

PART 8

IMPROPER PRACTICES: KNOWLEDGE AND RESPONSIBILITY

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INTRODUCTION

The Order appointing the Inspectors to investigate the affairs of the Bank requires that they, *inter alia*, investigate and report on the identity of those responsible for or aware of the practices being investigated.

In carrying out this aspect of the investigation, the Inspectors have not considered it 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.

Subject to that limitation the issue of the responsibility of individuals or their knowledge is dealt with hereunder, separately, in respect of each of the improper practices identified in Parts 2 to 7 of the report.

The responsibility or knowledge of other entities falls to be dealt with in respect of the totality of the improper practices, and the Inspectors' conclusions in regard to these form the first section of this Part.

CONCLUSIONS CONCERNING ENTITIES OTHER THAN INDIVIDUALS

The relevant entities are:

- The Bank's internal audit function
- The external auditors to the Bank
- The Audit Committee of the Board
- The Board of Directors.

Internal Audit

The Inspectors reviewed with particular attention internal audit reports on branch visits carried out during the period covered by the investigation, as they represent a contemporaneous record of the results of examination of branch procedures and records over that time. (The Bank advised the Inspectors that a total of 202 branch audit reports had been prepared in the period 1988 to 1997, but that only 164 of these reports could be located, the missing reports largely relating to the early years of the period being investigated).

The Inspectors also reviewed internal audit reports on other areas within the scope of the investigation, including reports on the FASD and theme audits on DIRT, interest, and fee income.

Review of these reports and interviews with internal audit personnel, past and present, have led the Inspectors to conclude that the Bank's internal audit personnel performed

their function in a satisfactory manner. As noted above, in each of the areas the subject of the investigation, with the exception of the manner of promotion of the CMI policies, internal audit staff identified, and reported to senior management in the Bank, instances of improper practices. The Inspectors are of the view that the manner of promotion of the CMI policies was not within the remit of Internal Audit.

The Inspectors accept that it is not the function of internal auditors to correct improper practices or deficiencies in procedures discovered by them.

The External Auditors

The Inspectors have considered the position of KPMG, who were the external auditors from 1990, in relation to the matters being investigated.

In carrying out their audits KPMG were aware of, and placed reliance on, the work of Internal Audit, as they concluded that Internal Audit was competent. In so far as Internal Audit identified the matters being investigated by the Inspectors, KPMG were satisfied that the issues were being reported to management and the Audit Committee and accordingly did not consider it necessary to modify their audit plans to specifically examine the areas reviewed by Internal Audit. In the opinion of the Inspectors, these judgements, with one exception, which is dealt with above at pages 57 and 58, were appropriate.

The Audit Committee of the Board

General

The Inspectors have considered the operation of the Board Audit Committee and have concluded that the Committee:

- afforded to Internal Audit access to Board level in the Bank, independent of senior management;
- ensured that no limitation was placed on the scope of operation of the internal audit function;
- met regularly and received presentations from Internal Audit,

and dealt satisfactorily with matters the subject of the Inspectors' investigation which were raised by Internal Audit, save in relation to DIRT.

DIRT

The management summary in the quarterly audit report to the Audit Committee in respect of the quarter ended February 1995 stated that, in the quarter under review, Internal Audit had completed its first theme audit, which was concerned with DIRT. The audit was rated "unsatisfactory".

The report noted three major audit findings in relation to DIRT, each with a 4 star significance rating (ie the second most serious rating on a scale of 1 to 5). It was clear from the findings that both in regard to non-resident accounts and Special Savings Accounts there had been a significant failure on the part of the Bank to observe the relevant statutory requirements.

The corrective action proposed by Internal Audit and accepted by management did not include any proposal to deal with the issue of the Bank's liability for such arrears of DIRT as might be due in the circumstances. Because of this, the Audit Committee ought not to have accepted the corrective action proposed as being adequate, but should have sought further information as to how management intended to deal with the issue of a potential retrospective liability for DIRT.

The Board of Directors

The Inspectors have considered the duties of a Board of Directors in relation to the matters under investigation, in particular the general duty of care imposed on directors.

The Inspectors note that:

- the Board of NIB appointed a committee of the Board with suitable terms of reference to deal with audit matters, appointed suitably qualified directors to this Committee, and received regular reports from it;
- there was an internal audit function in place, with independent access to Board level in the Bank;
- the Audit Committee met regularly and received reports from the Head of Internal Audit.

The Inspectors have received no evidence that any of the improper practices being investigated were brought to the attention of the Board.

In the circumstances, the Inspectors are of the opinion that the Board of the Bank cannot be held responsible for the existence of these practices.

EVASION OF REVENUE OBLIGATIONS: INCORRECTLY CLASSIFIED NON-RESIDENT DEPOSIT ACCOUNTS

Bogus Non-Resident Accounts

As stated in Part 2 at page 59, the Inspectors have concluded that the opening and maintenance of bogus non-resident accounts by the Bank constituted an unlawful and improper practice which served to encourage the evasion of Revenue obligations by third parties, both on the funds deposited and the interest earned thereon.

The Branch Managers

Managers at those branches 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 (“DIRT”).

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.

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

The Regional Managers (Dermott Boner, Kevin Curran and Tom McMnamin)

The titles and roles of Messrs Boner, Curran and McMnamin, and the periods for which the positions were held are set out in Part 1 at pages 7 and 8.

Throughout the periods they held Regional Manager (or superior) positions – ie 1 June 1988 to 19 January 1996 in the case of Mr Boner, 1 June 1988 to 4 July 1997 in the case of Mr Curran, and 1 October 1990 to 18 January 1996 (including a period as Area Manager) in the case of Mr McMnamin – each was made aware, through internal audit reports circulated to him (see Part 2, pages 44 to 50), 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.

Certain audit reports copied to the three above-named referred to instances where lending to resident customers was secured by letters of lien over deposit accounts with non-resident status. Reports copied to Mr Boner and Mr Curran also referred to instances where the residential status stated on non-resident declarations was at variance with other branch records. A report circulated to Mr McMnamin noted that some accounts designated “non-resident” were connected to resident accounts at the branch; another referred to four instances where non-resident savings accounts were opened in fictitious or incorrect customer names. In the opinion of the Inspectors, these audit reports pointed to the likelihood that the non-resident accounts referred to therein were in fact bogus. 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.

