

COMMI

Commission is needed to investigate bank failures

Taoiseach Brian Cowen has done much that is right – but unpopular – to prevent

the Irish economy from drowning. Commissioning an independent inquiry into the banking sector gives him an unlikely opportunity to do something which is both right and popular.

There cannot be any confidence in the banking system without restoring the trust of the Irish public. Ordinary people followed 'the rules', but have had to suffer job losses, pay cuts and foreclosures. A whole generation will suffer the consequences of this crisis through no fault of their own. Billions of euro of taxpayers' money have been put at risk through the bank guarantee for Irish-controlled banks and through



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Nama. There is justifiable anger and an appetite for accountability. Yet the taxpayer has not been given the decency of a comprehensive examination into the causes of the crisis. This cannot be allowed to continue.

An inquiry into precisely what happened in the banking sector is even more essential in Ireland because of the small size of the economy and its degree of exposure to international forces. Unless we establish what caused the crisis and undertake the necessary regulatory reforms to prevent a similar crisis in the future, the Irish economy cannot shake off its image as a sad exemplar of casino capitalism.

Over the past few weeks, some have said that this inquiry should be conducted by an Oireachtas committee – a similar approach to the Dirt inquiry. This would be throwing good money after bad. We do not need more political grandstanding and theatre. We need an investigation based on facts and evidence to tell us what brought the economy to collapse, and to identify failures – regulatory and human – that have to be fixed.

An independent commission must lead the inquiry. There are good models that we can adopt. The US launched an investigation into the current crisis by setting up the Financial Crisis Inquiry Commission (FCIC) last year. This bipartisan agency is mandated to "submit on December 15, 2010, to the President and to the Congress a report containing the findings and conclusions of the Commission on the causes of the current financial and economic crisis in the United States. It is chaired by Phil Angelides, a former California treasurer, and includes a retired senator, a couple of experienced attorneys, and experts in economic policy.

The FCIC can hold hearings, take testimony and issue subpoenas – useful to compel individuals to testify with the threat of criminal sanctions if they do not comply. FCIC staff can take depositions, meaning that there is no need for the full commission to convene to hear testimony. This will keep costs down and allow it to take more depositions. It also has the power to refer "any person that the commission finds may have violated the laws of the United States in relation to such crisis" for prosecution.

What do we learn from all this? At least three lessons: first, keep insiders out. The FCIC's parent law bans members of Congress and government employees from appointment as commissioners. An Irish inquiry must also be fully independent. It must not be staffed by tired insiders and retired judges. Second, it must be given the power to compel the production of relevant evidence and given access to all actors. Third, it must be mandated to submit a report within one year.

The inquiry commission must be set up by law – making it free from executive influence – with the power to hire and fire staff. It must appoint a lead investigator with full power to look behind every curtain and dig under every grave. This person must be a seasoned prosecuting lawyer with no axe to grind and no personal ambition to feed.

The commission's report must answer the following questions:

- What caused the credit bubble in Ireland?
- Why did banks engage in such extensive international borrowing and reckless domestic lending?
- Were capital adequacy requirements at appropriate levels?
- Were the legal requirements followed?

■ Was this a market failure, a regulatory failure, or an institutional failure?

- What is the role of information intermediaries?
- Did the regulators gloss over the risk exposure of financial institutions?
- Can regulation limit risk to tolerable levels?
- Did regulators have access to relevant information?
- Was there inadequate oversight and enforcement?
- Was there a failure of corporate governance?
- What ought to be the legal response to minimise the possibilities of a similar crisis in the future?

Those opposing an inquiry set up two straw men excuses – cost and delays – pointing at other unsuccessful Irish investigations as a reason to avoid one now. An inquiry is only as good as the individuals who lead it, and the powers that those individuals are given to do their jobs.

This one can be different. First, eliminating insiders will limit political paralysis and theatre.

Secondly, the insanely long hours that the task demands will ensure that only those keen to ferret out the truth will be part of the investigation.

Thirdly, setting a sunset provision in the law creating the commission – meaning that it dies after that date – will ensure that we get a report on time at a reasonable cost.

Cowen has said that he is "trying to engender confidence in the system".

Yet the government has so far refused to order a comprehensive inquiry into the causes of the financial crisis. Politicians, economists and employee groups have all joined the chorus for an inquiry, but the Taoiseach has still not give the green light.

If the government wants to escape suspicion that there is something to hide, it must act now.

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