indirect. The court is also conscious of the assurances given by Mr. D'Arcy with the knowledge of the Chief Executive in this regard.

Accordingly, the court is satisfied from the evidence that he could not have ensured that the promotion of these policies ceased.

9.8 Mr. Curran was aware of the practice of improperly charging interest in the Carrick-on-Shannon branch. The court is satisfied that Mr. Curran did, in fact, take some action in response to Mr. Brennan's memorandum of 5th June, 1990. However, it is clear from the evidence that insufficient steps were taken to refund customers where interest charges had been loaded on their accounts.

9.9 Mr. Curran was aware of the problem of improperly charging fees to accounts and did attempt to regularise the recording of such charges. It would appear to have been a widespread problem within all regions. It was not addressed appropriately by senior management and, the attempts by Mr. Curran to address the problem within his own region was not effectual. To blame the inadequacies of he manual recording system of the computerised Live Link system would not appear to justify the practice.

9.10 The evidence given by Mr. Curran showed that he was somewhat frustrated by the attitude of some bank managers with regard to each of the above matters and was uneasy with the priorities of senior management regarding the expansion and holding on to business during the late 1980s and early 1990s.

Notwithstanding the dilatory and ultimately ineffectual intervention by Mr. Curran in relation to each of the above problems, the court has to consider whether, in such circumstances it is appropriate to make an order that he be restricted.

The court has already considered the interpretation of the statutory provisions in the cases leading up to *Director of Corporate Enforcement v. Barry Seymour*, judgment delivered on 20th January, 2007. In that case this Court found that Mr. Seymour was in a position to require compliance. It does not appear to the court that Mr. Curran was, even in relation to his position as Head of Retail, in such a position. Mr. Curran did not appear to have had any line of communication with the Audit Committee nor, indeed, with the Board of Directors.

The court has also considered the review of the cases *Director of Corporate Enforcement v. Darcy* (Unreported, Kelly J. October 25, 2005) with regard to the CMI policies where Mr. Darcy was in the upper echelons of management and could have stopped the improper practice but did not do so. This was held to demonstrate a lack of commercial probity on his part.

The Supreme Court in *Re Readymix Limited* (in liquidation) [2002] 1 I.R. 372 had quoted with approval the dictum of Browne-Wilkinson V.C. in *Re Lo-Line Limited* [1988] Ch. as to the proper approach to decide whether someone is unfit to be a director: not to punish but to protect the public. Ordinary commercial misjudgement is not, in itself, sufficient to justify disqualification.

There would not seem to be any deviation in principles underlying such approach. Of course the words of s. 160 itself are paramount in their reference to conduct making a respondent unfit to be concerned in the management of a company. As already mentioned, management in that sense is direction or governance. While Mr. Curran was not alone responsible as part of the management team he was not involved in the direction or governance of the Bank.

9.11 Mr. Curran said he was handicapped when interviewed by the Inspectors. He had left the Bank two years beforehand and had left very good quality records in terms of their location and content. He was severely in his replies to the inspectors by the refusal of

his employer, the Bank, to furnish him with documentation. He was unable to establish what steps, if any, he had taken on foot of correspondence which was relied upon as fixing of knowledge to him. This, he said, was acknowledged by the inspectors who had said that they might try to get on to the Bank to get papers but did not but tried to get copies of everything that they were putting to Mr. Curran. The court, as already indicated, was satisfied that he had sufficient documentation available for this hearing. His evidence in that light has been more comprehensive. It explains the organisational difficulties within which he worked.

9.12 Mr. Curran said that a disqualification order would bring his working career to an abrupt end given that the basic currency in banking was honesty and integrity. He retired from the Bank ten years ago and the media then and now had a very traumatic effect on his personally, on his health and on his family. He had no intention or plans of any description to be a director of any company. He presently works a three-day week in risk management in a co-ordinating role to ensure that people complied with bank requirements in relation to operational risk management.

9.13 Mr. Curran had given evidence that at no time prior to the initiation of the proceedings did the Director of Corporate Enforcement contact him and seek any information concerning his future plans or invite him to furnish any undertaking concerning the level of responsibility that he would have in any business in which he might be involved.

The question arises whether the legislation should be amended with a view to compelling the Director to require an undertaking from such a director/officer. There would appear to be no provision whereby such undertaking could be a matter of public record. It could be noted by the Director of Corporate Enforcement and/or by the Company Registration Office. It would be an immediate remedy and a saving in court time and of costs.

9.14 The systems error in the management and control of the Bank had allowed the improper practices to remain and to continue. This resulted in a shortfall of tax revenue and undoubtedly, an element of interest payable which ultimately affected shareholders' rights.

While the court might have expected a more assiduous approach to compliance particularly when Mr. Curran became Head of Retail it would appear that he did not have the authority to bring about a cessation of the improper practices.

The court does not, in the circumstances and in the light of the authorities, feel that it is appropriate to make a disqualification order.