Additionally, while none of these three executives were on the circulation list for the DIRT Theme Audit report of December 1994, Mr Boner and Mr McMnamin attended the meeting of senior management held on 9 February 1995 to discuss the results of the audit and the DIRT compliance issues arising therefrom, and Mr Curran, although not present at the meeting, is noted as having been circulated with a copy of the minutes.

In evidence given when interviewed by the Inspectors, Mr Boner and Mr Curran acknowledged that they had suspicions that bogus non-resident accounts existed in the branch network.

The Inspectors believe the inevitable inference from the above is that Mr Boner, Mr Curran and Mr McMenemy were 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.

Mr Boner, Mr Curran and Mr McMenemy had each a responsibility in respect of the branches in his region to ensure that all accounts classified as DIRT-exempt non-resident accounts were correctly classified as such and, in this regard, particularly in light of the deficiencies disclosed in the audit reports circulated to him, had each a responsibility to make reasonable enquiries 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.

Mr Boner, Mr Curran and Mr McMenemy had each 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.

Mr Boner, Mr Curran and Mr McMenemy each failed to discharge these responsibilities.

Area Managers Appointed February 1996

As noted in Part 1 at page 8, six Area Managers were appointed with effect from 1 February 1996. Each had previously been a branch manager; the majority received branch audit reports in respect of the branches for which they were responsible which contained adverse comment in respect of compliance with the DIRT regime.

In February 1996, DIRT compliance issues were being addressed at a higher level in the Bank (as a result of the Bank's review of the 1994 DIRT Theme Audit). The Inspectors have therefore concluded that these Area Managers do not bear responsibility for the failures at branch level to deduct DIRT where it ought to have been deducted.

General Manager – Retail Banking/General Manager – Banking (Frank Brennan and Michael Keane)

The titles and roles of Messrs Brennan and Keane, and the periods for which these positions were held are set out in Part 1 at pages 5 to 7.

As General Manager – Retail Banking between May 1988 and July 1991, one of Mr Brennan's responsibilities was to ensure that the branches had full and accurate

instructions in regard to deducting DIRT from deposit interest, and to ensure that appropriate procedures were in place to implement the instructions.

Between July 1991 and March 1998, while Mr Brennan's title and functions changed from time to time, he continued to be responsible for procedures in the branches and accordingly he continued to be responsible for ensuring that there was an appropriate system in place for compliance with the DIRT regime.

The evidence discloses that prior to May 1995 no circular or other communication was issued to the branches, after the coming into force of the Finance Act, 1986, which informed branch staff of the effect of Section 32 (2) of the Act which provides that "*a relevant deposit taker should treat every deposit as a relevant deposit unless satisfied that it is not a relevant deposit.*" The effect of this Section was that the Bank was required to deduct DIRT from every account designated non-resident unless it held a valid declaration and was satisfied that the person beneficially entitled to the interest on the account was genuinely non-resident. By failing to inform the branches prior to May 1995 of the requirements of this Section, Mr Brennan, during the period preceding May 1995, failed to discharge his responsibility of ensuring that proper procedures were in place in the branches to secure compliance with the statutory provisions for the operation of DIRT-exempt non-resident accounts.

In the capacity of General Manager – Retail Banking or General Manager – Banking, Mr Brennan and Mr Keane were each made aware, through internal audit reports circulated to them, 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.

Certain audit reports copied to Mr Keane referred to instances where the residential status stated on non-resident declarations was at variance with other branch records; others referred to instances where lending to resident customers was secured by letters of lien over deposit accounts with non-resident status. In the opinion of the Inspectors, these audit reports pointed to the likelihood that the non-resident accounts referred to therein were in fact bogus.

None of the branch audit reports received by the Inspectors where Mr Brennan was on the circulation list referred to non-resident accounts connected to other resident accounts at the branch, to lending to resident customers being secured by liens over deposits with non-resident status or to other matters which, in the opinion of the Inspectors, pointed to the likelihood that certain non-resident accounts were in fact bogus. However, he attended the meeting of senior management held on 9 February 1995 to discuss the results of the DIRT Theme Audit and the issues arising therefrom. In the minutes of this meeting, Mr Brennan is noted as having stated that he felt that there was a need to change attitudes at branch level so that possible tax evasion could be eliminated to the greatest degree possible.

On the same day, 9 February 1995, Mr Brennan sent a memorandum, quoted in Part 2 at page 44, to the Executive Director, which noted Mr Brennan's concerns over a

number of years in the area of compliance with the legal requirements for the operation of DIRT-exempt non-resident accounts.

Mr Keane was on the circulation list for the DIRT Theme Audit report and chaired the 9 February 1995 meeting.

The Inspectors believe in the light of the above that Mr Brennan and Mr Keane were not only aware of the failure of branches to hold properly completed non-resident account declarations but ought also to have been aware that bogus non-resident accounts existed throughout the branch network.

It was the responsibility of Mr Brennan and Mr Keane, while General Manager – Retail Banking or General Manager – Banking, to ensure that accounts classified as DIRT-exempt non-resident accounts were correctly classified as such and to see that Regional Managers secured full compliance with the statutory provisions relating to DIRT. They failed to discharge this responsibility.

As noted at pages 54 and 55 above, the conclusion in the DIRT Theme Audit report was as follows:

Results of this audit are very disappointing and management must take immediate steps to improve the situation. The structure of the whole area can be improved but the level of non-compliance is too high. It appears that there needs to be an organisation-wide change in attitude to the whole area. This is a risk area and the penalty for non-compliance at the level shown in this report would be very significant.

No one at the meeting of 9 February 1995, Mr Brennan and Mr Keane included, raised the question of a potential retrospective liability to the Revenue Commissioners for DIRT resulting from the findings of the Theme Audit. In his evidence to the Inspectors Mr Brennan claimed that this would have been the responsibility of the Finance Department. Even if the primary responsibility rested elsewhere, both Mr Brennan and Mr Keane, by reason of being part of senior management, had a responsibility to raise the issue at the meeting, and this they failed to do.

Head of Finance (Gerry Hunt and Patrick Byrne)

Mr Hunt was Chief Accountant at 1 January 1988. His title subsequently changed to Head of Financial Control, then to Head of Finance and thereafter to Head of Finance and Strategy. He ceased to hold the latter position on 31 December 1993.

Mr Byrne was appointed Head of Finance on 11 April 1994; his title subsequently became Head of Finance and Planning.

The Head of Finance had responsibility for ensuring that the Bank made returns of DIRT to the Revenue Commissioners within prescribed time limits. The accuracy of these returns was critically dependent on the proper categorisation of deposit accounts at branch level between those exempt from DIRT, those liable to DIRT at the standard rate of tax, and those liable at a reduced rate.

In the respective periods throughout which Mr Hunt and Mr Byrne were responsible for returns of DIRT to the Revenue Commissioners, neither was on the circulation list for branch internal audit reports. Accordingly neither was aware through this medium of the extent of the deficiencies or “irregularities” in the declarations held by branches in support of claims for DIRT-exempt non-resident status.

On 18 November 1993, Mr Hunt, as a result of concerns expressed to him by senior officials in the Department of Finance and in the Office of the Revenue Commissioners sent a memorandum to Mr Brennan, Mr Keane and Mr Boner, with a copy to Mr Lacey (see Part 2, page 43, and Appendix 8) to alert them to the probability of a Revenue audit of banks’ non-resident accounts.

As stated above, Mr Hunt ceased to be Head of Finance on 31 December 1993. While the concerns which caused him to send the memorandum referred to could have put him on notice that the DIRT figures received from the branches might not be accurate, since no DIRT returns were submitted to the Revenue Commissioners by the Finance Department in the interval before he left, he did not have to consider the implications for future returns.

Mr Byrne was on the circulation list for the DIRT Theme Audit report of December 1994 and attended the meeting on 9 February 1995 to discuss the results of the audit and the issues arising therefrom. He was thus aware of the extent of non-compliance in the operation of DIRT-exempt non-resident accounts and ought to have known the consequences of such non-compliance for the accuracy of the returns of DIRT being made by him, or persons under his control, to the Revenue Commissioners.

At the meeting on 9 February 1995, Finance and Planning Department was charged with responsibility for drafting revised instructions to staff in relation to the operation of DIRT. These instructions were issued on 8 March 1995, as Special Circular No. S11/95. As already stated, this Circular introduced documentary requirements in relation to the opening of new non-resident accounts, but did not address the position in regard to accounts which had been opened previously apart from indicating that a valid declaration must be held “*which has been signed, dated and in all respects fully completed by the customer*”, nor did it inform the branches of the provisions of Section 32 (2) of the Finance Act, 1986 (see page 27 above). As Head of Finance and Planning, Mr Byrne shares responsibility for the defects in this Circular.

Mr Byrne, in common with Mr Seymour, Mr Keane and Mr Brennan, has given evidence to the Inspectors that the issue of a potential retrospective liability to the Revenue Commissioners for DIRT arising from the findings of the Theme Audit was not considered at the meeting of 9 February 1995. The Bank has confirmed to the Inspectors that no payment of retrospective DIRT was made to the Revenue Commissioners prior to their appointment.

Mr Byrne, as Head of Finance at the time of the DIRT Theme Audit, had a responsibility to raise the issue of potential retrospective liability for DIRT due in respect of interest on accounts wrongly classified as DIRT-exempt, and failed to do so.

Chief Executive (Jim Lacey)

Jim Lacey was the Chief Executive of the Bank from 1 April 1988 to 22 April 1994.

During this time he was copied with internal audit reports and accordingly had notice 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, but certain of the reports referred to instances where the residential status stated on non-resident declarations was at variance with other branch records, while others referred to instances where lending to resident customers was secured by letters of lien over deposit accounts with non-resident status. In the opinion of the Inspectors these audit reports pointed to the likelihood that the non-resident accounts referred to therein were in fact bogus. In addition, the extent of reported documentary non-compliance was on such a scale that, in the opinion of the Inspectors, it constituted a further indication that a substantial proportion of the non-resident accounts could be bogus.

The Inspectors believe the inevitable inference from the above is that Mr Lacey should not only have been aware of the failure of the branches to hold properly completed non-resident account declarations but should also have been aware that bogus non-resident accounts existed throughout the branch network.

As Chief Executive, Mr Lacey held ultimate responsibility to ensure that DIRT was deducted from interest paid or credited on all accounts subject to DIRT under the Finance Act, 1986. He failed to discharge this responsibility.

Executive Director (Barry Seymour)

Barry Seymour was appointed Executive Director of the Bank on 22 April 1994 in succession to Mr Lacey. Mr Seymour’s appointment was on an interim basis but was in fact continued until 15 July 1996.

During his term of office, Mr Seymour was copied with internal audit reports, as Mr Lacey had been, and accordingly had notice 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. Certain of these reports referred to instances where the residential status stated on non-resident declarations was at variance with other branch records, while others referred to instances where lending to resident customers was secured by letters of lien over deposit accounts with non-resident status. In the opinion of the Inspectors, these audit reports pointed to the likelihood that the non-resident accounts referred to therein were in fact bogus. In addition, the extent of reported documentary non-compliance was on such a scale that, in the opinion of the Inspectors, it constituted a further indication that a substantial proportion of the non-resident accounts could be bogus.

The DIRT Theme Audit of December 1994 highlighted the extent of the irregularities. Mr Seymour was made aware of significant issues of documentary non-compliance, the lack of understanding at branches of the Bank's duty to satisfy itself on non-resident status, and the resultant failure to deduct DIRT at the standard rate from interest paid or credited where the conditions for the operation of accounts as DIRT-exempt non-resident accounts were breached.

Through his receipt of the branch audit reports referred to above, and the DIRT Theme Audit report, Mr Seymour should not only have been aware of the failure of the branches to hold properly completed non-resident account declarations, but should also have been aware of the fact that bogus non-resident accounts existed throughout the branch network.

Mr Seymour attended the meeting of senior management of the Bank on 9 February 1995 convened to consider what corrective action was needed to remedy the situation disclosed by the DIRT Theme Audit, but he failed at that meeting, as did everyone else who attended it, to address, or even to raise, the question of the potential liability of the Bank to the Revenue Commissioners resulting from the irregularities.

In spite of the corrective action taken by the Bank following the DIRT Theme Audit, there continued to be non-compliance in the branches with the requirements for DIRT-exempt status during the remainder of Mr Seymour's term of office.

Whilst the Inspectors accept Mr Seymour's submission that DIRT compliance procedures improved during his term of office, nonetheless, as Executive Director, Mr Seymour held ultimate responsibility to ensure that DIRT was deducted from interest paid or credited on all accounts subject to DIRT under the Finance Act, 1986. He failed to discharge this responsibility.

Chief Operating Officer (Philip Halpin)

Philip Halpin was appointed Chief Operating Officer from 15 July 1996 and held that position on the appointment of the Inspectors on 30 March 1998. In that role, Mr Halpin was circulated with seven branch internal audit reports which referred to DIRT compliance issues in the area of DIRT-exempt non-resident accounts. None of these reports referred to issues other than documentary compliance. Mr Halpin, in his previous role as Head of Treasury & International, was circulated with a copy of the DIRT Theme Audit report of December 1994 but did not attend the meeting on 9 February 1995 held to discuss the results of the audit and the issues arising therefrom.

Mr Halpin's evidence to the Inspectors was that, as Head of Treasury at that time, he was not concerned with the main findings of the DIRT Theme Audit but only with the audit's favourable conclusion in regard to Treasury.

Mr Halpin inherited the problem of bogus non-resident accounts. He considered that he was entitled to assume that the issues concerning DIRT compliance raised by the DIRT Theme Audit had been addressed by those who were directly responsible.

While Mr Halpin may not have received such a volume of internal audit reports of documentary non-compliance as to make inevitable the inference that a substantial proportion of the non-resident accounts could be bogus, he had sufficient information to be aware that there were continuing problems in relation to DIRT. As Chief Operating Officer part of his responsibility was to ensure that DIRT was deducted from interest paid or credited on all accounts subject to DIRT under the Finance Act, 1986 and he failed in this regard.

EVASION OF REVENUE OBLIGATIONS: FICTITIOUS AND INCORRECTLY NAMED ACCOUNTS

The Branch Managers

Between 1988 and 1996 fictitious and incorrectly named accounts existed in the branch network. In the opinion of the Inspectors, branch managers were aware that the principal reason for the opening of these accounts was the evasion of tax by the Bank's customers.

In response to the instruction dated 30 May 1996 from the General Manager – Banking and the General Manager – Risk Management and Administration to remove such accounts from the books (see Part 3, page 67), certain managers suggested to customers that they close the accounts and either invest the money in CMI or place it in their correct names at another branch of the Bank. These “solutions” were improper as they served to encourage the account holder to continue to evade tax, but were not objected to by the Head of Audit, who was aware of them.

While the opening and maintenance of such accounts and the “solutions” proposed for regularising them were improper, the Inspectors have nonetheless concluded that it is not appropriate to find individual managers responsible for this practice as they believe that responsibility in this regard lay at a higher level in the Bank.

General Manager Risk Management and Administration, General Manager – Banking (Frank Brennan and Michael Keane)

The Inspectors have received no evidence that the General Manager – Risk Management and Administration or the General Manager – Banking were aware of the existence of fictitious and incorrectly named accounts across the branch network prior to the issue by Mr Keane of the memorandum dated 7 December 1995 referred to at page 67. The Inspectors believe the action taken by Mr Brennan and Mr Keane to eliminate such accounts was appropriate.

Head of Audit (Paul Harte)

Paul Harte, Head of Audit, had a major role in having fictitious and incorrectly named accounts removed from the branches (see Part 3, pages 67 and 68). The declaration which the branches were required to make by the memorandum of 30 May 1996 from the General Managers was directed to be sent to the internal audit department. This declaration was to include details of all the fictitious accounts still remaining in the

branches, and Mr Harte was informed by the managers what they proposed to do in order to eliminate these accounts. What was being recommended to some customers was that the account be closed and the funds either invested in CMI or placed in correct names at another branch of the Bank.

In the opinion of the Inspectors, Mr Harte ought to have known that these “solutions” were improper, as they served to encourage the continued evasion of tax by the Bank’s customers, and he should have refused to allow them to be adopted.

Chief Executive, Executive Director

Jim Lacey, as Chief Executive of the Bank in the period 1 April 1988 to 22 April 1994 may not have had knowledge of the existence of fictitious or incorrectly named accounts at the branches. Barry Seymour, Executive Director of the Bank from 22 April 1994 to 15 July 1996, may not have had knowledge of the existence of such accounts until late 1995.

Nonetheless, as Chief Executive and Executive Director respectively, both Mr Lacey and Mr Seymour must bear ultimate responsibility for the practice of opening and maintaining fictitious or incorrectly named accounts during the periods they held their respective positions.

During the period Mr Seymour held the position of Executive Director, the General Managers took action to eliminate such accounts.

EVASION OF REVENUE OBLIGATIONS: SPECIAL SAVINGS ACCOUNTS

The Branch Managers

Branch managers knew or ought to have known that properly completed declarations were not held by them for all accounts classified as Special Savings Accounts (“SSA’s”).

Branch managers also knew or ought to have known that withdrawals from SSA’s were being permitted within three months of the opening of the account or without the requisite notice period being given.

It was the branch managers’ duty to ensure that Deposit Interest Retention Tax (“DIRT”) at the standard rate was deducted from interest paid or credited where a properly completed declaration was not held for an account classified as an SSA, where there was a withdrawal within three months of the account being opened, or the statutory period of notice for a withdrawal was not given, and they failed to discharge that duty.

While the breaches of statutory requirements relating to declarations and withdrawals occurred at branch level, the Inspectors do not consider it appropriate to find

individual managers responsible, as they believe that responsibility for ensuring adherence to statutory provisions lay at a higher level in the Bank.

The Regional Managers (Dermott Boner, Kevin Curran and Tom McMEnamin)

The titles and roles of Messrs Boner, Curran and McMEnamin, and the periods for which they held their positions are set out in Part 1 at pages 7 and 8.

Each of these three was made aware, through circulation of branch internal audit reports, of widespread documentary non-compliance in the area of SSA's. Furthermore, Mr Boner and Mr McMEnamin attended the meeting of senior management held on 9 February 1995 to discuss the results of the DIRT Theme Audit and the issues arising therefrom, while Mr Curran was circulated with a copy of the minutes of the meeting.

In the light of this evidence, the Inspectors believe that Mr Boner, Mr Curran and Mr McMEnamin were 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 SSA's were being breached.

Mr Boner, Mr Curran and Mr McMEnamin had each a responsibility to ensure that all accounts classified as SSA's were correctly classified as such and, in this regard, particularly in light of the deficiencies disclosed in the internal audit reports circulated to them, each had a responsibility to make reasonable enquiries of the branches for which he was responsible to satisfy himself that properly completed declarations were in place for all accounts classified as SSA's.

Mr Boner, Mr Curran and Mr McMEnamin had each 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 SSA's were breached.

Mr Boner, Mr Curran and Mr McMEnamin each failed to discharge these responsibilities.

General Manager – Banking (Michael Keane)

Michael Keane was appointed General Manager – Banking on 3 May 1993 and held that position up to 18 August 1996. Throughout this period, Mr Keane was made aware, through audit reports circulated to him, of the deficiencies which existed in the operation of SSA's at branches, the failure of branches to hold properly completed declarations for all accounts classified as SSA's and instances of failure to comply with the relevant withdrawal notice requirements. The Inspectors believe that through these reports he 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 the accounts as SSA's were being breached.

Furthermore, Mr Keane was on the circulation list for the DIRT Theme Audit report of December 1994 and chaired the meeting of senior management held on 9 February 1995 at which the results of the audit and the issues arising therefrom were discussed.

Mr Keane had a responsibility to ensure that all accounts classified as SSA's were correctly classified as such and to ensure that DIRT at the standard rate was deducted from interest paid or credited where the conditions for the operation of accounts as SSA's were breached. Mr Keane failed to discharge these responsibilities.

Head of Finance (Gerry Hunt and Patrick Byrne)

As noted at page 173 above, the Head of Finance had responsibility for ensuring that returns of DIRT were made to the Revenue Commissioners within prescribed time limits. As stated, the accuracy of these returns was critically dependent on the proper categorisation of deposit accounts at branch level between those exempt from DIRT, those liable to DIRT at the standard rate of tax, and those liable at a reduced rate.

In the respective periods throughout which Mr Hunt and Mr Byrne were responsible for returns of DIRT to the Revenue Commissioners, neither was on the circulation list for branch internal audit reports. Accordingly neither was aware through this medium of the extent of the deficiencies in the operation of SSA's at the branches.

The Inspectors have no evidence that anything was brought to the notice of Mr Hunt which ought to have apprised him of these deficiencies.

Mr Byrne, however, was on the circulation list for the DIRT Theme Audit report of December 1994 and attended the meeting on 9 February 1995 to discuss the results of the audit and the issues arising therefrom. He was thus aware of the extent of non-compliance in the operation of SSA's and ought to have known the consequences of such non-compliance for the accuracy of the returns of DIRT being made by him, or persons under his control, to the Revenue Commissioners.

As already noted, Mr Byrne, in common with Mr Seymour, Mr Keane and Mr Brennan, has given evidence to the Inspectors that the issue of a potential retrospective liability to the Revenue Commissioners for DIRT arising from the findings of the Theme Audit was not considered at the meeting of 9 February 1995. The Bank has confirmed to the Inspectors that no payment of retrospective DIRT was made to the Revenue Commissioners prior to their appointment.

Mr Byrne, as Head of Finance at the time of the DIRT Theme Audit, also had a responsibility to raise the issue of potential retrospective DIRT due on accounts wrongly classified as SSA's, and failed to do so.

Chief Executive, Executive Director

Jim Lacey, as Chief Executive of the Bank in the period 1 January 1993 to 22 April 1994 may not have had knowledge of the deficiencies in the operation of SSA's at the branches. As Chief Executive Mr Lacey must nonetheless bear ultimate responsibility for the shortcomings which existed in this area during that period.

Barry Seymour held the position of Executive Director of the Bank from 22 April 1994 to 15 July 1996 and during that period was made aware, through audit reports circulated to him, of the deficiencies which existed in the operation of SSA's at

branches, both in relation to documentary non-compliance and breaches of the withdrawal notice requirements.

Mr Seymour was also circulated with the DIRT Theme Audit report of December 1994 and attended the meeting on 9 February 1995 to discuss the results of the audit and the issues arising therefrom. He was thus aware of significant issues of documentary non-compliance in relation to SSA's, the widespread failure to ensure adherence to the notice requirements for withdrawals from such accounts, and the resultant failure to deduct DIRT at the standard rate from interest paid or credited where the conditions for the operation of such accounts as SSA's were breached.

As Executive Director, Mr Seymour bears ultimate responsibility for the failure of the Bank to deduct DIRT at the standard rate from interest paid or credited on all accounts classified as Special Savings Accounts where the conditions to which such accounts were subject were not observed.

THE SALE OF CMI, SCOTTISH PROVIDENT INTERNATIONAL AND OLD MUTUAL INTERNATIONAL POLICIES

The Financial Advice and Services Division

As described at pages 83 and 84 above, on 1 May 1989 Nigel D'Arcy was recruited by the then Chief Executive of National Irish Bank, Jim Lacey, to establish the Financial Advice and Services Division ("FASD") of the Bank to provide a range of independent financial services, primarily in the insurance and investment-related sector, to Bank customers and others.

The Bank employed financial services managers whose responsibilities were to obtain referrals for high value insurance products from the Bank's retail branches and to deal with direct enquiries from the public with respect to such products.

Nigel D'Arcy

Mr D'Arcy was head of the FASD during the entire of the period from 1 May 1989 to the date of the appointment of the Inspectors on 15 June 1998 to investigate the affairs of National Irish Bank Financial Services Limited. All the financial services managers reported directly to him.

Mr D'Arcy's evidence to the Inspectors, at his interview on 7 September 2000, can be summarised as follows:

- As head of the FASD, Mr D'Arcy became aware in 1992 that funds undisclosed to the Revenue Commissioners were being targeted by Bank personnel for investment in CMI.
- Prospective investors were being assured by the FASD managers that their investment would be confidential from the Revenue Commissioners.

- They were also being assured that if their investment was made the subject of a trust, the beneficiaries could obtain the funds invested, after the death of the investor, on production of a death certificate, thus avoiding the necessity of probate having to be taken out.
- He also became aware that CMI was being used by the Bank to regularise bogus non-resident accounts and fictitious and incorrectly named accounts.
- The manner in which the CMI policies were being promoted served to facilitate the evasion of tax by the persons investing in the policies.

The Inspectors' findings concerning Mr D'Arcy's knowledge and responsibility are:

- Mr D'Arcy was aware that monies which were undisclosed to the Revenue Commissioners, including funds held in bogus non-resident accounts and fictitious and incorrectly named accounts, were being targeted by Bank personnel for investment in CMI policies, and he failed to stop the practice.
- Mr D'Arcy was aware that the FASD financial services managers were promoting CMI policies as a secure investment for funds which had not been declared to the Revenue and failed to stop the said practice, which served to facilitate the evasion of Revenue obligations by third parties.
- Mr D'Arcy was aware that prospective investors were being given an assurance by the FASD financial services managers 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.

In his evidence to the Inspectors Mr D'Arcy stated that from 1992 he was fully aware of the manner in which the CMI policies were being promoted by the financial services managers, and since as head of the FASD he could have stopped the practice, he was, in the opinion of the Inspectors, primarily responsible for the continuation of the practice. The responsibility of the financial services managers has to be judged against this background. They were operating with Mr D'Arcy's tacit approval.

The FASD Financial Services Managers; Patrick Cooney, Investment Manager

The names of the nine individuals who were employed at different times as financial service managers in the FASD are set out at page 84 above. The Inspectors make no findings in regard to three of the persons named, Michael Fitzgerald, Gerry Stewart and John Bailey.

Michael Fitzgerald was interviewed by the Inspectors on 25 March 1999 and a copy of the transcript of this interview was mailed to his solicitors on 18 May 1999. The Inspectors sought to interview Mr Fitzgerald a second time in late 1999, but were advised by Mr Fitzgerald's solicitors that he was not medically fit. The Inspectors

arranged that Mr Fitzgerald be examined by an independent medical practitioner, who confirmed Mr Fitzgerald's incapacity to attend for interview.

In January 2002 the Inspectors sent to Mr Fitzgerald their provisional findings relating to him. In reply, the Inspectors received a letter from his solicitor enclosing a medical certificate from a doctor stating that Mr Fitzgerald was not fit to respond to the Inspectors' provisional findings.

In these circumstances, the Inspectors are precluded from making any findings with regard to Mr Fitzgerald.

Messrs Stewart and Bailey are omitted because they did not join the FASD until June and August 1997 respectively, and were involved in the sale of very few CMI policies.

The Inspectors' findings in regard to the remaining six financial services managers and Patrick Cooney will be structured as follows:

- *Beverley Cooper-Flynn, Charlie McCarthy, Patricia Roche and Alistair Stewart*
- *Frank Lynch and Bob Wynne*
- *Patrick Cooney*

Beverley Cooper-Flynn joined the FASD as a financial services manager on 1 September 1989 and continued working in the FASD until 5 January 1997 when she was given leave of absence by the Bank.

Charlie McCarthy joined the FASD as a financial services manager on 4 December 1989 and was still working in the FASD on 15 June 1998, the date on which the Inspectors were appointed to investigate the affairs of the company.

Patricia Roche joined the FASD as a financial services manager on 1 October 1991. She took leave of absence from the Bank on 19 September 1994 for personal reasons.

Alistair Stewart joined the FASD as a financial services manager on 1 September 1989 and he continued working in the FASD until 25 June 1994.

Beverley Cooper-Flynn, Patricia Roche and Alistair Stewart sold a substantial number of CMI policies. Charlie McCarthy also sold a number of CMI policies, but not as many as the other three.

All four were aware that monies being invested in CMI were undeclared to the Revenue. All four assured their customers that their investment was completely confidential from everyone, including the Revenue. They also informed their customers that if their investment was made the subject of a trust their beneficiaries could obtain the funds after their death without having to take out probate.

The Inspectors' findings in regard to the knowledge and responsibility of Beverley Cooper-Flynn, Charlie McCarthy, Patricia Roche and Alistair Stewart are:

- They sold CMI policies as a secure investment for funds which had not been declared to the Revenue.
- They gave an assurance to prospective investors that their investment would be confidential, that the Revenue Commissioners would not become aware of it.
- They told prospective investors that if their investment was made the subject of a trust it would pass to the beneficiaries on the production of a death certificate, thereby avoiding the necessity of probate being obtained, and making it possible for the funds invested to be kept hidden from the Revenue Commissioners even after the investor's death.

Bob Wynne joined the FASD as a financial services manager on 15 August 1994, and **Frank Lynch** joined as a financial services manager on 15 March 1995.

At the respective times they joined, the culture in regard to the sale of CMI policies was well established. After they took up their positions, the CMI policies continued to be sold in the same way as previously. Branch managers continued to refer customers to the financial services managers with a view to investment in CMI only, particularly when they thought that they were at risk of losing a deposit. However, the level of CMI sales had declined from its peak.

The Inspectors are satisfied that on joining the FASD, Mr Wynne and Mr Lynch carried on the practice that existed in regard to the promotion of CMI policies before they joined, and accordingly find:

- They sold CMI policies as a secure investment for funds which had not been declared to the Revenue.
- They gave an assurance to prospective investors that their investment would be confidential, that the Revenue Commissioners would not become aware of it.
- They told prospective investors that if their investment was made the subject of a trust it would pass to the beneficiaries on the production of a death certificate, thereby avoiding the necessity of probate being obtained, and making it possible for the funds invested to be kept hidden from the Revenue Commissioners even after the investor's death.

Patrick Cooney joined the FASD as Investment Analyst on 4 December 1989 and he was appointed Investment Manager on 1 January 1991, a position he held until he ceased working for the Bank on 12 July 1996.

Mr Cooney worked closely with the financial services managers and the Inspectors are satisfied that he was fully aware that they were promoting the CMI policies as a secure investment for funds which had not been declared to the Revenue.

While Mr Cooney's principal function was to assist the financial services managers with advice in regard to investments, he was also involved in the sale of CMI policies to a small number of customers, either assisting the financial services managers, or occasionally replacing a financial services manager who was not available.

The Branch Managers

Branch managers introduced customers to CMI or referred customers to the FASD for introduction to CMI, in many cases in the knowledge that such introduction was to enable the customers to continue to conceal funds from the Revenue.

The Inspectors have concluded that it is not appropriate to find individual managers responsible for the manner in which the CMI policies were promoted. They take the view that responsibility in this regard lay with the FASD and at a higher level in the Bank.

Head of Retail/Regional Managers (Dermott Boner, Kevin Curran)

Dermott Boner was Head of Retail between 1 October 1990 and 1 January 1995 and after that a Regional Manager until his retirement in February 1996. During his period as Head of Retail he was aware that funds coming from deposits in the branches, when invested in CMI through FASD, were reinvested by CMI on deposit with the Bank. He was also aware, from his knowledge of the retail section of the Bank, and in particular from his knowledge of an investment made in CMI in 1993 by a customer of the Bank who invested approximately £600,000 which had not been declared to the Revenue Commissioners, that FASD were promoting CMI policies as a secure investment for funds which had not been declared to the Revenue Commissioners.

Mr Boner 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.

Kevin Curran was one of the Regional Managers in the Bank between 1988 and February 1996 and after that was Head of Retail Banking until his retirement from the Bank. 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.

Mr Curran 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.

General Manager – Administration (Frank Brennan)

Frank Brennan, while General Manager – Administration, as the addressee of the memorandum dated 17 August 1994 from Geoff Bell, Head of Management Services quoted in Part 5 at page 100, knew that the CMI policy was being promoted to persons with “*sensitive*” funds with “*confidentiality a prerequisite in investment*” and also knew the extent of the funds deposited by CMI with the Bank resulting from the sale of CMI Personal Portfolio policies.

Mr Brennan shares responsibility for the Bank's failure to take steps to ensure that the promotion of CMI policies in this manner was stopped.

General Manager – Banking (Michael Keane)

Michael Keane, while General Manager – Banking, was copied with Mr Bell's memorandum of 17 August 1994. He thus knew that the CMI policy was being promoted to persons with “*sensitive*” funds and also knew the extent of the funds deposited by CMI with the Bank resulting from the sale of CMI Personal Portfolio policies.

Mr D'Arcy reported directly to Mr Keane from 1 January 1995 to the date of Mr Keane's ceasing to act as General Manager – Banking.

Mr Keane shares responsibility for the Bank's failure to take steps to ensure that the promotion of CMI policies in the manner stated above was stopped.

Head of Audit (Paul Harte)

Paul Harte, Head of Audit, became aware in 1996 that CMI was being used by branch managers as a means of continuing to conceal from the Revenue Commissioners undeclared funds which had been on deposit in fictitious or incorrectly named accounts. He ought to have taken steps to ensure that this practice was stopped.

Chief Executive, Executive Director, Chief Operating Officer (Jim Lacey, Barry Seymour, Philip Halpin)

Jim Lacey as Chief Executive recruited Mr D'Arcy to establish the FASD; Mr D'Arcy reported directly to him. Mr Lacey was aware of the level of deposits made by CMI with the Bank. He knew or ought to have known how the product was being promoted.

Whether or not Mr Lacey was aware that the CMI product was being promoted to persons wishing to conceal, or continue to conceal, funds from the Revenue Commissioners, as Chief Executive of the Bank he has to bear responsibility for the existence of this practice, which served to facilitate customers of the Bank and others in evading tax.

Barry Seymour held the position of Executive Director of the Bank from 22 April 1994 to 15 July 1996. On his appointment, he inherited the practice whereby customers of the Bank, and others, were being facilitated in evading tax through investment in the CMI product. As Executive Director of the Bank he has to bear responsibility for the continuation of the practice.

Philip Halpin was appointed Chief Operating Officer of the Bank on 15 July 1996 and held that position on the appointment of the Inspectors on 30 March 1998. On his appointment, he inherited the practice whereby customers of the Bank, and others, were being facilitated in evading tax through investment in the CMI product. As Chief Operating Officer of the Bank he has to bear responsibility for the continuation of the practice.

THE PRACTICE OF IMPROPER CHARGING OF INTEREST

The Branch Managers

The branch managers who effected, or who directed there be effected, adjustments to interest charged to customers otherwise than in respect of legitimate interest amounts were clearly aware of the practice of “loading” interest.

These branch managers undoubtedly engaged in the practice, but the Inspectors have nonetheless concluded that it is not appropriate to find individual managers responsible, as they accept the evidence of managers that they loaded interest in the belief that they were charging customers for amounts legitimately due to the Bank (albeit misdescribed), and under the impression that their superiors would not at the time have disapproved of such practice.

No instruction to make refunds was received by the branch managers and accordingly the Inspectors are of the opinion that the managers were not responsible for the Bank’s failure in this regard.

The Regional Managers (Dermott Boner and Kevin Curran)

As noted in Part 1 at page 7, the Regional Managers in 1990, the time of first reporting of interest loading, were Dermott Boner and Kevin Curran.

Mr Curran was made aware of the existence 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 from Frank Brennan, then General Manager – Retail Banking, dated 21 May 1990 (addressed to Mr Curran) and 5 June 1990 (addressed to both Mr Curran and Mr Boner), quoted in Part 6 at page 131.

As noted, Mr Boner was an addressee of Mr Brennan’s memorandum of 5 June 1990 and he also received a copy of the August 1990 internal audit report on Carndonagh branch.

Mr Boner's knowledge of the practice antedated the 5 June 1990 memorandum and the audit report on Carndonagh branch; he had, for some six years prior to being appointed Regional Manager, been manager of the Bank's Cork branch, where he had overseen interest loading on customers' accounts (to remunerate the Bank for management time, according to Mr Boner). In common with other managers interviewed, he at the time considered the practice acceptable.

The actions of the Regional Managers in response to Mr Brennan's memorandum of 5 June 1990 were appropriate in that they gave instructions that the practice of loading interest cease.

They however did not revert to Mr Brennan as requested by him to report on how widespread the practice was, and it remains unclear whether they took sufficient steps to establish this. While it must remain a matter of speculation what might have ensued if they had furnished a comprehensive report to Mr Brennan, no supplementary guidance to the branches was issued.

The Regional Managers share with Mr Brennan 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.

General Manager – Retail Banking (Frank Brennan)

The General Manager – Retail Banking in 1990 was Frank Brennan. He was made aware of the practice of loading interest through receipt of the audit reports on the Carrick-on-Shannon and Carndonagh branches. (Mr Brennan ceased to be on the circulation list for branch audit reports from September 1990).

Mr Brennan's response to the audit report on Carrick-on-Shannon branch, and to the related memorandum dated 21 May 1990 from Mr Lacey, was appropriate in so far as he requested that he be advised of the extent of the practice and he instructed that the practice cease. He however omitted to give any instruction that refunds be made to customers.

Mr Brennan also failed to ensure that he was advised of the extent of the practice, and by reason of his failure in this regard he was unable to take any decision on whether further action was required.

Mr Brennan shares responsibility for the Bank's failure to make appropriate refunds to customers at the time, notwithstanding his evidence to the Inspectors that the primary responsibility to refund customers lay with the branch manager, and thereafter with the relevant Regional Manager.

Chief Executive (Jim Lacey)

Jim Lacey was Chief Executive of the Bank for the period during which the adverse internal audit reports on interest loading were issued, and with which he was copied.

Mr Lacey's reaction to receipt of the April 1990 report on Carrick-on-Shannon branch was appropriate in that he directed that the practice cease, but incomplete in that it failed to address the issue of refunds to customers.

THE PRACTICE OF IMPROPER CHARGING OF FEES

The Branch Managers

During the period 1988 to mid 1996, the vast majority of branch managers included, in amounts charged to customers, fees for which there was no supporting documentation.

Managers interviewed have indicated to the Inspectors that these fees purportedly related to management time.

The Inspectors are satisfied that the branch managers were required by senior management in the Bank to charge for management and administration time, but that senior management had failed up to 1996 to put in place a proper system for recording and charging such time.

In these circumstances the Inspectors have concluded that it is not appropriate to find the branch managers responsible, as they believe that responsibility for the failure to introduce an appropriate time recording system lay at a higher level in the Bank.

The Regional and Area Managers

As set out in Part 1 at pages 7 and 8, the management structure and the titles of the personnel to whom branch managers reported changed on a number of occasions between 1988 and 1996. The executives holding the positions of Regional and Area Manager during the period were Dermott Boner, Kevin Curran, Tom McMenemy and Barry Grogan.

The late Michael O'Rourke also held the position of Regional Manager. By reason of the death of Mr O'Rourke, it has not been possible for him to be heard and accordingly the Inspectors make no finding in this report in relation to his knowledge and responsibility. Any references to Regional Managers in this section are not to be taken as including him.

All those holding the position of Regional or Area Manager during the period 1988 to 1996 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 responsible for delivery of the service.

They were 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, they were all on the circulation list for internal audit reports on branches under their supervision; as indicated in Part 7 at pages 153 to 155, there was a constant theme therein of dissatisfaction with the lack of explanation for fee increases recorded on the Fees to be Applied Report. They were also aware from internal audit reports of the failure of the introduction of the Customer Action Pad by Mr Boner in 1992 to bring about an improvement in the situation.

The Regional Managers, Head of Retail, and Area Managers holding the latter title in the 1993/94 period – ie Dermott Boner, Kevin Curran, Tom McMenamin, and Barry Grogan 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.

Following a reorganisation in February 1996, six Area Managers were appointed. The Inspectors are unaware of any initiative taken by these Area Managers to rectify the position; their date of appointment as Area Managers however postdates commencement of work on the systems improvements which included the time recording facility referred to in Part 7 at pages 155 and 156 and therefore the Inspectors have concluded that they should not be held responsible for failing to act to bring about a change in the system.

General Manager – Retail Banking/General Manager – Banking (Frank Brennan and Michael Keane)

As outlined in Part 1 at pages 5 to 7, Frank Brennan held the position of General Manager – Retail Banking from 1988 to 30 June 1991 and Michael Keane held the position of General Manager – Banking from 3 May 1993 to 18 August 1996.

During the periods they respectively held the position, Mr Brennan and Mr Keane 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 responsible for delivery of the service.

As General Manager – Banking, Mr Keane was made aware, through receipt of branch audit reports, of the consistently reported shortcomings concerning the lack of explanation supporting adjustments on the Fees to be Applied Reports, and, from September 1993, of the failure of the 1992 introduction of the Customer Action Pad to bring about an improvement in the situation.

Mr Brennan and Mr Keane bear the principal responsibility for the Bank's failure, during the periods they occupied the respective positions of General Manager – Retail Banking or General Manager – Banking, to put in place an appropriate system for recording management and administration time which was chargeable to customers. Between July 1991 and March 1996, while Mr Brennan's title and functions changed from time to time, he continued to be responsible for procedures in the branches and accordingly he continued to share responsibility for the Bank's failure in this regard.

Chief Executive, Executive Director (Jim Lacey and Barry Seymour)

Jim Lacey was Chief Executive of the Bank from 1 April 1988 to 22 April 1994.

Barry Seymour became Executive Director of the Bank on 22 April 1994 and held that position until 15 July 1996.

Through receipt of branch audit reports, both Mr Lacey and Mr Seymour were made aware of consistently reported shortcomings concerning the lack of explanation supporting fee increases recorded on the Fees to be Applied Reports. They were also made aware, through receipt of branch audit reports, that the Customer Action Pad introduced in July 1992 was not being used. It was their responsibility to ensure that there was a system in place in the branches for the contemporaneous recording of management and administration time. Such a system was introduced in March 1996 following pressure on banks from the Director of Consumer Affairs to provide customers with an itemised breakdown of their charges before being applied to the account.

Mr Lacey, during the period he was Chief Executive, and Mr Seymour, during the period he was Executive Director, each bear ultimate responsibility for the failure of the Bank, prior to March 1996, to put in place in the branches an appropriate system for recording management and administration time which was chargeable to customers.

John Blayney

Tom Grace

Joint Inspectors

9 July 2004

